

DEPARTMENT OF ECONOMIC SECURITY (R-18-0401)

Title 6, Chapter 1, Article 2, Debt Set Off

Amend: R6-1-202, R6-1-203

New Section: R6-1-201



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: April 3, 2018

AGENDA ITEM: E-1

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

FROM: Council Staff

DATE: March 20, 2018

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (R-18-0401)
Title 6, Chapter 1, Article 2, Debt Set Off

Amend: R6-1-202, R6-1-203

New Section: R6-1-201

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Department of Economic Security (Department), adds one new rule while amending and renumbering two existing rules in A.A.C. Title 6, Chapter 1, Article 2. The rules relate to the process through which a person may request review of a debt set off conducted by the Department of a person's state income tax refund or lottery winnings.

The Department is engaging in this rulemaking to update statutory references, clarify both the process for requesting review of a set off and the process for reviewing a debt set off, and remove language duplicative of statute from the rules. This rulemaking relates, in part, to a five-year review report approved by the Council on February 4, 2014. The rules were last amended in 1993. The Governor's Office provided an exemption from Executive Order 2016-03 on May 16, 2016.

Proposed Action

- R6-1-201 - *Definitions*: This new section is being added to define the terms: "debtor," "department," and "request for review."
- R6-1-202 - *Request for Review* (previously R6-1-201):
 - Add "of Debt Setoff" to end of the title to make the title clearer.
 - Update statutory references.
 - Update the language in accordance with the new definitions.
 - Amend language to make the request process clearer.

- R6-1-203 - *Review of Debt Set Off* (previously R6-1-202):
 - Add “Departmental” to the beginning of the title to make the title clearer.
 - Update the statutory references.
 - Remove language that is duplicative of statute.
 - Update the language in accordance with the new definitions.

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

Yes. The Department cites to both general and specific authority for the rules, including A.R.S. § 41-1954, which empowers the Department to adopt rules necessary to “further the objectives and programs of the department.” Further, A.R.S. § 5-575 allows an agency to “set off” lottery prize money to satisfy debts and A.R.S. § 42-1122 allows an agency to “set off” state income tax refunds to satisfy debts.

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

No. The rules do not establish a new fee or contain a fee increase.

3. Summary of the agency’s economic impact analysis:

The Department generated 98,310 notices of debt setoff from FY2013 to FY2017. The Department received approximately 145 written requests for review during this same period. During these five years, the Department recovered \$20.6 million from debtors via the debt setoff process.

4. 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?

Yes. The Department indicates that the rules do not impose costs on any relevant stakeholders. As a current and clear process for requesting review of debt setoff benefits all stakeholders involved, the benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department and the Department’s debtors. The Department benefits from clearer rules that govern the debt setoff and review process. Prior to this rulemaking, these rules included outdated references to the implementing statutes for these rules. Outdated references have the potential to generate significant confusion. The Department’s debtors may benefit from this rulemaking because the process for requesting a review of a debt setoff will be clearer and easier to follow.

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

Not applicable. The Department indicates that no comments were received on the proposed rules.

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

No. Only non-substantive clarifying changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Department indicates that no federal law is directly applicable to the subject of the rules.

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

No. The rules do not require a permit or license.

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

No. The Department indicates that it did not review or rely on any study for this rulemaking.

11. Conclusion

The Department requests the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

JAN 30 2018



Ms. Nicole Ong Colyer, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Colyer,

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

1. Close of Record Date: The rulemaking record closed on October 8, 2017, following the public comment period. This rulemaking package is being submitted within the 120 days provided by A.R.S. § 41-1024(B). There was no oral proceeding requested and none was held.
2. General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules: General statute: A.R.S. § 41-1954(A)(3). Specific statute: A.R.S. §§ 5-575 and 42-1122. No definition is used from statutes or other rules for the making of these rules.
3. Relation of the Rulemaking to a Five-year Review Report: This rulemaking relates to a Five-year Review Report approved by the Council on February 4, 2014.
4. New Fee or Fee Increase: This rulemaking does not establish a new fee or increase an existing fee.
5. Effective Date: The Arizona Department of Economic Security (Department) is requesting an effective date 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).
6. Material Incorporated by Reference: No material is incorporated by reference in this rulemaking.
7. Certification Regarding Studies: The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and either relied on or not relied on in the Department's evaluation of or justification of the rule.
8. Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.
9. List of Documents Enclosed:
 - a. Cover letter;
 - b. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text;
 - c. Economic Impact Statement;
 - d. Current Rules;
 - e. Statutes; and
 - f. Governor's Office Approval.

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If you have any questions, please contact Christian Eide, Rules Analyst, Division of Business and Finance, at (602) 542-9199 or ceide@azdes.gov.

Sincerely,



Michael Traylor
Director

Enclosures: Notice of Final Rulemaking
Economic Impact Statement
Arizona Administrative Code, Title 6, Chapter 1, Article 2
Arizona Revised Statutes §§ 5-575, 41-1954(A)(3), and 42-1122.
Electronic Email of May 16, 2016

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 1. DEPARTMENT OF ECONOMIC SECURITY

PREAMBLE

<u>1.</u>	<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R6-1-201	Renumber (<i>moving to R6-1-202</i>)
	R6-1-201	New Section
	R6-1-202	Renumber (<i>moving to R6-1-203 and coming from R6-1-201</i>)
	R6-1-202	Amend
	R6-1-203	Renumber (<i>coming from R6-1-202</i>)
	R6-1-203	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. § 41-1954(A)(3)

Implementing statutes: A.R.S. §§ 5-575 and 42-1122

3. The effective date of the rules:

In accordance with A.R.S. § 41-1032, the rules will become effective 60 days after filing with the Office of Secretary of State.

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

reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 2427, September 8, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2421, September 8, 2017

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 rules in Article 2 were last amended effective December 22, 1993. This rulemaking is in response to a Five-year Review Report, approved by the Governor's Regulatory Review Council on February 4, 2014. This rulemaking will amend the rules related to the request for review for debt setoff. It will also amend the rules associated with the review process. Language that is duplicative of statute will be removed without broadening the Department's scope of review. Moreover, this rulemaking will update the references to A.R.S. §§ 5-575 and 42-1122.

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:

There is minimal economic, small business or consumer impact. The Department benefits by the dollars collected from the debtors. The general public will benefit from this rulemaking because it will eliminate confusion by reflecting the A.R.S. §§ 5-575 and

42-1122 statutory change from the previous statutes, A.R.S. §§ 5-525 and 42-133 respectively. This rulemaking will also simplify the language to improve the request for review process, and make the rules more clear, concise, and understandable. Small businesses are not impacted by the rules.

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

- The term “Request for review” was added to the definitions contained in R6-1-201.
- Language was added to R6-1-202(A), R6-1-202(B)(4), and R6-1-202(C)(2) to clarify the rules.
- Replaced existing language in the proposed rule with an internal reference for clarity in R6-1-203(D).
- The language in R6-1-203(F) will remain in rule to provide notice of the debtor’s appeal rights.
- Minor grammatical changes were also made.

The Department does not believe there are substantial changes under A.R.S. §41-1025.

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:

Not applicable.

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

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the 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 1. DEPARTMENT OF ECONOMIC SECURITY

ARTICLE 2. DEBT SETOFF

Section

R6-1-201.

Definitions

~~R6-1-201.~~ R6-1-202.

Request for Review of Debt Setoff

~~R6-1-202.~~ R6-1-203.

Departmental Review of Debt Setoff

ARTICLE 2. DEBT SETOFF

R6-1-201. Definitions

A. In this article, unless otherwise specified:

1. “Debtor” means a person indebted to the Department.
2. “Department” means the Department of Economic Security.
3. “Request for review” means a request for agency-level review filed with the Department pursuant to A.R.S. §§ 5-575(C) or 42-1122(H), but excludes claims made pursuant to A.R.S. § 42-1122(S).

~~R6-1-201.~~ R6-1-202. Request for Review of Debt Setoff

A. A person indebted to the Department of Economic Security (“the Department”), Debtor who has had all or part of ~~the~~ their debt set off pursuant to A.R.S. §§ ~~5-525 (C)~~ 5-575 or ~~42-133(E)~~ 42-1122 may file a request ~~a~~ for review of the setoff.

B. The To be considered by the Department, the request for review shall:

1. Be in writing;
2. Be ~~filed with~~ received by the Department office ~~which~~ that set off the debt, at the address indicated on the notice of debt setoff (~~“the notice”~~), no later than 30 days after the ~~mailing~~ date of the notice of debt setoff;
3. List any prior judicial or administrative proceedings regarding the debt;
4. Set forth, with specificity, all reasons why the setoff is inaccurate or improper;

5. Be signed by the ~~debtor~~ Debtor or the ~~debtor's~~ Debtor's authorized representative; and
 6. ~~Have~~ Include an attached complete copy of the notice of debt setoff from which review is sought.
- C. As used in this Section, the date of the notice of debt setoff shall be the following dates, as applicable to the ~~debtor~~ Debtor:
1. The date that the State Lottery Office gives the ~~debtor~~ Debtor a written statement of winnings indicating the amount of the setoff; or
 2. The mailing date of the written notice generated by the Department, advising the ~~debtor~~ Debtor of the setoff.
- D. Notwithstanding subsection (B), the Department may consider a timely request for review which does not include all the documentation listed in subsection (B) if:
1. The ~~debtor~~ Debtor has good cause for failing to provide the information, and
 2. The lack of information does not substantially prejudice the Department's ability to evaluate the request.

~~R6-202.~~ R6-1-203. Departmental Review of Debt Setoff

- A. The Director of the Department of ~~Economic Security~~ shall appoint representatives who shall conduct the review in accordance with A.R.S. §§ ~~5-525~~ 5-575 or ~~42-1133~~ 42-1122, as applicable, and in a manner ~~which~~ that will observe the substantial rights of the ~~debtor~~ Debtor.
- B. ~~The Department shall limit the scope of its review to the identity of the debtor and the amount of the debt setoff when the validity of the debt was established by judicial review~~

~~in a court of competent jurisdiction, agency hearing, or final administrative decision made in accordance with the law. If it is found that the debt was not established in accordance with one of the foregoing methods listed in this subsection, the setoff action shall be stayed and remanded to the appropriate Department authority for resolution.~~

Unless otherwise prohibited by law, the Department may correct clerical errors that have occurred in the administration of the debt setoff.

- C. In reviewing the debt setoff, the Department shall consider all relevant evidence, including, without limitation, evidence submitted by the ~~debtor~~ Debtor and the documents and records in the Department's files.
- D. The Department ~~shall~~ may dispose of a request for review by:
1. Dismissal, if the ~~debtor~~ Debtor fails to ~~state with specificity in the request for review why the debt does not exist or why the amount of debt is incorrect~~ comply with R6-1-202;
 2. Withdrawal, if the ~~debtor~~ Debtor withdraws the request for review in writing at any time before the Department issues a decision; or
 3. Decision.
- E. Every review decision shall be in writing and shall be mailed to the last known address of the ~~debtor~~ Debtor or the ~~debtor's~~ Debtor's authorized representative.
- F. The Department's decision is final unless the debtor files a petition for judicial review with the Superior Court within 35 days of the date the decision is mailed to the debtor as provided in A.R.S. § 12-904. A debtor who files a petition for review shall mail a copy to the Department office which issued the decision.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 6. ECONOMIC SECURITY

CHAPTER 1. DEPARTMENT OF ECONOMIC SECURITY

ARTICLE 2. DEBT SET OFF

1. Identification of the rulemaking:

The proposed rulemaking will amend the Arizona Administrative Code Title 6, Article 2. Debt Setoff. It adds new sections, and amends existing text of the article. The language has been simplified for clarity. It updates the reference to A.R.S. §42-1122 from the previous reference to A.R.S. §42-133(E). This rulemaking is in response to the five-year review report, approved by the Governor's Regulatory Review Council on February 4, 2014. The rules in Article 2 were last amended effective December 22, 1993.

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

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

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

This rulemaking will have a minimal impact (less than \$1,000) on small business or consumers. The debtor shall benefit by this rulemaking because the language has been simplified and the references were updated.

4. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking:

There is minimal (less than \$1,000 projected) economic, small business or consumer impact. The Department generated 16,618 notices of debt set off for FY2017, 18,473 for FY 2016, 20,342 for FY2015, 19,047 for FY2014, and 23,830 for FY2013. The Department averaged 145 written requests for review for the five prior fiscal year periods from debtors who believe that their state income tax refund should not be intercepted to pay a debt owed to the Department. The general public and the Department will benefit from this rulemaking because it will eliminate the confusion by reflecting the A.R.S. §42-1122 statutory change from the previous

statute A.R.S. §42-133(E) and simplifies the language to improve the request of the written review process. It makes the rules more clear, concise and understandable. The Department further benefits from this rulemaking because the debtor can request that the Department conduct a review prior to debt set off taking place. The Department will be able to determine if the offset or partial offset hold should be released prior to receiving the debtor's monies. If the debtor's monies are received from the Department of Revenue and it is determined they were sent in error, the Department would need to request a warrant be issued to the debtor. When the review is completed, the debtor will be noticed of the decision.

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

The Department of Economic Security, Office of Accounts Receivable and Collections, collect for over 33 DES Programs except Unemployment Insurance Tax and Child Support. The Office refers delinquent debts to the Arizona Department of Revenue for debt set off. The total dollars the Office collected was \$3.3 million for FY2017, \$4 million for FY 2016, \$4.6 million for FY2015, \$4.2 million for FY 2014 and \$4.5 million for FY2013.

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

Not applicable.

5. Impact on private and public employment:

This rulemaking is not expected to impact public and private employment.

6. Impact on small businesses:

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

This rulemaking does not impact small businesses.

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

There are no administrative or other costs required to comply with this rulemaking.

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

i. Establish less costly or less stringent compliance or reporting requirements:

Not applicable

ii. Establish less costly schedules or less stringent deadlines for compliance:

Not applicable

iii. Consolidate or simplify compliance or reporting requirements:

Not applicable

iv. Establish separate performance standards:

Not applicable

v. Exempt small businesses from any or all requirements:

Not applicable

d. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The proposed rulemaking will have no negative financial impact upon private persons and consumers. The debtor will benefit by this rulemaking because the language has been simplified and the references were updated.

7. Probable effects on state revenues:

None

8. Less intrusive or less costly alternative methods considered:

There is no less intrusive or less costly method of achieving the objectives of the rulemaking.

a. Monetizing of the costs and benefits for each option:

Not applicable

b. Rationale for not using non-selected alternatives:

Not applicable

9. Description of any data on which the rule is based:

Not applicable

Department of Economic Security

R6-1-105. Oral Proceedings; Request for; Nature of

- A. Oral proceedings scheduled pursuant to A.R.S. § 41-1023(A) shall be held in each of the districts established pursuant to A.R.S. § 41-1961.
- B. A written request for oral proceedings filed with the Department pursuant to A.R.S. § 41-1023(B) shall contain:
 - 1. The name, current address, and daytime telephone number of each requestor;
 - 2. The name of any partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any nature, or another agency that the requestor is representing as a registered lobbyist or otherwise;
 - 3. A statement identifying the rule for which the oral proceeding is requested; and
 - 4. The signature of each requestor.
- C. The petition may contain a proposed location for such proceeding. If such a location is included, the petition shall also explain how the proposed location will afford interested members of the public a reasonable opportunity to participate.
- D. Oral proceedings shall be conducted by a presiding officer in an informal manner and without adherence to the procedures of a trial-type or evidentiary hearing, as described in this subsection.
 - 1. A person may make an oral presentation without being placed under oath or affirmation.
 - 2. Any person who makes an oral presentation shall fill out a speaker's registration card prior to speaking.
 - 3. The presiding officer shall conduct the proceeding in a way which avoids undue repetition and assures a reliable record on any proposed rulemaking.
 - 4. Any person may file a written submission at an oral proceeding, in addition to or in lieu of oral presentations.
 - 5. Prior to taking oral presentations, the presiding officer shall summarize the contents of the rule under consideration and the economic impact and small business statements filed with the rule.
 - 6. Prior to the close of the record of the oral proceeding, the presiding officer shall summarize all subsequent rulemaking steps, procedures, and time-frames.

Historical Note

Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4).

R6-1-106. Petition for Delayed Effective Date

- A. A person may petition the Department pursuant to A.R.S. § 41-1032(2) to delay the effective date of a rule.
- B. A petition for delayed effective date shall contain:
 - 1. The petitioner's name, current address, and daytime telephone number;
 - 2. The name of any partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any nature, or another agency that the petitioner is representing as a registered lobbyist or otherwise;
 - 3. A statement describing the effect the rule may have on the petitioner, and the reason why delaying the effective date of a rule to a specified date will lessen or eliminate that effect;
 - 4. The reasons why the public will not be harmed by the later effective date; and
 - 5. The signature of the petitioner.
- C. The Department shall mail the petitioner written notice of the Department's determination regarding the petition.

Historical Note

Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4).

R6-1-107. Written Criticisms of Existing Rules

The Department shall retain written criticisms of existing rules which have been filed with the Department and shall consider such writings when conducting the five-year review required by A.R.S. § 41-1054.

Historical Note

Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4).

ARTICLE 2. DEBT SETOFF

R6-1-201. Request for Review

- A. A person indebted to the Department of Economic Security ("the Department"), who has had all or part of the debt set off pursuant to A.R.S. §§ 5-525(C) or 42-133(E) ("the debtor"), may request a review of the setoff.
- B. The request for review shall:
 - 1. Be in writing;
 - 2. Be filed with the Department office which set off the debt, at the address indicated on the notice of debt setoff ("the notice"), no later than 30 days after the mailing date of the notice;
 - 3. List any prior judicial or administrative proceedings regarding the debt;
 - 4. Set forth all reasons why the setoff is inaccurate or improper;
 - 5. Be signed by the debtor or the debtor's authorized representative; and
 - 6. Have an attached copy of the notice of debt setoff.
- C. As used in this Section, the date of the notice of debt setoff shall be the following dates, as applicable to the debtor:
 - 1. The date that the State Lottery Office gives the debtor a written statement of winnings indicating the amount of the setoff; or
 - 2. The date of the written notice generated by the Department, advising the debtor of the setoff.

Department of Economic Security

- D. Notwithstanding subsection (B), the Department may consider a timely request for review which does not include all the documentation listed in subsection (B) if:
1. The debtor has good cause for failing to provide the information, and
 2. The lack of information does not substantially prejudice the Department's ability to evaluate the request.

Historical Note

Adopted as an emergency effective March 2, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former Section R6-1-101 adopted as an emergency effective March 2, 1984 now adopted without change as a permanent rule effective April 30, 1984 (Supp. 84-2). Former Section R6-1-101 renumbered without change as R6-1-201 (Supp. 88-3). Amended and subsections (B)(2) through (C) renumbered to Section R6-1-202 effective December 22, 1993 (Supp. 93-4).

R6-1-202. Review of Debt Setoff

- A. The Director of the Department of Economic Security shall appoint representatives who shall conduct the review in accordance with A.R.S. §§ 5-525 or 42-133, as applicable, and in a manner which will observe the substantial rights of the debtor.
- B. The Department shall limit the scope of its review to the identity of the debtor and the amount of the debt setoff when the validity of the debt was established by judicial review in a court of competent jurisdiction, agency hearing, or final administrative decision made in accordance with the law. If it is found that the debt was not established in accordance with one of the foregoing methods listed in this subsection, the setoff action shall be stayed and remanded to the appropriate Department authority for resolution. Unless otherwise prohibited by law, the Department may correct clerical errors that have occurred in the administration of the debt setoff.
- C. In reviewing the debt setoff, the Department shall consider all relevant evidence, including, without limitation, evidence submitted by the debtor and the documents and records in the Department's files.
- D. The Department shall dispose of a request for review by:
1. Dismissal, if the debtor fails to state with specificity in the request for review why the debt does not exist or why the amount of debt is incorrect;
 2. Withdrawal, if the debtor withdraws the request for review in writing at any time before the Department issues a decision; or
 3. Decision.
- E. Every decision shall be in writing and shall be mailed to the last known address of the debtor or the debtor's authorized representative.
- F. The Department's decision is final unless the debtor files a petition for judicial review with the Superior Court within 35 days of the date the decision is mailed to the debtor as provided in A.R.S. § 12-904. A debtor who files a petition for review shall mail a copy to the Department office which issued the decision.

Historical Note

Renumbered from R6-1-201(B)(2) through (C) and amended effective December 22, 1993 (Supp. 93-4).

ARTICLE 3. EXPIRED

Article 3, consisting of R6-1-301 through R6-1-309, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-301. Expired

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-302. Expired

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-303. Expired

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-304. Expired

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-305. Expired

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

5-575. Prizes; setoff for debts to state agencies; definitions

A. The commission shall establish a liability setoff program by which state lottery prize payments pursuant to section 5-573 may be used to satisfy debts which a person owes this state. The program shall comply with the standards and requirements prescribed by this section.

B. If a person owes an agency a debt, an agency may notify the commission, furnishing at least the state agency or program identifier, the first name, last name, middle initial and social security number of the debtor, and the amount of the debt. This information shall be in the form the commission prescribes. Each agency shall certify the information and update the information monthly. No information may be transmitted by the department of revenue to the commission if the transmission would violate title 42, chapter 2, article 1.

C. The commission shall match the information submitted by the agency with persons who are entitled to a state lottery prize payment in an amount of six hundred dollars or more. If there is a match, the commission shall set off the amount of the debt from the prize due and notify the person of the person's right to appeal to the appropriate court, or to request a review by the agency pursuant to agency rule. The person shall make such a request or appeal within thirty days after the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize shall be paid to the person. The commission shall promptly transfer the setoff, less the amount of the commission's fee, to the agency.

D. If a person requests a review by the agency or provides the agency with proof that an appeal has been taken to the appropriate court within thirty days after the setoff and it is determined that the setoff was made in error under this section, the agency shall reimburse the person with interest as determined pursuant to section 42-1123.

E. The basis for a request for review shall not include the validity of the claim if its validity has been established at an agency hearing, by judicial review in a court of competent jurisdiction in this or any other state or by final administrative decision and shall state with specificity why the person claims the obligation does not exist or why the amount of the obligation is incorrect.

F. The commission may prescribe a fee to be collected from each agency utilizing the setoff procedure. The amount of the fee shall reasonably reflect the actual cost of the service provided.

G. If agencies have two or more delinquent accounts for the same person, the commission shall apportion the prize equally among them, except that a setoff to the department of economic security for overdue support has priority over all other setoffs.

H. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency as provided by law or resubmitted for setoff against any other prize awarded.

I. An agency shall not enter into an agreement with a debtor for the assignment of any prospective prize to the agency in satisfaction of the debt.

J. In this section:

1. "Agency" means a department, agency, board, commission or institution of this state. Agency also means a corporation under contract with this state that provides a service that would otherwise be provided by a department, agency, board, commission or institution of this state if the contract specifically authorizes participation in the liability setoff program and the attorney general's office has reviewed the contract and approves of such authorization. The participation in the liability setoff program is limited to debts related to the services the corporation provides for or on behalf of this state.

2. "Debt" means an amount over one hundred dollars owed to an agency by a person and may include interest, penalties, charges, costs, fees or any other amount. Debt also includes monies owed by a person for overdue support and referred to the department of economic security for collection.

3. "Overdue support" means a delinquency in court ordered payments for support or maintenance of a child or for spousal maintenance to the parent with whom the child is living if child support is also being enforced pursuant to an assignment or application filed under 42 United States Code section 654(6).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.
3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.
6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. 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 its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that shall be judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.

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. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department 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.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department'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 inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department 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 department shall pay ninety-nine per cent 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 department shall pay one hundred per cent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department 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.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

42-1122. Setoff for debts to state agencies, political subdivisions and courts; revolving fund; definitions

A. The department shall establish a liability setoff program by which refunds under sections 42-1118 and 43-1072 may be used to satisfy debts that the taxpayer owes to this state, a political subdivision or a court. The program shall comply with the standards and requirements prescribed by this section.

B. If a taxpayer owes an agency, political subdivision or court a debt, the agency, political subdivision or court, by November 1 of each year, may notify the department, furnishing at least the state agency, court or program identifier, the first name, last name, middle initial or middle name and suffix, social security number and any other available identification that the agency, political subdivision or court deems appropriate of the debtor as shown on the records of the agency, political subdivision or court, and the amount of the debt.

C. The department shall match the information submitted by the agency, political subdivision or court by at least two items of identification of the taxpayer with taxpayers who qualify for refunds under section 42-1118 and:

1. Notify the agency, political subdivision or court of a potential match, the taxpayer's home address and any additional taxpayer identification numbers used by the taxpayer. Even if the taxpayer is not entitled to a refund, the department of revenue shall provide to:

(a) The court, the clerk of the court and the department of economic security, for child support and spousal maintenance purposes only, the home address of a taxpayer whose debt for overdue support is referred for setoff and any additional taxpayer identification numbers used by the taxpayer.

(b) The court, the home address and any additional taxpayer identification numbers used by the taxpayer whose debt for a court obligation is referred for setoff and who is identified by the court as a probationer on absconder status.

2. Request final agency, political subdivision or court confirmation in writing or electronically as determined by the department within ten days of the match and of the continuation of the debt. If the agency, political subdivision or court fails to provide confirmation within forty-five days after the request, the department shall release the refund to the taxpayer.

D. An agency, political subdivision or court may submit updated information, additions, deletions and other changes on a quarterly or more frequent basis, at the convenience of the agency, political subdivision or court.

E. On confirmation pursuant to subsection C, paragraph 2 of this section, the agency or political subdivision shall notify the taxpayer, by mail to the most recent address provided by the taxpayer to the department:

1. Of the intention to set off the debt against the refund due.

2. Of the taxpayer's right to appeal to the appropriate court, or to request a review by the agency or political subdivision pursuant to agency or political subdivision rule, within thirty days of the mailing of the notice.

F. In addition the taxpayer shall receive notice that if the refund is intercepted in error through no fault of the taxpayer, the taxpayer is entitled to the full refund plus interest and penalties from the agency, political subdivision or court as provided by subsection O of this section.

G. The basis for a request for review as provided by subsection E of this section shall not include the validity of the claim if its validity has been established at an agency hearing, by judicial review in a court of competent

jurisdiction in this or any other state or by final administrative decision and shall state with specificity why the taxpayer claims the obligation does not exist or why the amount of the obligation is incorrect.

H. If, within thirty days of the mailing of the notice, the taxpayer requests a review by the agency or political subdivision or provides the agency or political subdivision with proof that an appeal has been taken to the appropriate court, the agency or political subdivision shall immediately notify the department and the setoff procedure shall be stayed pending resolution of the review or appeal.

I. If the department does not receive notice of a timely appeal, it shall draw and deliver a warrant in the amount of the available refund up to the amount of the debt in favor of the agency or political subdivision and notify the taxpayer of the action by mail.

J. Subsections E, G, H and I of this section do not apply to a debt imposed by a court except that the taxpayer shall receive notice of the intent to set off the debt against the refund due and the right to appeal to the court that imposed the debt within thirty days of the mailing of the notice. The basis for the request for review shall not include the validity of the claim and shall state with specificity why the taxpayer claims the obligation does not exist or why the obligation is incorrect.

K. If the setoff accounts for only a portion of the refund due, the remainder of the refund shall be sent to the taxpayer. A court shall not use this section to satisfy a judgment or payment of a fine or civil penalty until the judgment has become final or until the time to appeal the imposition of a fine or civil penalty has expired.

L. A revolving fund is established to recover and pay the cost of operating the setoff program under this section. The department may prescribe a fee to be collected from each agency, political subdivision or court utilizing the setoff procedure or from the taxpayer, and the amount shall be deposited in the fund. The amount of the fee shall reasonably reflect the actual cost of the service provided. Monies in the revolving fund are subject to legislative appropriation.

M. If agencies, political subdivisions or courts have two or more delinquent accounts for the same taxpayer, the refund may be apportioned among them pursuant to rules prescribed by the department of revenue, except that a setoff to the department of economic security for overdue support has priority over all other setoffs.

N. If the refund is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency, political subdivision or court as provided by law or resubmitted for setoff against subsequent refunds.

O. In the case of a refund that is intercepted in error through no fault of the taxpayer under this section, the taxpayer shall be reimbursed by the agency, political subdivision or court with interest pursuant to section 42-1123. In addition, if all or part of a refund is intercepted in error due to an agency, political subdivision or court incorrectly identifying a taxpayer as a debtor through no fault of the taxpayer, the agency, political subdivision or court shall also pay the taxpayer a penalty as follows:

1. If the agency, political subdivision or court reimburses the taxpayer sixteen through one hundred eighty days after the agency, political subdivision or court receives notification that the refund was erroneously intercepted and the refund was received by the agency, political subdivision or court, the penalty is equal to ten percent of the amount of the refund that was intercepted.

2. If the agency, political subdivision or court reimburses the taxpayer one hundred eighty-one through three hundred sixty-five days after the agency, political subdivision or court receives notification that the refund was erroneously intercepted and the refund was received by the agency, political subdivision or court, the penalty is equal to fifteen percent of the amount of the refund that was intercepted.

3. If the agency, political subdivision or court fails to reimburse the taxpayer within three hundred sixty-five days after the agency, political subdivision or court receives notification that the refund was erroneously intercepted and the refund was received by the agency, political subdivision or court, the penalty is equal to twenty percent of the amount of the refund that was intercepted.

P. The time periods set forth in subsection O of this section shall be stayed during a review of an agency decision pursuant to section 25-522.

Q. Except as is reasonably necessary to accomplish the purposes of this section, the department shall not disclose under this section any information in violation of chapter 2, article 1 of this title.

R. An agency, political subdivision or court shall not enter into an agreement with a debtor for:

1. The assignment of any prospective refund to the agency, political subdivision or court in satisfaction of the debt.

2. Payment of the debt if the debt has been confirmed to the department for setoff under subsection C, paragraph 2 of this section.

S. If a tax refund is based on a joint income tax return and the department of economic security receives a written claim from the nonobligated spouse within forty-five days after the notice of a setoff for overdue child support, the setoff only applies to that portion of the refund due to the obligor. The nonobligated spouse shall provide to the department of economic security copies of both the obligated and nonobligated spouse's federal W-2 forms and evidence of estimated tax payments supporting the proportionate share of each spouse's payment of tax. The department of economic security shall retain the amount of the set off refund due to the obligated spouse determined by a proration based on the tax payments of each spouse by estimated tax payment or tax withheld from wages.

T. For the purposes of this section:

1. "Agency" means a department, agency, board, commission or institution of this state. Agency also means a corporation that is under contract with this state and that provides a service that would otherwise be provided by a department, agency, board, commission or institution of this state, if the contract specifically authorizes participation in the liability setoff program and the attorney general's office has reviewed the contract and approves such authorization. The participation in the liability setoff program shall be limited to debt related to the services the corporation provides for or on behalf of this state.

2. "Court" means all courts of record, justice courts and municipal courts.

3. "Debt" means an amount over fifty dollars owed to an agency, political subdivision or court by a taxpayer and may include a judgment in favor of this state or a political subdivision of this state, interest, penalties, charges, costs, fees, fines, civil penalties, surcharges, assessments, administrative charges or any other amount. Debt also includes monies owed by a taxpayer for overdue support and referred to the department of economic security or the clerk of the court for collection.

4. "Overdue support" means a delinquency in court ordered payments for spousal maintenance or support of a child or for spousal maintenance to the parent with whom the child is living if child support is also being enforced pursuant to an assignment or application filed under 42 United States Code section 654(6) or other applicable law.

5. "Political subdivision" means a county or an incorporated city or town in this state.

DEPARTMENT OF ECONOMIC SECURITY (R-18-0402)

Title 6, Chapter 3, Article 51, Discharge Benefit Policy; Article 52, Able and Available Benefit Policy; Article 55, Total and Partial Unemployment Benefit Policy

Amend: R6-3-51140; Article 52; R6-3-5205; R6-3-5240; R6-3-52235;
R6-3-55460



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: April 3, 2018

AGENDA ITEM: E-2

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

FROM: Council Staff

DATE: March 20, 2018

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (R-18-0402)
Title 6, Chapter 3, Article 51, Discharge Benefit Policy; Article 52, Able and Available Benefit Policy; Article 55, Total and Partial Unemployment Benefit Policy

Amend: R6-3-51140; Article 52; R6-3-5205; R6-3-5240; R6-3-52235;
R6-3-55460

SUMMARY OF THE RULEMAKING

In this rulemaking, the Arizona Department of Economic Security (Department) seeks to amend five rules in A.A.C. Title 6, Chapter 3, related to the Unemployment Insurance (UI) program. The UI program is a social insurance program that provides weekly payments to workers who have involuntarily lost their jobs.

The rules in Article 51, related to the Discharge Benefit Policy, implement A.R.S. § 23-775(2), which requires an individual to be disqualified from receiving UI benefits if the individual has been discharged for willful or negligent misconduct connected with employment. Article 52, related to the Able and Available Benefit Policy, implements A.R.S. § 23-771(A), which establishes that an individual is only eligible to receive UI benefits if the Department finds the individual is able and available to work. The rules in Article 55 relate to various special circumstances that may impact an applicant's eligibility for benefits. The rules were last amended at various times between 1977 and 1997.

This rulemaking relates to the five-year-review report approved by the Council on June 6, 2017. The Department received an exemption from the Governor's Office on March 7, 2016.

Proposed Action

- **Section 51140 – Misappropriation of Funds; Falsification of Employment Records:** The title of the rule is being changed to “Misappropriation of Funds or Property; Falsification of Employment Records.” Misappropriation is being defined in subsection (A)(1) to include any misuse of employer’s credit cards or checks. In addition, subsections (A)(3) and (4) are added to reference a claimant who is discharged for knowingly misappropriating company property and who is discharged for retaining company property.
- **Article 52 – Able and Available Benefit Policy:** The title of the article is being changed to “Able and Available for Work.”
- **Section 5205 – General (Able and Available 5):** The rule defines “availability for work” and establishes factors that the Department considers when determining a claimant’s availability for work. In addition to numerous clarifying changes that are being made throughout the rule to reflect the Department’s current policies, subsection (6) is added to align the rule with the Americans with Disabilities Act (ADA).
- **Section 5240 – Attendance at School or Training Course:** Subsections (A)(3) and (B)(1)(d) are added to reflect changes in academia. Online classes allow individuals to attend school or training courses while still being available in the job market.
- **Section 52235 – Health or Physical Condition:** The rule defines “able to work” and establishes factors that are considered when determining a claimant’s ability to work in subsection (A)(3). Currently, the rule analyzes a claimant’s ability to work based on age, suffrage from an infectious or communicable disease, seizures, and pregnancy. In addition, a subsection on disability is being added to the rule to align with ADA. The new subsection states that the Department may find a claimant with a disability as able to work, as long as the claimant is not completely restricted from all work.
- **Section 55460 – Type of Compensation (Total and Partial Unemployment 460):** The rule is being amended to avoid confusion and remain consistent with A.R.S. § 23-621, which establishes that severance pay is considered a wage.

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

Yes. As for general authority, A.R.S. § 41-1954(A)(3) authorizes the Department to adopt rules that are deemed “necessary or desirable to further the objectives and programs of the [D]epartment.”

As for specific authority, the Department cites to A.R.S. § 23-771 (related to eligibility for benefits) and A.R.S. § 23-773 (related to examination and determination of claims).

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

No. The rules do not establish a new fee or contain a fee increase.

3. Summary of the agency's economic impact analysis:

Between October 1, 2016 and September 30, 2017, the Department paid a total of \$260 million in UI benefits. During this same period, there was an average of 20,135 claimants receiving UI benefits each week.

4. 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?

Yes. The Department concludes that the rules update and clarify the administration of the UI program, and the rules do not impose costs on any relevant stakeholders. Updated and clearer rules reduce the transaction costs that stakeholders incur when interacting with the UI program. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department, employers, and UI claimants. The Department benefits from clearer rules that govern the administration of the UI program. Periodic updates to the rules ensure that they reflect the realities of administering a large social insurance program while maintaining compliance with pertinent statutes.

Both employers and claimants benefit from the rules that are more clear, concise, and understandable. Navigating the rules for the UI program is not a simple process. Once the rulemaking takes effect, it will be easier for these stakeholders to understand how this program functions in relationship to them.

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

Yes. The Department indicates that representatives from the William E. Morris Institute for Justice and the Arizona Center for Disability Law made comments on the proposed rules. The public comments, along with the Department's responses, can be found on pages 6 through 9 of the Notice of Final Rulemaking. The Department made several amendments to the rules as a result of the public comments. Council staff believes the Department adequately addressed the comments.

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

No. Only non-substantive changes were made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. Clarifying language was added in response to the public comments and at the request of Council staff.

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

No. The Department indicates that the rules do not correspond to federal law.

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

No. The rules do not require a permit or license.

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

No. The Department indicates that it did not review or rely on any study for this rulemaking.

11. Conclusion

The Department requests the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



DEPARTMENT OF ECONOMIC SECURITY

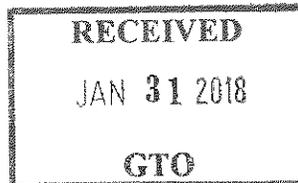
Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

JAN 30 2018

Ms. Nicole Ong Colyer, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007



Dear Ms. Colyer,

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

1. Close of Record Date: The rulemaking record closed on October 6, 2017, following the oral proceedings, requested during the public comment period, held by the Department on October 4, 5, and 6. This rulemaking package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
2. General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules: General statute: A.R.S. § 41-1954(A)(3). Specific statute: A.R.S. §§ 23-771 and 23-773. No definition is used from statutes or other rules for the making of these rules.
3. Relation of the Rulemaking to a Five-year Review Report: This rulemaking relates to a Five-year Review Report approved by the Council on June 6, 2017.
4. New Fee or Fee Increase: This rulemaking does not establish a new fee or increase an existing fee.
5. Effective Date: The Arizona Department of Economic Security (Department) is requesting an effective date 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).
6. Material Incorporated by Reference: No material is incorporated by reference in this rulemaking.
7. Certification Regarding Studies: The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and either relied on or not relied on in the Department's evaluation of or justification of the rule.
8. Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.
9. List of Documents Enclosed:
 - a. Cover letter;
 - b. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text;
 - c. Economic Impact Statement;
 - d. Current Rules;
 - e. Statutes; and
 - f. Governor's Office Approval

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If you have any questions, please contact Christian Eide, Rules Analyst, Division of Business and Finance, at (602) 542-9199 or ceide@azdes.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Traylor". The signature is stylized with a large initial "M" and a cursive "T".

Michael Traylor
Director

Enclosures: Notice of Final Rulemaking
Economic Impact Statement
Arizona Administrative Code, Title 6, Chapter 3, Articles 51, 52, and 55
Arizona Revised Statutes §§ 41-1954(A)(3), 23-771, and 23-773.
Electronic Email of March 7, 2016

NOTICE OF FINAL RULEMAKING
TITLE 6. ECONOMIC SECURITY
CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

PREAMBLE

<u>1.</u>	<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R6-3-51140	Amend
	Article 52	Amend
	R6-3-5205	Amend
	R6-3-5240	Amend
	R6-3-52235	Amend
	R6-3-55460	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. § 41-1954(A)(3)

Implementing statutes: A.R.S. §§ 23-771 and 23-773

3. **The effective date of the rule:**

In accordance with A.R.S. § 41-1032, the rules will become effective 60 days after filing with the Office of Secretary of State.

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 22 A.A.R. 2084, August 12, 2016

Notice of Proposed Rulemaking: 23 A.A.R. 1627, June 16, 2017

Notice of Oral Proceeding on Proposed Rulemaking: 23 A.A.R. 2388, September 1, 2017

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 Unemployment Insurance rules contain requirements relating to misappropriation of funds and falsification of employment records; ability to and availability for work; attendance at school or training course; health or physical condition; and type of compensation. The Department front-line Deputies and the Administrative Law Judges rely on the rules as their primary authority. The rules require revision to reflect technology advancements and state and federal law revisions that have changed the employment environment. These changes have led to confusion on the part of claimants, employers, Deputies, and Administrative Law Judges. This rulemaking reflects statutory changes that will properly inform the parties of requirements relating to Unemployment Insurance.

These amendments will provide employers and claimants with knowledge of the actual processes used by the Department. This rulemaking will make the rules more clear, concise, and understandable.

R6-3-51140 currently fails to address theft and falsification of time and work records and property. This lack of clarity creates a burden on the adjudicatory process by making the Deputies and parties seek answers outside the rules. The amendments will create clarity, reducing time spent searching for the applicable regulations.

R6-3-5205 defines the terms “able to work” and “available to work” and to address able to work part time as provided by medical evidence that the restriction is due to a disability.

R6-3-5240 covers attendance at school and training courses. The amendment addresses the current state of education by recognizing some employees’ ability to attend school or training courses while still being “available” in the job market.

R6-3-52235 includes provisions covering pregnant Unemployment Insurance claimants and their ability to work.

R6-3-55460 currently provides that severance pay is not considered a wage. The statutes were amended to state that severance pay is considered a wage. This amendment makes the rule consistent with the statutes.

- 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 Department does not anticipate any significant changes to the overall economic impact of rules. The changes are minor and add no requirements for participants; no additional costs of administration; and no need for additional equipment, supplies, or personnel. The changes will align the rules with current practice to clarify the process to stakeholders.

- 10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

- R6-3-51140 the word “Property” was added.
- The language, “Able to work part time as provided by medical evidence that the restriction is due to a disability,” was added to R6-3-5205
- “Online class” information was added to R6-3-5240
- R6-3-51140, R6-3-5205, R6-3-5240, R6-3-52235 and R6-3-55460 were amended for clarity, style, format and language.

The Department does not believe these are substantive changes under A.R.S. § 41-1025.

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

	COMMENT FROM COMMENTOR	DEPARTMENT RESPONSE:
1.	<p>Comment from Ellen Katz William E Morris Institute for Justice (WMIJ)</p> <p>In R6-3-51140, DES proposes to add "property" to the section on misappropriation. In Section A(2), DES acknowledges that the situation where the claimant honestly believes the claimant is entitled to the "funds" and makes adjustment or restitution upon notification, constitutes a discharge for reasons other than misconduct. The proposed rule has no such exception for property. Just as with funds, there may be situations where the claimant honestly believes she was entitled to the property and makes adjustment or restitution upon notification. These situations, like the situation of "funds," should also be considered a discharge for reason other than misconduct . . . There is no reason to treat the situations differently.</p>	<p>The Department has added “property” to the Misappropriation section.</p>
2.	<p>Comment from Ellen Katz, William E Morris Institute for Justice (WMIJ) Rose Daly-Rooney, Legal Director Arizona Center for Disability Law (ACDL)</p> <p>Comments regarding R6-3-5205</p> <p>Subsection 3, state as follows: 3. The term “work” means suitable work that is a recognized occupation for which the claimant is reasonably qualified and that the claimant does not have good cause to refuse. <u>For purposes of this regulation, good cause includes an employer’s refusal to provide reasonable accommodations that the claimant needs to perform the essential functions of the claimant’s job.</u> <i>From ACDL (emphasis in the original).</i></p> <p>R6-3-5205 concerns when a claimant is able and available to work. In subsection 6, DES inserts a section on disability.</p>	<p>DEPARTMENT RESPONSE:</p> <p>In Subsection 3, good cause is determined during the fact finding process. Reasonable accommodation requirements are imposed on employers via the Americans with Disabilities Act and are not imposed via this Chapter of the Arizona Administration Code. The Department is a neutral party in determining eligibility. If the suggested language is added to the rule, the rule would be very restrictive in how the Department applies the rule and the rule may be interpreted to be in favor of the claimant.</p> <p>In Subsection 6, the Department declines to add “with or without reasonable accommodation” to the rule.</p>

	<p>Subsection (a) should be modified to add after the word "disability" "with or without a reasonable accommodation." Persons with disabilities are entitled to reasonable accommodations and those should be acknowledged in the rules. <i>From WMIJ.</i></p> <p>Subsection 7 to state: 7. The Department . . . If the claimant is not able or available for more than a full shift, the claimant is ineligible for benefits, except as provided in subsection 6. <i>From ACDL (emphasis in the original).</i></p> <p>In subsection 8, DES proposes that, if DES or the claimant's union "tried to contact the claimant for possible referral" but "was unable to do so" (subsection c), or an employer "made an effort to contact the claimant for a job offer or interview" but "was unable to do so" (subsection d), the claimant may have "reduced or jeopardized" their employment opportunities. These sections are overly broad and vague. The Institute is concerned about what constitutes "unable to do so" in each situation and what constitutes "an effort" by an employer . . . At a minimum, DES should modify subsections 8 (c) and (d) to require both contacts to the correct telephone number, e-mail address, or proper alternative mode of communication and there should be proof of the actual receipt by the claimant and a good cause assessment of the reason that the claimant did not receive and/or respond to the contact. <i>From WMIJ.</i></p>	<p>Although, persons with a disability are entitled to reasonable accommodations, it is up to the employer to provide reasonable accommodations. During the fact finding process (obtaining information and evidence from both the employer and claimant), the Department must determine if the employer provided reasonable accommodations.</p> <p>The Department has added the following language to Subsection 6: "c. Able to work part time as provided by medical evidence that the restriction is due to a disability."</p> <p>With regard to Subsection 7, see response regarding Subsection 6, above.</p> <p>In Subsection 8, the Department declines to add specific modes of communication to the rule because the Department makes all reasonable attempts to contact the claimant and employer to the address and phone number of record. In situations where the employer makes an effort to contact a claimant, the employer's effort and claimant's availability is determined during the fact finding process. While the Department can expect employers to make reasonable effort to contact prospective employees, the Department cannot advise employers on their business practices. Reasonable accommodation requirements are imposed on employers via the Americans with Disabilities Act and are not imposed via this Chapter of the Arizona Administrative Code.</p>
<p>3.</p>	<p>Comment from Ellen Katz, William E Morris Institute for Justice (WMIJ) Rose Daly-Rooney, Legal Director Arizona Center for Disability Law (ACDL)</p> <p>Comments regarding R6-3-52235</p> <p>Under R6-3-52235, DES addresses when a claimant is able and available for work.</p> <p>Subsection A, defining Able to Work, should be modified to provide:</p> <p>1). A claimant is able to work if the claimant possesses the physical and mental capabilities is able to perform the essential job functions with or without reasonable accommodation that are necessary for the performance of suitable work for which the claimant meets the minimum qualifications.</p> <p>2). It includes any type of work for which the claimant is reasonably qualified and that the claimant can perform under normal conditions of employment with or without reasonable accommodations. A disability may entirely prevent a claimant from pursuing the claimant's customary occupation and yet the claimant may retain sufficient physical and mental ability to perform some gainful work for which the claimant is reasonable qualified to perform with or without reasonable accommodation.</p> <p>3). "Able to work" does not include a claimant's appearance or any other personal characteristic or obvious disability that might prejudice an employer against the claimant.</p> <p>b) The claimant is capable of performing such work without</p>	<p>DEPARTMENT RESPONSE:</p> <p>In Subsection (A), any reference to reasonable accommodations cannot be imposed by the Department to the employer.</p> <p>During the fact-finding process (obtaining information and evidence from both the employer and claimant), reasonable accommodation is verified with both the claimant and the employer.</p>

<p>endangering the claimant, coworkers, the public, or the employer posing a direct threat to self or others, as that term is defined by the Americans with Disabilities Act.</p> <p>Subsection C, addressing communicable disease as it relates to able to work, should be changed to read:</p> <p>1.a) The claimant is willing to accept work in an occupation or position where the disease would not be a hazard pose a direct threat; or</p> <p>b) The claimant is under medical treatment and a physician certifies that the disease is in a non-communicable state does not pose a direct threat regarding the risk of transmission in the workplace.</p> <p>2. Except that the claimant is not able to work until a physician certifies or public health information confirms that the claimant is able to work without endangering others posing a direct threat of risk of transmission in the workplace and :</p> <p>a) The claimant’s physician states that the claimant should not work because of the danger of infecting others there is a direct threat for the risk of transmission in that workplace.; or</p> <p>b) the law of the community prohibits the claimant’s employment because of the disease. An individualized assessment reveals that there is not a significant risk of substantial harm caused by transmission of the condition in the workplace.</p> <p>Subsection D, addressing seizures as it relates to “able to work”, should be changed to read:</p> <p>When a claimant is subject to periodic seizures or attacks that render the claimant unable to work during the seizure or attacks, the Department may consider the claimant able to work if during the intervals between seizures or attacks, the claimant is able to perform work the essential job functions with or without reasonable accommodation for work for which the claimant is qualified meets the minimum requirements.</p> <p>More specifically, the Department should broaden the examples used when referring to “attacks” or substitute or a more general term, such as “episodic conditions” to refer to seizures and attacks. Common examples of conditions, other than epilepsy, that might result in brief periods when an individual may not be able to work followed by an ability to work, include post-traumatic stress disorder (due to intermittent flashbacks), multiple sclerosis, migraines, cancer (due to treatment), hypertension, diabetes, asthma, major depressive disorder, bipolar disorder, and schizophrenia. Each of these conditions would also likely be covered as a disability under the ADAAA [Americans with Disabilities Amendment Act of 2008]. <i>From ACDL (emphasis in the original).</i></p> <p>Section E. Pregnancy. In subsection 5, DES proposes that if a pregnant claimant restricts her availability to work to the listed restrictions of standing, lifting and travel, in addition to showing that the work for which she is qualified does not require those restrictions, she must also show in subsection (b) that there is a reasonable possibility of her obtaining work with the restrictions. If the claimant shows she is qualified for the work, the claimant should not have to show the reasonable possibility of obtaining such work. The Institute does not see another situation in the rules where the claimant is asked to meet this additional burden. This is a discriminatory requirement applied only to pregnant claimants and should be removed. <i>From WMJJ.</i></p>	<p>Adding “direct threat” and “regarding the risk of transmission in the workplace” does not change the meaning of Subsection (C). The Department declines to add the words “direct threat” or “regarding the risk of transmission in the workplace.”</p> <p>With regard to, Subsection (D), The Department declines to add the language suggested. Any reference to reasonable accommodations cannot be imposed by the Department to the employer.</p> <p>The Department has added “episodic condition” to the rule.</p> <p>The claimant’s ability/availability for work would only be questioned if the pregnant claimant herself is restricting her ability to work or availability for work. The Department questions all claimant’s that are restricting their availability for work.</p>
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<p>Subsection E, addressing pregnancy as it applies to “able to work”, should be substantially revised. The ACDL offers the following specific comments to support this recommendation. The section now states: “when a pregnant woman restricts her availability for employment to work that does not require her to stand, sit, lift heavy objects, or travel great distances, the Department may consider her able to work only if she shows that work for which she is reasonably qualified: A) Does not require these conditions; and B) There is a reasonable possibility of her obtaining work with those restrictions.” This subsection likely violates the ADAAA because it creates a greater burden on claimants who have a pregnancy-related disability to establish eligibility than workers with other disabilities. Additionally, this subsection does not account for employers’ obligations to provide reasonable accommodations to workers with pregnancy-related disabilities.</p> <p>Under the proposed regulation, as it is written, a claimant with a pregnancy-related disability who has related restrictions in standing, lifting heavy objects, or travelling distances, has the burden of showing she can find work that does not impose these restrictions. However, covered employers must provide reasonable accommodations that would address these limitations when the claimant has a pregnancy-related disability. <i>From ACDL.</i></p>	<p>The claimant’s ability/availability for work would only be questioned if the pregnant claimant herself is restricting her ability to work or availability for work. The Department questions all claimant’s that are restricting their availability for work.</p> <p>A claimant’s disability is not considered a factor during the claim process unless the reason for separation is due to the claimant’s physical or mental impairment, or the inability to seek and accept full time work. Therefore, disability should not be defined in this Chapter of the Arizona Administrative Code.</p>
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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:

Not applicable

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

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the 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 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 51. DISCHARGE BENEFIT POLICY

Section

R6-3-51140. Misappropriation of Funds; Falsification of Employment Records

ARTICLE 52. ABLE AND AVAILABLE BENEFIT POLICY

Section

R6-3-5205. General (~~Able and Available 5~~)

R6-3-5240. Attendance at School or Training Course

R6-3-52235. Health or Physical Condition (~~Able and Available 235~~)

ARTICLE 55. TOTAL AND PARTIAL UNEMPLOYMENT BENEFIT POLICY

Section

R6-3-55460. Type of Compensation (~~Total and Partial Unemployment 460~~)

ARTICLE 51. DISCHARGE BENEFIT POLICY

R6-3-51140. Misappropriation of Funds or Property; Falsification of Employment Records

A. ~~1.~~ To determine whether a claimant's misappropriation of company funds or property is misconduct ~~which~~ that will disqualify the claimant from receipt of unemployment benefits, the Department shall consider the employer's practices regarding the handling of funds and whether the claimant knew that the claimant was misappropriating funds.

~~21.~~ A claimant who is discharged for knowingly misappropriating company funds is discharged for misconduct connected with employment. Misappropriation includes misusing credit cards, checks, or other financial instruments owned or controlled by the employer.

~~32.~~ A claimant who ~~retains~~ is discharged for retaining funds to which the claimant honestly believes the claimant, is entitled, and makes adjustment or restitution upon notification, is discharged for reasons other than misconduct relating to such funds.

~~3.~~ A claimant who is discharged for knowingly misappropriating company property, or conversion of the employer's property or theft is discharged for misconduct connected with employment.

~~34.~~ A claimant who is discharged for retaining company property to which the claimant honestly believes the claimant is entitled, and makes adjustment or restitution upon notification, is discharged for reasons other than misconduct relating to such company property engaging in the misappropriation, theft, or conversion of the employer's property is discharged for misconduct.

B. A claimant who is discharged for falsification of an employment application or for falsification of a written document related to the claimant's obtaining or retaining

employment or for falsification of work or time records is discharged for misconduct related to employment when the available evidence establishes that the falsification was or is:

1. No change
2. No change

ARTICLE 52. ABLE AND AVAILABLE ~~BENEFIT POLICY~~ FOR WORK

R6-3-5205. General (~~Able and Available~~ 5)

A.R.S. § 23-771 of the Employment Security Law of Arizona provides in part: “An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that: . . . 3. He is able to work, and is available for work An unemployed claimant is eligible to receive benefits under A.R.S. § 23-771 for a work week if the Department finds that the claimant was able and available to work during that week.

1. ~~In order to conform to and carry out the meaning and intent of A.R.S. § 23-771, the word “is” as used in paragraph (3) of that section should be construed to mean “was” with respect to the week in question.~~

21. Availability for work is ~~defined~~ as the readiness of a claimant to accept suitable work when offered. ~~To fulfill this requirement all the following criteria must be met: To be available for work, a claimant shall be:~~

- a. ~~He must be accessible~~ Accessible to a labor market;
- b. ~~He must be ready~~ Ready to work on a full-time basis;
- c. ~~His personal circumstances must leave him free~~ Free from personal circumstances that interfere with the claimant’s ability to accept and undertake some form of full-time work; and

- d. ~~He must be actively~~ Actively seeking work or following a course of action reasonably designed to result in ~~his~~ the claimant's prompt reemployment in full-time work.
32. The criterion is availability for work, rather than availability of work. The willingness or unwillingness of ~~employers~~ an employer to hire is ~~not relevant to the issue~~ irrelevant.
43. The term "work" means suitable work that is in a recognized occupation, for which the claimant is reasonably ~~fitted~~ qualified and ~~which~~ that he the claimant does not have good cause to refuse
54. "Availability for work" is a relative term. The objective of availability is to determine ~~if~~ whether a claimant is genuinely and regularly attached to the labor market. "Availability for work" also is the relationship between the restrictions imposed ~~upon~~ by a claimant and the job requirements of the work ~~which~~ that he the claimant is qualified to perform. It implies that restrictions do not unduly lessen the possibilities of ~~his~~ the claimant accepting suitable work. Unreasonable restrictions ~~which~~ that substantially limit employment opportunities result in unavailability. Whether the restrictions are unreasonable depends ~~upon~~ on their source, as well as their effect ~~upon~~ on the possibilities of employment.
65. A claimant's eligibility is not impaired when ~~he~~ the claimant is physically unable to work, or engaged in activities ~~which~~ that would prevent ~~his~~ the claimant from working, provided:
- a. No change
 - b. The inability or activities do not reduce or jeopardize ~~his~~ the claimant's opportunities for employment.

6. A claimant who is unable to work full-time because of an established disability is not ineligible as long as the claimant is:
- a. Seeking work up to the limit of the claimant's disability;
 - b. Is not completely unable to work; and
 - c. Able to work part time as provided by medical evidence that the restriction is due to a disability.
7. ~~Only~~ The Department shall consider only the working days in the claimant's customary occupation ~~are to be considered in~~ when applying the one day's inability to work or unavailability for work. "One working day" ~~is defined to mean~~ means a normal work shift. A normal shift for any claimant is what is standard ~~in~~ for his the claimant's occupation. If the claimant is not able or available for more than a full shift, ~~he~~ the claimant is ineligible for benefits. ~~Whether a claimant's activities have reduced or jeopardized his employment opportunities must be determined objectively and in retrospect. For example, under any of the following situations, a claimant's activities on the day in question may have reduced or jeopardized his employment opportunities:~~
- a. ~~The claimant refused a job or referral;~~
 - b. ~~The claimant failed to comply with his union registration or referral regulations;~~
 - c. ~~The Job Service or the claimant's union tried to contact the claimant for possible referral, but was unable to do so;~~
 - d. ~~An employer made an effort to contact the claimant for a job offer or interview, but was unable to do so.~~
8. The Department shall determine whether a claimant's activities during a working day have reduced or jeopardized the claimant's employment opportunities. This determination

must be made objectively. For example, under any of the following situations, a claimant's activities on the day in question may have reduced or jeopardized the claimant's employment opportunities:

- a. The claimant refused a job or referral;
- b. The claimant failed to comply with the claimant's union registration or referral regulations;
- c. The Department or the claimant's union tried to contact the claimant for possible referral but was unable to do so; or
- d. An employer made an effort to contact the claimant for a job offer or interview, but was unable to do so.

89. In applying this ~~policy~~ rule, the nature of the claimant's activities is not a factor. It is immaterial whether the activities resulted from compelling circumstances or from normal activities of people in general.

R6-3-5240. Attendance at School or Training Course

A. No change "Full-time student" is a person who:

1. Satisfies the criteria for being a full-time student, as established by the school the student is attending;
2. Is a part-time student at 2 different schools if the number of the student's combined hours meets at least 1 school's definition of full-time student; or
3. Would be considered a full-time student under (1) or (2) and is enrolled in online courses that require the student to attend online lectures, participate in "blackboard"

discussions, or be involved in other activities at a specific time that falls within the normal work day, unless the claimant meets one of the exceptions in (B)(1).

B. No change

1. No change

a. No change

i. No change

ii. No change

iii. No change

b. No change

i. No change

ii. No change

iii. No change

c. No change

d. The claimant is enrolled in online courses that allow the student to complete the courses at any time including evenings and weekends. The Department considers a claimant taking full time classes that fall into this category a “night” student and claimant may be eligible if the claimant is willing to accept full time work that falls during the claimant’s normal occupation work hours, and claimant is seeking this type of work.

2. No change

a. No change

b. No change

c. No change

C. No change

1. No change

2. No change

3. No change

4. No change

D. No change

1. No change

2. No change

R6-3-52235. Health or Physical Condition (~~Able and Available 235~~)

A. General (~~Able and Available 235.05~~)

1. ~~Ability to work, a requisite for eligibility for benefits, generally means the physical and mental capacity of an individual to work under circumstances that ordinarily exist. Thus, ability to work is defined as the possession of~~ A claimant is able to work if the claimant possesses the physical and mental capabilities necessary to perform suitable work for which ~~one~~ the claimant is reasonably fitted qualified. Conversely, inability to work refers to a lack of physical or mental ability to such a degree as to prevent the acceptance of work for which one is reasonably fitted which renders him unemployable.

2. ~~The above definition does not restrict the term “work”~~ “Work for which a claimant is qualified” is not restricted to the usual customary occupation of the claimant. It includes any type of work for which the claimant is reasonably fitted qualified and ~~which~~ that he

~~the claimant~~ can perform under normal conditions of employment. ~~He may be prevented entirely by his disability~~ A disability may entirely prevent a claimant from pursuing his the claimant's usual customary occupation and yet the claimant may retain sufficient physical and mental ability to perform some gainful full-time work for which he the claimant is reasonably fitted qualified. ~~For the claimant to be considered able to work, it is not necessary that he compete successfully with able-bodied men or that he establish the willingness of employers to hire him. Therefore, a physical or mental disability, although lessening or even canceling a claimant's employment opportunities because of the unwillingness of employers to engage him, does not negate his ability to work. The question is~~ The Department shall determine a claimant's "ability to work" on the basis of whether the claimant is able to work and not whether he the claimant can obtain work.

3. ~~"Ability Able to work"~~ does not include a claimant's appearance or any ~~other personal characteristic which that~~ might prejudice ~~employers an employer~~ against employing ~~him the claimant~~. ~~However, the term "ability to work" does include the fact that~~ To determine whether a claimant is able to work, the Department shall consider whether:
 - a. ~~the The~~ work for which the claimant is qualified ~~must exist exists~~ as a recognized part of the labor market; and ~~that~~
 - b. ~~the The~~ claimant ~~must be is~~ capable of performing such work without endangering ~~the lives and well-being of himself, his fellow workers, the claimant, coworkers, the public, or his the~~ employer.
4. ~~Ordinarily, The Department considers a skilled workers worker~~ who can no longer follow ~~their the worker's trades trade~~ ~~are considered~~ more able to work than ~~an~~ unskilled ~~workers worker~~ since ~~because the former~~ a skilled worker:

- a. ~~Typically possess~~ possesses a number of skills ~~which that~~ can be transferred to a larger number of related fields; and
- b. ~~usually~~ Usually can assume more positions of responsibility. ~~Counseling services of the Job Service may succeed in revealing additional types of work for which the claimant is qualified.~~

B. Age (~~Able and Available 235.1~~)

- 1. Age, in itself, does not create a presumption that a claimant is unable to work. ~~Additional factors, such as the claimant's separation from employment because of inability to produce or his retirement, must be present in order to raise a question of inability. Similarly, a A statement that a claimant was separated or retired because ~~he~~ the claimant was unable "to maintain ~~his~~ the claimant's production" raises just as much of a question as to the effect of the employer's requirements for the job as it does on the claimant's ability to perform work. If the claimant can show that the claimant is able to perform other suitable work for which the claimant is qualified and reasonably fitted, or that the claimant could still meet the production standards of other employers, the claimant would be able to work.~~
- 2. ~~In either event it requires additional evidence of its import. If the claimant can show that he is able to perform other suitable work for which he is qualified and reasonably fitted, or that he could still meet the production standards of other employers, he would not be unable to work.~~

C. Communicable disease (~~Able and Available 235.15~~)

1. ~~In determining whether~~ The Department may consider a claimant who suffers from ~~some physical impairment,~~ an infectious or communicable disease is to be able to work, it is not only necessary to determine whether the claimant can physically perform the tasks for which he states he is available, but also, whether he can do so without substantially endangering the health and well-being of himself, his fellow workers, the public, or the employer. if the claimant is able to work in an occupation for which the claimant is reasonably qualified and:

2. ~~A claimant who suffers from an infectious or communicable disease may be considered able to work~~

a. ~~if he~~ The claimant is qualified for and willing to accept work in an occupation where the disease would not be a hazard; or

b. ~~When the~~ The claimant is under medical treatment and ~~his~~ a physician certifies that the disease is in a noncommunicable state; ~~the claimant is able to work in an occupation for which he is reasonably fitted.~~

2. ~~However,~~ Except, a claimant is not able to work until a physician certifies that the claimant is able to work without endangering others when:

a. ~~the~~ The claimant's physician states that the claimant should not work because of the danger of infecting others; or

b. ~~when the~~ The law of the community prohibits ~~his~~ the claimant's employment because of the disease ~~the claimant is unable to work until his physician certifies that he is able to work without endangering others.~~

D. ~~Illness or injury (Able and Available 235.25)~~Seizures

1. ~~An individual's ability to work may be restricted by illness or injury which results in temporary, partial, or total disability. Again it is stressed that a claimant's ability is judged solely on the basis of his capability to perform work for which he is qualified and not on the willingness of employers to hire him.~~
2. When a claimant is subject to periodic seizures ~~or~~ attacks, or any episodic conditions (such as epileptic seizures) which ~~that~~ render him the claimant unable to work during the seizure ~~or~~ attack, or episodic condition, he may be presumed the Department may consider the claimant able to work if, during the intervals between seizures ~~or~~ attacks, or episodic conditions, he the claimant is able to perform work for which ~~he the claimant~~ is qualified and which does not involve unusual hazards.

E. Pregnancy (Able and Available 235.4)

1. ~~Although pregnancy of itself may not render a woman unable to work, a claimant who is pregnant is presumed to be unable to work for a period of 8 weeks prior to the calculated date of delivery and for 6 weeks immediately following delivery. Such presumption may however be rebutted by medical evidence or other proof to the contrary. Pregnancy does not affect a woman's ability to work unless her physician restricts her from working in any occupation for which she is qualified.~~
2. A pregnant woman who leaves employment because it is too difficult for her to perform work in her customary occupation may be considered able to work if there is medical evidence that she is able to do less strenuous work for which she is reasonably qualified and she is ready to accept such work. ~~However, if the claimant is not qualified to perform~~

~~less strenuous work, or if her physician recommends that she should not work, she may be presumed unable to work.~~

3. ~~A pregnant woman who~~ The Department shall consider a woman unavailable for work if the woman, because she is pregnant, voluntarily leaves suitable employment which that she could have continued to perform and which that did not adversely affect her health may be presumed unavailable for work. However, when a claimant
4. When a woman was unable to work in the early months of pregnancy; ~~but and~~ has now recovered sufficiently to be able to return to work, ~~she may be presumed;~~ the Department shall consider her able to work; if her physician agrees that she is physically able to return to work.
45. When a pregnant woman restricts her availability for employment to work ~~which that~~ will does not require her to stand, lift heavy objects, or travel great distances, ~~etc., she may be presumed~~ the Department may consider her able to work only if ~~it is shown~~ she shows that work for which she is reasonably ~~fitted~~ qualified:
 - a. ~~does~~ Does not require these conditions; and
 - b. ~~when there~~ There is a reasonable possibility of her obtaining ~~such~~ work ~~within the~~ restrictions imposed with those restrictions.
5. ~~If a claimant states that she is able to work only part time because of her pregnancy, she may be presumed unable to work.~~

F. Disability

1. A claimant with a disability may not be able to work full-time because of that disability. So long as the claimant is not completely restricted from all work, the Department may find the claimant able to work.
2. If the claimant will be restricted in the claimant's ability to work or availability for work because of a disability, the Department may consider the claimant able to work if the claimant is seeking work up to the limit of the claimant's disability. Example: A claimant cannot work longer than four hours each day because of chronic pain. So long as that claimant is looking for and willing to work part time up to four hours per shift, the claimant is still able to work.
3. A claimant who is completely disabled and cannot work at all is ineligible.
4. A claimant shall substantiate the claimant's disability by appropriate documentation such as doctor's notes, military papers, or a judgment from a court.

ARTICLE 55. TOTAL AND PARTIAL UNEMPLOYMENT BENEFIT POLICY

R6-3-55460. Type of Compensation (~~Total and Partial Unemployment 460~~)

A. ~~Dismissal or separation pay~~ Separation Pay (T.P.U. 460.35)

1. ~~Dismissal payments include~~ A separation payment includes, but are not limited to, wages in lieu of notice, dismissal payments, and severance payments, and may be in accordance with the contract of employment made under an employment contract or an unilateral policy of the employer under A.R.S. § 23-621.
2. ~~Payments~~ A payment may be made:
 - a. as As a lump sum at the time of termination of services; or

~~b. in other instances, the~~ The employer may continue to include the worker on ~~his~~ the employer's payroll for one or more pay periods following the termination of the worker's services.

3. ~~Section 23-621 of the Employment Security Law of Arizona provides that an employee is unemployed with respect to any week in which he performs no services and with respect to which no wages are payable to him. Therefore, dismissal or separation payments, as shown above, are considered to be payments for past services and shall not be allocated to any period after the separation from work.~~

B. Vacation, holiday or sick pay (T.P.U. 460.75)

1. No change

2. The appropriate period to which vacation, ~~sick, or holiday,~~ sick pay is allocable will be determined in one of the following ways:

a. If there ~~was~~ is a ~~written or verbal~~ contract, written or verbal, in effect between the employer and the claimant ~~in effect~~ at the time of separation, allocate to the appropriate period in accordance with the contract, continuing for the number of work days which the pay would cover at the regular wage rate.

b. If there is no ~~written or verbal~~ contract, written or verbal, ~~was~~ in effect, allocate to the appropriate period following the last day of ~~performance of services, continuing for~~ work through the number of work days ~~which that~~ the pay would cover at the regular wage rate.

3. If in a particular situation the agreement was made for a purpose other than to establish a vacation period (e.g., to prevent payment of UI benefits for an extended period which the

pay would not cover at the worker's pay rate), the appropriate period will be determined as in subsection ~~(B)~~ (B)(2)(b) .

C. No change

1. No change
2. For purposes of A.R.S. §§ 23-621, 23-771(6) and 23-779(A) and (B), back pay awards are wages for the period for which the payment is made, ~~irrespective~~ regardless of when paid. This shall not affect the manner in which wages are reported for contribution purposes.
3. For the purpose of this ~~policy~~ rule, back pay awards include, but are not limited to,
awards
 - a. No change
 - b. No change

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY /

UNEMPLOYMENT INSURANCE

ARTICLES 51, 52, AND 55

1. Identification of the rulemaking:

Arizona Department of Economic Security (Department), is amending Arizona Administrative Code (A.A.C) Title 6, Chapter 3, Article 51, 52, and 55. With these amendments the rules will conform to current practice and terminology, and will be made more clear, concise, and understandable. Specifically:

- The Department is amending A.A.C. Title 6, Chapter 3, Article 51 (R6-3-51140) to clarify what constitutes theft and falsification of time and work records.
- The Department is amending A.A.C. Title 6, Chapter 3, Article 52 (R6-3-5205) to make the rule consistent with the federal Americans with Disabilities Act.
- The Department is amending A.A.C. Title 6, Chapter 3, Article 52 (R6-3-5240) to address the current state of education by recognizing some employees' ability to attend school or training courses while still being available in the job market.
- The Department is amending A.A.C. Title 6, Chapter 3, Article 52 (R6-3-52235) to include provisions covering pregnant UI claimants and their

ability to work. The Department is amending A.A.C. Title 6, Chapter 3, Article 55 (R6-3-55460) to state that severance pay is considered a wage.

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

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

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

The Department anticipates that this rulemaking will have a minimal (less than \$1,000) economic impact on the implementing agency, small businesses and consumers. The purpose of this rulemaking is to amend rules to conform to

current practice and terminology and most importantly to make the rules more clear, concise, and understandable. Therefore, the Department does not anticipate that the changes to the rule will have more than a minimal economic impact. Below is a summary of claims load and benefit payment activity for the one year period beginning October 1, 2016 and ending September 30, 2017:

Average number of individuals receiving UI benefits per week: 20,135

Amount of regular UI benefits paid: \$260,931,132.00

4. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking:

There is no additional cost to the Department or other state agencies anticipated by this rulemaking.

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

This program has no economic impact on political subdivisions; therefore, there is no cost or benefits to political subdivisions by this rulemaking.

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

Not applicable

5. Impact on private and public employment:

This rulemaking is not expected to impact public and private employment.

6. Impact on small businesses:

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

This rulemaking does not impact small businesses.

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

There are no administrative or other costs required to comply with this rulemaking.

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

i. Establish less costly or less stringent compliance or reporting requirements:

Not applicable

ii. Establish less costly schedules or less stringent deadlines for compliance:

Not applicable

iii. Consolidate or simplify compliance or reporting requirements:

Not applicable

iv. Establish separate performance standards:

Not applicable

v. Exempt small businesses from any or all requirements:

Not applicable

d. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The Department believes that the rulemaking will have minimal (less than \$1,000) economic impact for all persons involved in the rulemaking.

There are no negative impacts on small businesses as a result of this rulemaking.

7. Probable effects on state revenues:

None

8. Less intrusive or less costly alternative methods considered:

There is no less intrusive or less costly method of achieving the objectives of the rulemaking.

a. Monetizing of the costs and benefits for each option:

Not applicable

b. Rationale for not using non-selected alternatives:

Not applicable

9. Description of any data on which the rule is based:

Not applicable

1. Disloyalty is misconduct when manifested by acts or omissions by a worker which establish a breach or the obligations owed his employer.
 2. Conspiring with fellow employees or others to cause damage or loss or ignoring a duty to act to prohibit loss or damage to the employer is disloyalty and is disqualifying.
 3. Knowingly, speaking or demonstrating against the employer's product(s) or operation in a manner which could adversely affect the confidence of customers or damage the reputation of the employer constitutes a disregard of the employer's interest.
- G. Security clearance (Misconduct 45.32).** A worker discharged because he cannot be cleared by the employer for access to classified security information which is required for the job is deemed to have been discharged for misconduct connected with the work if he knew or could reasonably be expected to know that clearance would be required and intentionally gave false or misleading information, or knowingly failed to disclose information that might affect his security clearance.
- H. Indifference (Misconduct 45.35)**
1. Normally a worker's lack of interest in the plans, purpose, or goals of his employer is not misconduct if the worker performs his own duties in a generally satisfactory manner.
 2. A worker who is discharged because he is not interested in or is considered not suited for promotion is not discharged for misconduct.
 3. Isolated acts of inefficiency, inability, errors in judgment or discretion, as well as single acts of ordinary negligence, do not establish indifference to a degree that warrants a finding of misconduct. Only when such indifference amounts to a serious neglect of the duties and responsibilities assigned to the worker would misconduct be indicated. In determining when neglect shows a degree of indifference warranting disqualification, the nature of the neglect, the number of instances of neglect, the worker's understanding of his duties as pointed out through expressed rules, warnings, etc., must be considered. See R6-3-51310.
- I. Injury to employer through relations with patron (Misconduct 45.4)**
1. It is of unusual importance to employers, who rely on public acceptance of their products or service, to have their employees serve the public in such a manner that the customer is pleased.
 2. It should be remembered, however, that in constantly dealing with the public, some friction will occur. Although an employer may well adopt the attitude that in such frictional situations the customer is always right, this is not necessarily so. Thus, an employee discharged because of some disagreement with a customer, is generally not to be disqualified unless he has allowed himself to act out of all proportion to the cause of the dispute.
- Historical Note**
- Former Rule number Misconduct 45. - 45.4. Former Rule repealed, new Section R6-3-5145 adopted effective January 24, 1977 (Supp. 77-1).
- R6-3-5146. Reserved through**
- R6-3-5184. Reserved**
- R6-3-5185. Connected with work (Misconduct 85)**
- A.** A disqualification for misconduct is assessed only when a claimant's discharge is determined to be in "connection with the work." Any action by a worker in the course of his duties, or committed on the employer's premises during working hours is connected with the work.
- B.** Generally, what a worker does when he is off work is of no concern to the employer and the employer has no basis for holding him accountable for his off-duty conduct. However, when a worker's off-duty conduct bears such a relationship to his job as to render him unsuitable to continue in his job because of the adverse affect it would have on the employer's operation, such off-duty action would be connected with the work.
- C.** If an employee's duties and responsibilities are such that his actions while off-duty may adversely affect the reputation, public trust, or confidence on which his employer's business is dependent his off-duty misconduct may be connected with the work.
- D.** Adjudicators should refer to the following sections of the Policy rules for guidance on specific off-duty conduct issues:
- | | |
|------------------------------------|---------------|
| Absence due to incarceration | R6-3-5115(E) |
| Intoxicants and use of intoxicants | R6-3-51270 |
| Garnishment | R6-3-51485(B) |
| Violation of law | R6-3-51490 |
- Historical Note**
- Former Rule number Misconduct 85. Former Rule repealed, new Section R6-3-5185 adopted effective January 24, 1977 (Supp. 77-1). Amended subsection (D) effective July 9, 1980 (Supp. 80-4).
- R6-3-5186. Reserved through**
- R6-3-51134. Reserved**
- R6-3-51135. Repealed**
- Historical Note**
- Former Rule number Misconduct 135. - 135.35. Former Rule repealed, new Section R6-3-51135 adopted effective January 24, 1977 (Supp. 77-1). Section repealed effective July 22, 1997 (Supp. 97-3).
- R6-3-51136. Reserved**
- R6-3-51137. Reserved**
- R6-3-51138. Reserved**
- R6-3-51139. Reserved**
- R6-3-51140. Misappropriation of Funds; Falsification of Employment Records**
- A.** Cash shortage or misappropriation (Misconduct 140.15)
1. To determine whether a claimant's misappropriation of company funds is misconduct which will disqualify the claimant from receipt of unemployment benefits, the Department shall consider the employer's practices regarding the handling of funds and whether the claimant knew that the claimant was misappropriating funds.
 2. A claimant who is discharged for knowingly misappropriating company funds is discharged for misconduct connected with employment.
 3. A claimant who retains funds to which the claimant honestly believes the claimant, is entitled, and makes adjustment or restitution upon notification, is discharged for reasons other than misconduct.
- B.** Falsification of records. A claimant who is discharged for falsification of an employment application or for falsification of a written document related to the claimant's obtaining or retaining employment is discharged for misconduct related to employment when the available evidence establishes that the falsification was or is:
1. Material to the claimant's ability to obtain, retain, or perform the job; and

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2. Of such a nature as to adversely affect a material or substantial interest of the employer.

Historical Note

Former Rule number Misconduct 140. - 140.25. Former Rule repealed, new Section R6-3-51140 adopted effective January 24, 1977 (Supp. 77-1). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5). Amended effective December 20, 1995 (Supp. 95-4).

R5-3-51141. Reserved through

R6-3-51189. Reserved

R6-3-51190. Evidence (Misconduct 190)

A. General (Misconduct 190.05)

1. Evidence is that which furnishes any mode of proof or that which is submitted as a means of learning the truth of any alleged matter of fact. This evidence is usually in the form of oral or written statements of a claimant, employer, or witnesses. The adjudicator must obtain all pertinent evidence reasonably available to make a non-monetary determination.
2. A claimant or employer statement written and signed by him is valuable as evidence. Documentary evidence, such as physician's statements or union by-laws and contracts, is often significant. Such evidence should be fully identified and proved authentic in order to have evidential weight.
3. From the standpoint of logic, evidence which does not tend to establish a fact should not be considered in determining the truth of that fact.

B. Burden of proof and presumption (Misconduct 190.1)

1. The burden of proof consists of the requirement to submit evidence of such nature that, taking all other circumstances into account, the facts alleged appear to be true. When this burden has been met, the evidence becomes proof.
2. The burden of proof rests upon the individual who makes a statement.
 - a. If a statement is denied by another party, and not supported by other evidence, it cannot be presumed to be true.
 - b. When a discharge has been established, the burden of proof rests on the employer to show that it was for disqualifying reasons. This burden may be discharged by an admission by the claimant, or his failure or refusal to deny the charge when faced with it.
 - c. An employer who discharges a worker and charges misconduct but refuses or fails to bring forth any evidence to dispute a denial by the claimant does not discharge the burden of proof. It is important to keep in mind that mere allegations of misconduct are not sufficient to sustain such a charge.

C. Weight and sufficiency (Misconduct 190.15)

1. Evidence must be evaluated during the course of adjudication to determine whether it is sufficient to make a decision. Sufficiency is reached when further rebuttal or circumstantial evidence will not alter the conclusions of the adjudicator.
2. When sufficient evidence has been obtained, all the facts available must be weighed. Only relevant evidence can be considered.

- a. Unsupported oral statements may be outweighed by documentary evidence from disinterested third parties.
 - b. Specific detailed facts must be given more credence than general statements.
 - c. Credible testimony of an eye witness must be given more weight than hearsay statements.
3. When the evidence, in its entirety, is evenly balanced, or weighs in favor of the claimant, misconduct has not been established and no disqualification is in order. When there is conflicting evidence, but the adjudicator concludes that the weight of evidence supports the employer's allegations, he should hold that the claimant was discharged for misconduct.

Historical Note

Former Rule number Misconduct 190. - 190.15. Former Rule repealed, new Section R6-3-51190 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-51191. Reserved through

R6-3-51234. Reserved

R6-3-51235. Health or physical condition (Misconduct 235)
Pregnancy (Misconduct 235.4). A discharge for pregnancy is never disqualifying, but under certain conditions may be for compelling personal reasons not attributable to the employer. See R6-3-5105(B).

Historical Note

Former Rule number Misconduct 235. - 235.4. Former Rule repealed, new Section R6-3-51235 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended effective July 24, 1980 (Supp. 80-4). Typographical error corrected (Supp. 97-3).

R6-3-51236. Reserved through

R6-3-51254. Reserved

R6-3-51255. Insubordination (Misconduct 255)

A. General (Misconduct 255.05)

1. An employer has the right to expect that reasonable orders, given in a civil manner, will be followed and that a supervisor's authority will be respected and not undermined. There is no precise rule by which to judge when a dispute with a supervisor constitutes insubordination if insolence, profanity, or threats are not involved. The pertinent overall consideration is whether the worker acted reasonably in view of all the circumstances. Some examples of insubordination are:
 - a. Refusal to follow reasonable and proper instructions; or
 - b. Insolence in actions or language, profanity, or threats toward a supervisor without due provocation; or
 - c. Refusal to accept assignment to suitable work.
2. Incompatibility with a supervisor does not of itself constitute insubordination, neither does an employee's emphatic insistence on discussing the situation if he is acting in good faith. Misconduct may exist if the worker resorts to hot-tempered remarks, threats, or insolence, without due provocation.

Historical Note

Former Rule number Misconduct 255. - 255.05. Former Rule repealed, new Section R6-3-51255 adopted effective January 24, 1977 (Supp. 77-1).

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have been discharged for misconduct provided a preponderance of evidence establishes that:

- a. The act(s) amounted to misconduct connected with the work (see R6-3-5185), and
 - b. The worker committed the act(s) alleged.
2. The allegation, arrest, charge, information or indictment is not evidence that the worker committed the alleged violation of public law or rule.
 3. A felony offense connected with the work is misconduct. A misdemeanor offense or a violation of a public rule which has the potential to substantially and adversely affect the employer's business interest is misconduct.
 4. A worker discharged for refusal to violate a public law or rule will be found to have been discharged for a reason other than misconduct connected with the work.
 5. A benefit determination shall not be delayed pending action by a court or another agency.

Historical Note

Former rule number Misconduct 490. - 490.05. Former rule repealed, new Section R6-3-51490 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended effective October 22, 1981 (Supp. 81-5).

ARTICLE 52. ABLE AND AVAILABLE BENEFIT POLICY

R6-3-5201. Reserved

R6-3-5202. Reserved

R6-3-5203. Reserved

R6-3-5204. Reserved

R6-3-5205. General (Able and Available 5)

A.R.S. § 23-771 of the Employment Security Law of Arizona provides in part: "An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that: . . . 3. He is able to work, and is available for work

1. In order to conform to and carry out the meaning and intent of A.R.S. § 23-771, the word "is" as used in paragraph (3) of that section should be construed to mean "was" with respect to the week in question.
2. Availability for work is defined as the readiness of a claimant to accept suitable work when offered. To fulfill this requirement all the following criteria must be met:
 - a. He must be accessible to a labor market
 - b. He must be ready to work on a full-time basis
 - c. His personal circumstances must leave him free to accept and undertake some form of full-time work
 - d. He must be actively seeking work or following a course of action reasonably designed to result in his prompt reemployment in full-time work.
3. The criterion is availability for work, rather than availability of work. The willingness or unwillingness of employers to hire is not relevant to the issue.
4. The term "work" means suitable work (work which is in a recognized occupation, for which the claimant is reasonably fitted and which he does not have good cause to refuse).
5. Availability for work is a relative term. The objective of availability is to determine if a claimant is genuinely and regularly attached to the labor market. Availability for work also is the relationship between the restrictions imposed upon a claimant and the job requirements of the work which he is qualified to perform. It implies that restrictions do not unduly lessen the possibilities of his accepting suitable work. Unreasonable restrictions which substantially limit employment opportunities result in

unavailability. (Whether the restrictions are unreasonable depends upon their source, as well as their effect upon the possibilities of employment.)

6. A claimant's eligibility is not impaired when he is physically unable to work, or engaged in activities which would prevent his working, provided:
 - a. The period involved is not more than one full calendar day, and
 - b. The inability or activities do not reduce or jeopardize his opportunities for employment.
7. Only the working days in the claimant's customary occupation are to be considered in applying the one day's inability to work or unavailability for work. One working day is defined to mean a normal work shift. A normal shift for any claimant is what is normal in his occupation. If the claimant is not able or available for more than a full shift, he is ineligible for benefits. Whether a claimant's activities have reduced or jeopardized his employment opportunities must be determined objectively and in retrospect. For example, under any of the following situations, a claimant's activities on the day in question may have reduced or jeopardized his employment opportunities:
 - a. The claimant refused a job or referral;
 - b. The claimant failed to comply with his union registration or referral regulations;
 - c. The Job Service or the claimant's union tried to contact the claimant for possible referral, but was unable to do so;
 - d. An employer made an effort to contact the claimant for a job offer or interview, but was unable to do so.
8. In applying this policy, the nature of the activities is not a factor. It is immaterial whether the activities resulted from compelling circumstances or from normal activities of people in general.

Historical Note

Former rule number - Able and Available 5. Former rule repealed, new Section R6-3-5205 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-5206. Reserved through

R6-3-5239. Reserved

R6-3-5240. Attendance at School or Training Course

- A. In this rule, "full-time student" means a person who:
 1. Satisfies the criteria for being a full-time student, as established by the school the student is attending; or
 2. Is a part-time student at 2 different schools if the number of the student's combined hours meets at least 1 school's definition of full-time student.
- B. Except as otherwise provided in A.R.S. § 23-771.01 and A.A.C. R6-3-1809, a claimant who is or was a full-time student during the most recent regular school term is presumed unavailable for work.
 1. A claimant who is currently attending school may remove the presumption of unavailability through 1 of the methods described in this subsection.
 - a. The claimant shows a pattern of concurrent, full-time work and full-time school attendance for the 9 month period before the claimant files an initial claim for unemployment insurance, and the claimant has not, in order to attend school or a training course:
 - i. Left suitable full-time work,
 - ii. Refused suitable full-time work, or
 - iii. Reduced the hours of work to part-time;

- b. The claimant, who cannot establish a 9-month pattern of concurrent full-time work and full-time school attendance because the claimant was engaged in active military service or other similar service for the United States during that period shows that the claimant:
- i. Is conducting a work search as prescribed in R6-3-52160, and
 - ii. Is willing to change class hours or drop classes to accept suitable full-time work, or
 - iii. Is able to work full time during hours other than the class hours.
- c. The claimant shows that the claimant attends classes only at night and is experienced at and seeking work readily available during daytime hours.
2. A claimant who is not currently attending school, but who attended school as a full-time student during the most recent regular term, may remove the presumption of unavailability if the claimant:
- a. Graduated or completed the course,
 - b. Discontinued school prior to the end of the term, or
 - c. Does not intend to return for the next regular term.
- C. A claimant attending school as a part-time student is presumed available for work when the claimant establishes that:
1. Schooling is incidental to full-time employment,
 2. The claimant did not leave full-time work to enroll as a part-time student, and
 3. There is full-time work available during hours other than the time when the claimant attends classes, or
 4. The claimant will change the hours of school attendance or drop classes in order to accept full-time work.
- D. A claimant attending a training course of less than 4 weeks' duration is eligible for benefits if:
1. The course is sponsored by an employer who will employ the claimant upon the claimant's successful completion of the course, or
 2. The course provides a vocational evaluation or other service that assists the claimant in becoming reemployed.

Historical Note

Former rule number - Able and Available 40. - 40.1. Former rule repealed, new Section R6-3-5240 adopted effective January 24, 1977 (Supp. 77-1). Amended subsection (A)(1) and (2) effective July 9, 1980 (Supp. 80-4). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5241. **Reserved**R6-3-5242. **Reserved**R6-3-5243. **Reserved**R6-3-5244. **Reserved**R6-3-5245. **Disloyalty (Able and Available 45)**

Security clearance (Able and Available 45.32). Any person unable to obtain employment in his work classification because he has been denied access to classified security information shall be held unavailable for work unless it is determined he is available for other suitable work for which a security clearance is not required.

Historical Note

Former rule number - Able and Available 45. - 45.32. Former rule repealed, new Section R6-3-5245 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-5246. **Reserved through**R6-3-5269. **Reserved**R6-3-5270. **Citizenship or residence requirements (Able and Available 70)**

- A. An alien claimant who is residing illegally in the United States is unavailable for work.
- B. A claimant lawfully in the United States who will not be hired by certain employers because he is an alien, is available for work provided work not requiring citizenship exists in reasonable quantity in the area in which he resides, and he will accept such work.
- C. A claimant lawfully in the United States who lacks citizenship and restricts himself solely to work requiring citizenship is unavailable for work.

Historical Note

Former rule number - Able and Available 70. Former rule repealed, new Section R6-3-5270 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-5271. **Reserved through**R6-3-5289. **Reserved**R6-3-5290. **Conscientious objection (Able and Available 90)**

A claimant who places certain restrictions upon his availability because of religious convictions may be held available for work if it can be shown that work for which he is qualified exists within these limitations, or if he has previously performed full-time work under such limitations.

Historical Note

Former rule number - Able and Available 90. Former rule repealed, new Section R6-3-5290 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-5291. **Reserved through**R6-3-52104. **Reserved**R6-3-52105. **Contract obligation (Able and Available 105)**

- A. An individual's normal field of employment may be narrowed by contract obligations. For example:
1. Under contract terms with his last employer, he may be prohibited from accepting work in a certain line; or
 2. His contract with an employer may require that he hold himself ready to answer work calls from that employer on certain days of the week; or
 3. He may be required by a lease to remain on a certain piece of property most of his time.
- B. Before determining whether a contract renders an individual unavailable, the relevant restrictions of the contract must be considered. If the contract requires full-time employment, the claimant is not available for work. If it does not, the claimant's obligations must be examined to see whether they unduly restrict accepting full-time employment for which he is qualified. Undue restriction consists of that degree of restriction which leaves no reasonable possibility of acceptance of full-time employment. Thus, if a salesman is obligated not to take sales work and cannot or will not take other work, he is unduly restricted and is unavailable for work.
- C. An individual may be under certain contractual obligations and still assert that if employment were offered he would accept it in violation of his contract. This assertion must be viewed in the light of all the circumstances; if it appears to be true, there is no restriction in fact. In this type of case, thoroughness of investigation by the adjudicator cannot be too greatly emphasized.
- D. A claimant who is "on call" or on "extra" or "stand-by" basis, but who is not required to work specific hours, may be presumed available for work if other circumstances indicate a readiness to accept work. A claimant on call who is not

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who restricts herself to day work only because she is unable to find someone to care for her child except during the day is available for work if such work is generally performed in the area.

5. The extent to which a claimant's restrictions limit his possibility for employment is the criterion for establishing his availability.

Historical Note

Former rule number Able and Available 190. - 190.15.
Former rule repealed, new Section R6-3-52190 adopted effective January 24, 1977 (Supp. 77-1). Typographical error corrected (Supp. 97-3).

R6-3-52191. Reserved through

R6-3-52234. Reserved

R6-3-52235. Health or physical condition (Able and Available 235)

A. General (Able and Available 235.05)

1. Ability to work, a requisite for eligibility for benefits, generally means the physical and mental capacity of an individual to work under circumstances that ordinarily exist. Thus, ability to work is defined as the possession of the physical and mental capabilities necessary to the performance of suitable work for which one is reasonably fitted. Conversely, inability to work refers to a lack of physical or mental ability to such a degree as to prevent the acceptance of work for which one is reasonably fitted which renders him unemployable.
2. The above definition does not restrict the term "work" to the usual occupation of the claimant. It includes any type of work for which the claimant is reasonably fitted and which he can perform under normal conditions of employment. He may be prevented entirely by his disability from pursuing his usual occupation and yet retain sufficient physical and mental ability to perform some gainful full-time work for which he is reasonably fitted. For the claimant to be considered able to work, it is not necessary that he compete successfully with able-bodied men or that he establish the willingness of employers to hire him. Therefore, a physical or mental disability, although lessening or even canceling a claimant's employment opportunities because of the unwillingness of employers to engage him, does not negate his ability to work. The question is whether the claimant is able to work and not whether he can obtain work.
3. "Ability to work" does not include a claimant's appearance or any other characteristic which might prejudice employers against employing him. However, the term "ability to work" does include the fact that the work for which the claimant is qualified must exist as a recognized part of the labor market and that the claimant must be capable of performing such work without endangering the lives and well-being of himself, his fellow workers, the public, or his employer.
4. Ordinarily, skilled workers who can no longer follow their trades are considered more able to work than unskilled workers since the former possess a number of skills which can be transferred to a larger number of related fields and usually can assume more positions of responsibility. Counseling services of the Job Service may succeed in revealing additional types of work for which the claimant is qualified.

B. Age (Able and Available 235.1)

1. Age, in itself, does not create a presumption that a claimant is unable to work. Additional factors, such as the

claimant's separation from employment because of inability to produce or his retirement, must be present in order to raise a question of inability. Similarly, a statement that a claimant was separated or retired because he was unable "to maintain his production" raises just as much of a question as to the effect of the employer's requirements for the job as it does on the claimant's ability to perform work.

2. In either event it requires additional evidence of its import. If the claimant can show that he is able to perform other suitable work for which he is qualified and reasonably fitted, or that he could still meet the production standards of other employers, he would not be unable to work.

C. Communicable disease (Able and Available 235.15)

1. In determining whether a claimant who suffers from some physical impairment, is able to work, it is not only necessary to determine whether the claimant can physically perform the tasks for which he states he is available, but also, whether he can do so without substantially endangering the health and well-being of himself, his fellow workers, the public, or the employer.
2. A claimant who suffers from an infectious or communicable disease may be considered able to work if he is qualified for and willing to accept work in an occupation where the disease would not be a hazard. When the claimant is under medical treatment and his physician certifies that the disease is in a non-communicable state, the claimant is able to work in an occupation for which he is reasonably fitted. However, when the claimant's physician states that the claimant should not work because of the danger of infecting others, or when the law of the community prohibits his employment because of the disease, the claimant is unable to work until his physician certifies that he is able to work without endangering others.

D. Illness or injury (Able and Available 235.25)

1. An individual's ability to work may be restricted by illness or injury which results in temporary, partial, or total disability. Again it is stressed that a claimant's ability is judged solely on the basis of his capability to perform work for which he is qualified and not on the willingness of employers to hire him.
2. When a claimant is subject to periodic seizures or attacks (such as epileptic seizures) which render him unable to work during the seizure or attack, he may be presumed able to work if, during the intervals between seizures, he is able to perform work for which he is qualified and which does not involve unusual hazards.

E. Pregnancy (Able and Available 235.4)

1. Although pregnancy of itself may not render a woman unable to work, a claimant who is pregnant is presumed to be unable to work for a period of 8 weeks prior to the calculated date of delivery and for 6 weeks immediately following delivery. Such presumption may however be rebutted by medical evidence or other proof to the contrary.
2. A pregnant woman who leaves employment because it is too difficult for her to perform work in her customary occupation may be considered able to work if there is medical evidence that she is able to do less strenuous work for which she is qualified and ready to accept such work. However, if the claimant is not qualified to perform less strenuous work, or if her physician recommends that she should not work, she may be presumed unable to work.

3. A pregnant woman who voluntarily leaves suitable employment which she could have continued to perform and which did not adversely affect her health may be presumed unavailable for work. However, when a claimant was unable to work in the early months of pregnancy, but has now recovered sufficiently to be able to return to work, she may be presumed able to work, if her physician agrees that she is physically able to return to work.
4. When a pregnant woman restricts her availability to work which will not require her to stand, lift heavy objects, travel great distances, etc., she may be presumed able to work only if it is shown that work for which she is reasonably fitted does not require these conditions and when there is a reasonable possibility of her obtaining such work within the restrictions imposed.
5. If a claimant states that she is able to work only part time because of her pregnancy, she may be presumed unable to work.

Historical Note

Former rule number - Able and Available 235. - 235.4.
Former rule repealed, new Section R6-3-52235 adopted effective January 24, 1977 (Supp. 77-1). Typographical error corrected (Supp. 97-3).

R6-3-52236. Reserved through

R6-3-52249. Reserved

R6-3-52250. Incarceration or other legal detention (Able and Available 250)

- A. An individual who is prevented from accepting employment because of confinement in jail is unavailable for work. However, every form of legal detention does not result in complete withdrawal from the labor market.
- B. In most instances, a person on probation is not unduly restricted. Neither is a person who is free on bond pending appearance in court. A person under a peace bond (a bond conditioned on performance or non-performance of certain acts) may or may not be available, depending upon how much his field of employment is restricted. Broadly speaking a person is available for work when his personal conditions and circumstances leave him free to accept and undertake some form of work for which he is qualified. The fact that employers may hesitate to employ a person with a police record is irrelevant, since the person's availability is not dependent upon the willingness of employers to hire him.

Historical Note

Former rule number - Able and Available 250. Former rule repealed, new Section R6-3-52250 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52251. Reserved through

R6-3-52284. Reserved

R6-3-52285. Leave or absence or vacation (Able and Available 285)

- A. A claimant on leave of absence generally is unavailable for work. The availability of the claimant depends upon the following factors:
 1. The reason for the leave of absence; and
 2. Whether the leave of absence binds him from accepting employment during the duration of the leave; and
 3. Whether he has demonstrated that he is actively in the labor market; and
 4. Whether there is a financial necessity for the claimant being in the labor market.

- B. The nature of the leave is of primary importance. If examination of the written leave or interview of the claimant discloses that the claimant is receiving remuneration for the period of the leave, he must be deemed to be not unemployed. If the leave contains provisions prohibiting the claimant from accepting other employment, the claimant must show that he does not intend to comply with the provision of the leave and that he is actively in the labor market. If the claimant requested the leave to recuperate from an illness or because of domestic circumstances, the ability or availability of the claimant is questionable. When the claimant contends he is able and available despite his illness or despite the domestic circumstances, the case should be reviewed with reference to R6-3-52190(A) or R6-3-52155(A) of these rules. If the claimant has removed to this area because of the need for a change of climate and he is able to work, the nature of the leave of absence and his activities in attempting to secure work must be carefully reviewed.
- C. In order to demonstrate attachment to the labor market, the claimant must establish that he is making all reasonable efforts to obtain employment on his own behalf and that he is not restricting unduly the type and working conditions of the employment he will accept.
- D. The final factor for consideration, the financial necessity for the claimant's being in the labor market, always should be considered in determining the availability of a claimant on leave of absence. The financial status of the claimant should be examined. The need for an income to carry current expenses is a forceful argument of a claimant's real attitude toward a job and his efforts to seek employment.

Historical Note

Former rule number - Able and Available 285. Former rule repealed, new Section R6-3-52285 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52286. Reserved through

R6-3-52294. Reserved

R6-3-52295. Length of unemployment (Able and Available 295)

- A. In determining whether a claimant is available for work, consideration must be given to his length of unemployment. Although a claimant should be allowed a reasonable period of time in which to obtain suitable work at his highest skill, prolonged unwillingness to accept other work for which he is qualified may, in effect, render the claimant unavailable. Therefore, as the period of the claimant's unemployment lengthens, he will be expected to lessen the restrictions he imposes as to the type of work he is seeking and is willing to accept.
- B. Generally, the reasonable period in which a claimant shall be allowed to restrict his availability to his highest skill without denial of benefits will be the periods specified in R6-3-53295. These periods are guides for availability purposes. In determining when a claimant should be required to widen his search for work, the adjudicator shall consider the claimant's personal circumstances and the prevailing labor market conditions.
- C. A claimant shall be deemed unavailable because he restricts his search or willingness to accept work to his highest skill;
 1. Beyond a reasonable period of adjustment; or
 2. Whenever the possibility of obtaining work at his highest skill is remote and there is a reasonable expectation of his securing other suitable work for which he is qualified.
- D. A claimant shall not be deemed unavailable because he restricts his search or willingness to accept work, to his highest skill if:

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- ii. A claimant knowingly fails to disclose a fact if he deliberately withholds information which he knows should be disclosed to the Agency.
- c. **Material fact**
 - i. A fact is material if in some way it affects the eventual outcome of a transaction. Thus, a fact which, if known, would result in a determination adverse to the claimant, is a material fact.
 - ii. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. Thus, a fact which, if known, would cause no denial of benefits to the claimant is not material.
- d. **With intent to obtain benefits**
 - i. This phrase refers to the claimant's purpose in knowingly making a false statement or representation or in knowingly failing to disclose a material fact. The fact that concealment of a material fact by willful misstatement or nondisclosure occurs in the course of claiming benefits suggests that the claimant's intent was to obtain benefits. In the absence of facts to indicate otherwise it may be assumed such was his purpose.
 - ii. If facts are discovered which indicate a different intent, the conclusions as to the claimant's intent must be based on consideration of all the facts and not merely on an assumption.
- 6. A claimant who inadvertently makes a mistake or omission, or who does not understand his responsibility or the questions asked him, and on the basis of information previously given him, cannot reasonably be expected to understand his responsibility, shall not be disqualified under A.R.S. § 23-778. If at any time during the investigation, it becomes apparent that one of the conditions required by the law, does not exist, the adjudicator must decline application of the administrative penalty.
- 7. This rule rescinds Unemployment Insurance regulation R6-3-1808 (former 30-7).

Historical Note

Former rule number -- Miscellaneous 340. - 340.05. Former rule repealed, new Section R6-3-54340 adopted effective January 24, 1977 (Supp. 77-1). Amended effective October 20, 1978 (Supp. 78-5).

- R6-3-54341. **Reserved through**
- R6-3-54406. **Reserved**
- R6-3-54407. **Repealed**

Historical Note

Former rule number -- Miscellaneous 407. - 407.1. Former rule repealed, new Section R6-3-54407 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

ARTICLE 55. TOTAL AND PARTIAL UNEMPLOYMENT BENEFIT POLICY

- R6-3-5501. **Reserved through**
- R6-3-55414. **Reserved**
- R6-3-55415. **Self-employment or other work (Total and Partial Unemployment 415)**
Salesman, commission (T.P.U. 415.3)
 - 1. The primary issue created when a claimant accepts sales work on a straight commission basis is that of his

- employment status. It must be determined whether or not he is considered unemployed and potentially eligible for benefits. The eligibility of a commission salesman must be determined from the standpoint of the particular job as well as the intent of the claimant in engaging in selling activities.
- 2. If a claimant's training, experience, or work history qualify him as a salesman, he may be considered employed and ineligible for benefits if he engages in selling activities. Each such case must be judged on the basis of the facts.
- 3. A claimant who has lost his customary work and engages in commission sales work, only as a stop-gap measure until work more suited to his training and experience becomes available, is not ineligible solely on the basis of engaging in commission selling.
- 4. A claimant performing services as a commission salesman, who receives commission payments in an amount less than his weekly benefit amount, may be considered unemployed if:
 - a. The number of hours spent on the job is restricted to less than full time by his employer; or
 - b. It is neither customary nor practical in the community to devote full time to the selling activities; or
 - c. Regardless of the number of hours devoted to the activity, the selling is stop-gap, odd job work outside the customary occupation for which he is qualified and his acceptance of the work will not preclude his obtaining employment more suitable to his experience and training.
- 5. If a claimant engaged in commission selling is determined to be unemployed he must also meet the test of availability. Refer to R6-3-52160(A) of these rules.
- 6. Commission payments should be allocated, as other wages, to the week in which the services were performed. However, certain circumstances sometimes arise which make it impossible for the claimant to determine the amount of wages earned during a given week or whether they will be paid. In such cases the claimant may report commissions as earnings for the week in which they are payable.

Historical Note

Former rule number -- Total and Partial Unemployment 415. - 415.3. Former rule repealed, new Section R6-3-55415 adopted effective January 24, 1977 (Supp. 77-1). Amended effective November 28, 1977 (Supp. 77-6). Amended effective May 8, 1979 (Supp. 79-3). Amended paragraph (4), subparagraph (c) effective November 24, 1982 (Supp. 82-6).

- R6-3-55416. **Reserved through**
- R6-3-55459. **Reserved**
- R6-3-55460. **Type of compensation (Total and Partial Unemployment 460)**
 - A. **Dismissal or separation pay (T.P.U. 460.35)**
 - 1. Dismissal payments include, but are not limited to, wages in lieu of notice, dismissal payments, and severance payments, and may be in accordance with the contract of employment or an unilateral policy of the employer.
 - 2. Payments may be made as a lump sum at the time of termination of services in other instances, the employer may continue to include the worker on his payroll for one or more pay periods following the termination of the worker's services.

3. Section 23-621 of the Employment Security Law of Arizona provides that an employee is unemployed with respect to any week in which he performs no services and with respect to which no wages are payable to him. Therefore, dismissal or separation payments, as shown above, are considered to be payments for past services and shall not be allocated to any period after the separation from work.
- B. Vacation, holiday or sick pay (T.P.U. 460.75)**
1. For the purpose of Unemployment Insurance, payments received for vacation, sick or holiday leave are considered earnings and shall result in denial of benefits if allocated to periods during which claims are filed.
 2. The appropriate period to which vacation, sick, or holiday pay is allocable will be determined in one of the following ways:
 - a. If there was a written or verbal contract between the employer and the claimant in effect at the time of separation, allocate to the appropriate period in accordance with the contract, continuing for the number of work days which the pay would cover at the regular wage rate.
 - b. If no written or verbal contract was in effect, allocate to the appropriate period following the last day of performance of services, continuing for the number of work days which the pay would cover at the regular wage rate.
 3. If in a particular situation the agreement was made for a purpose other than to establish a vacation period (e.g., to prevent payment of UI benefits for an extended period which the pay would not cover at the worker's pay rate), the appropriate period will be determined as in subsection (B) above.
- C. Back pay awards**
1. Unemployment Insurance regulation R6-3-1703 requires employers to report wages of workers for the quarter in which the wages were paid. For the purpose of determining a claimant's eligibility for an unemployment insurance award, wages are allocated to the quarter in which the wages were paid, in accordance with A.R.S. § 23-771(6).
 2. For purposes of A.R.S. §§ 23-621, 23-771(6) and 23-779(A) and (B), back pay awards are wages for the period for which the payment is made, irrespective of when paid. This shall not affect the manner in which wages are reported for contribution purposes.
 3. For the purpose of this policy, back pay awards include, but are not included to, awards
 - a. Under the Fair Labor Standards Act for unpaid overtime or minimum wages, but not for liquidated damages thereunder; and
 - b. Of the National Labor Relations Board or by private agreement consent or arbitration for loss of pay by reason of wrongful discharge.

Historical Note

Former rule number -- Total and Partial Unemployment 460. - 460.75. Former rule repealed, new Section R6-3-55460 adopted effective January 24, 1977 (Supp. 77-1). Amended effective August 24, 1977 (Supp. 77-4).

ARTICLE 56. LABOR DISPUTE BENEFIT POLICY

R6-3-5601. Definitions and Explanation of Terms

The following definitions and explanation of terms apply to A.R.S. § 23-777 and Article 56 of this Chapter:

1. "Class" means a number of grades of workers, joined together for a common purpose.

2. "Directly interested in," when used in reference to a labor dispute, means that an employee is a member of a bargaining unit in which the terms or conditions of the employee's work will be directly affected by the outcome of a dispute.
 - a. An employee may be directly interested in the labor dispute even though the employee is not a member of a striking union.
 - b. An employee may be directly interested in a dispute even though the employee offered to continue working, or voted against or otherwise opposed the labor dispute.
 - c. An employee is not directly interested in a dispute if the employee was not in the bargaining unit involved in the labor dispute but may benefit from the labor dispute because the employer's practice is to bring the employment status of all the employees into line with a settlement reached with any particular group of employees.
3. "Establishment" means more than a factory or other business premises and may include combinations or portions of factories or other premises. An establishment is each separate project of an employing unit if the project is a separate activity for the purpose of employment.
4. "Financing," when used in reference to a labor dispute, means that an employee is contributing money to enable workers to strike. Mere payment of union dues is not financing a labor dispute. If all or a portion of the employee's union dues are used to pay strike benefits, or to, in some other way, support the employee's union or another union involved in a labor dispute at the establishment at which the employee is or was last employed, the employee is financing a labor dispute.
5. "Grade" means a particular classification within an occupation, such as apprentice or journeyman.
6. "Labor dispute" means any controversy between employees and their employer over terms, tenure, or conditions of employment, or the association or representation of employees in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. A labor dispute may exist without a union or a collective bargaining agreement. A strike or a lockout is a form of labor dispute.
7. "Lockout" means that an employer is withholding employment from a group of employees to obtain the employees' acceptance of the employer's terms. A lockout does not require the inclusion of all employees in a particular grade or class. A lockout exists when all the following conditions are present:
 - a. The employer demands some concession from the employees,
 - b. The employer withholds employment in order to gain the concession, and
 - c. The employer intends to resume operations with the same employees when the concession is gained.
8. "Member of a bargaining unit" means any employee or group of employees, whether or not the employees belong to a union or other trade organization, who are members of a grade or class of employees represented by a bargaining unit that engages in bargaining on wages or other conditions of work.
9. "Participating in," when used in reference to a labor dispute at an establishment at which an employee is or was last employed, means that the employee has taken definite action such as stopping work, walking out, striking, picketing, or otherwise lending tangible aid to the worker

23-771. Eligibility for benefits

A. An unemployed individual is eligible to receive benefits with respect to any week only if the department finds that the individual:

1. Has registered for work at and thereafter has continued to report at an employment office in accordance with the regulations prescribed by the department.

2. Has made a claim for benefits in accordance with section 23-772.

3. Is able to work.

4. Except for an individual who is applying for shared work benefits pursuant to article 5.1 of this chapter, is available for work and both of the following apply:

(a) The individual has engaged in a systematic and sustained effort to obtain work during at least four days of the week.

(b) The individual has made at least one job contact per day on four different days of the week.

5. Has been unemployed for a waiting period of one week. A week is not counted as a week of unemployment for the purpose of this paragraph:

(a) Unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits.

(b) Unless the individual was eligible for benefits with respect thereto as provided in this section and sections 23-775, 23-776 and 23-777.

(c) If benefits have been paid in respect thereto.

6. Has met one of the following requirements:

(a) Has been paid wages for insured work during the individual's base period equal to at least one and one-half times the wages paid to the individual in the calendar quarter of the individual's base period in which the wages were highest, and the individual has been paid wages for insured work in one calendar quarter of the individual's base period equal to an amount that is equal to at least three hundred ninety times the minimum wage prescribed by section 23-363 that is in effect when the individual files a claim for benefits.

(b) Has for a benefit year beginning on or after September 2, 1984, been paid wages for insured work during at least two quarters of the individual's base period and the amount of the wages paid in one quarter would be sufficient to qualify the individual for the maximum weekly benefit amount payable under this chapter and the total of the individual's base-period wages is equal to or greater than the taxable limit as specified in section 23-622, subsection B, paragraph 1.

7. Following the beginning date of a benefit year established under this chapter or the unemployment compensation law of any other state and before the effective date of a subsequent benefit year under this chapter, has performed services whether or not in employment as defined in section 23-615 for which wages were payable in an amount equal to or in excess of eight times the weekly benefit amount for which the individual is otherwise qualified under section 23-779. In making a determination under this paragraph the department shall use information available in its records or require the individual to furnish necessary information within thirty days after the date notice is given that the information is required.

B. If an unemployed individual cannot establish a benefit year as defined in section 23-609 due to receipt during the base period of compensation for a temporary total disability pursuant to chapter 6 of this title, or any similar federal law, the individual's base period shall be the first four of the last five completed calendar quarters immediately preceding the first day of the calendar week in which the disability began. Wages previously used to establish a benefit year may not be reused. This subsection does not apply unless all of the following occur:

1. The individual has filed a claim for benefits not later than the fourth calendar week of unemployment after the end of the period of disability.
2. The claim is filed within two years after the period of disability begins.
3. The individual meets the requirements of subsection A of this section.
4. The individual has attempted to return to the employment where the temporary total disability occurred.

C. If an unemployed individual is a member of the national guard or other reserve component of the United States armed forces, the individual is not considered to be either employed or unavailable for work by reason of the individual's participation in drill, training or other national guard or reserve activity that occurs on not more than one weekend per month or in lieu of a weekend drill or the equivalent.

D. The department shall not disqualify an individual from receiving benefits under this chapter on the basis of the individual's separation from employment if the individual is a victim of domestic violence and leaves employment due to a documented case involving domestic violence pursuant to section 13-3601 or 13-3601.02. Benefits paid to an individual pursuant to this subsection shall not be charged against an employer's account pursuant to section 23-727, subsection G.

E. For the purposes of subsection A, paragraph 6 of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if that benefit year begins subsequent to the date on which the employing unit by which those wages were paid has become an employer subject to this chapter.

23-773. Examination and determination of claims

A. A representative designated by the department as a deputy shall promptly examine any claim for benefits and, on the basis of the facts found by the deputy, shall determine whether or not the claim is valid. If the claim is valid, the deputy shall also determine the week with respect to which the benefit year shall commence, the weekly benefit amount payable and the maximum duration of the benefit.

B. The deputy shall promptly notify the claimant and any other interested parties of the determination and the reasons for the determination. Except as provided in subsection D of this section, unless the claimant or an interested party, within seven calendar days after the delivery of notification, or within fifteen calendar days after notification was mailed to the claimant's or interested party's last known address, files an appeal from the determination, it shall become final, and benefits shall be paid or denied in accordance with the determination. The department shall adopt rules to allow an appeal to be filed in writing, electronically or by telephone. If an appeal tribunal affirms a determination of the deputy allowing benefits, or the appeals board affirms a determination or decision allowing benefits, the benefits shall be paid regardless of any appeal that may thereafter be taken, but if that decision is finally reversed, no employer's account shall be charged with benefits so paid.

C. On receipt of a request from an interested party for information about a deputy's determination made pursuant to this section or section 23-673, the department shall make available by memorandum or other written document within five days after receipt of the request the following information:

1. The facts considered and the facts relied on in making the determination.
2. The specific statutes, regulations or other authority relied on in making the determination.
3. The reasoning applied in making the determination.

D. Before the time for appeal as prescribed in subsection B of this section has expired, an interested party may request a reconsidered determination. The department shall examine the request and, within seven calendar days, deny the request or issue a reconsidered determination. The interested party may prove that a response was timely filed by using evidence of fax records that documents the date and time when a faxed response was transmitted and received by the department. A request for reconsideration that is denied shall be treated as an appeal, and the same procedure shall be followed as provided for in case of appeal from the original determination. If a reconsidered determination is issued, the time for appeal shall run from the date of issuance of the reconsidered determination. The employer and the claimant shall each be permitted no more than one request for reconsideration on each case.

E. Before the actual filing of an appeal under subsection B of this section, but not later than the time permitted to appeal, the department on its own motion may issue a reconsidered determination. After the time for appeal has expired, but within one year after the issuance of the original determination, the department with authorization of the unemployment insurance

program administrator may issue a reconsidered determination, on the basis of newly discovered evidence that by due diligence could not have been previously discovered, if no administrative or judicial review has occurred or is pending on the original determination. If a redetermination is based on fraud, the one year limitation on the issuance of redeterminations does not apply.

F. Prompt notice in writing of any reconsidered determination under subsection E of this section and the reasons for reconsideration shall be given to all interested parties. An interested party may appeal within the time prescribed under subsection B of this section, and the same procedure shall be followed as provided for in case of an appeal from the original determination.

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. 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 its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that shall be judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.

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. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual

case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department 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.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department'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 inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department 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 department shall pay ninety-nine per cent 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 department shall pay one hundred per cent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department 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.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

DEPARTMENT OF ENVIRONMENTAL QUALITY (R-18-0403)

Title 18, Chapter 2, Article 9, New Source Performance Standards; Article 11, Federal Hazardous Air Pollutants

Amend: R18-2-901; R18-2-1101; Appendix 2



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: April 3, 2018

AGENDA ITEM: E-3

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

FROM: Council Staff

DATE: March 20, 2018

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R-18-0403)
Title 18, Chapter 2, Article 9, New Source Performance Standards; Article 11,
Federal Hazardous Air Pollutants

Amend: R18-2-901; R18-2-1101; Appendix 2

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Environmental Quality (Department), seeks to amend two rules and one appendix in A.A.C. Title 18, Chapter 2, related to air pollution control. The Department is proposing to adopt new and updated incorporations by reference of federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). Updating these incorporations by reference will allow the Department to continue its delegated authority from the Environmental Protection Agency (EPA) to implement and enforce NSPS and NESHAP in Arizona, except for those specific authorities retained by the EPA.

On pages 2-35 of the Notice of Final Expedited Rulemaking, the Department summarizes the proposed incorporations by reference. The Department indicates that the use of the expedited rulemaking process is justified, as the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, and because the rulemaking incorporates federal regulations by reference without material change. The Governor's Office provided an exemption from Executive Order 2017-02 on March 3, 2017.

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

Yes. The Department cites to a number of statutes as authority for the rules, including A.R.S. § 49-404(A), under which the Department 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.”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

No. The Department indicates that the rules incorporate federal standards by reference, and are not more stringent than federal law.

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

Yes. In compliance with A.R.S. § 41-1037, the rules are subject to a Title V General Permit.

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

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

FEB 15 2018

Ms. Nicole A. Ong Colyer
The Governor's Regulatory Review Council
State of Arizona
100 N. 15th Ave. #305
Phoenix, AZ 85007

Re: Request for Approval of Notice of Final Expedited Rulemaking under A.R.S. § 41-1027(E)

Dear Chairperson Nicole Ong Colyer,

Pursuant to A.R.S. § 41-1027(E) and R1-6-202, the Arizona Department of Environmental Quality (ADEQ) hereby submits this Notice of Final Expedited Rulemaking (NFERM) to the Governor's Regulatory Review Council (Council) for approval.

ADEQ proposes to incorporate by reference, without material change, federal New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAPS). This will extend ADEQ's delegated authority from the U.S. Environmental Protection Agency (EPA) to permit and enforce NSPS and NESHAPS in Arizona, except for those specific authorities retained by the EPA.

ADEQ was last authorized to update these incorporations by reference of the EPA rules through June 28, 2013. ADEQ now proposes to update these incorporations by reference of the EPA rules finalized between June 29, 2013 and June 30, 2017. The Governor approved this rulemaking on March 3, 2017. The record closed for this rulemaking on January 29, 2018. This rulemaking does not actively relate to a five-year review report.

This final expedited rulemaking meets the requirements in A.R.S. §41-1027(A)(4) because it does not "increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, and incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state."

ADEQ certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule. Enclosed is the NFERM, including the preamble, table of contents, and text of the rules. No comments or analyses from the public were received.

Please direct any questions or concerns regarding this proposed expedited rulemaking to Natalie Muilenberg, Air Quality Division, 1110 W. Washington St., Phoenix, AZ 85007, 602-771-1089 or nm3@azdeq.gov.

Sincerely,

Bret Parke, Deputy Director
Arizona Department of Environmental Quality

Enclosure

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

<u>1. Article, Part, of Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
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)(4), A.R.S. § 41-1028

3. Citations to all related notices published in the Register that pertain to the record of the final expedited rulemaking:

The Notice of Docket Opening was published simultaneously with this Notice of Proposed Expedited Rulemaking.

Notice of Proposed Expedited Rulemaking: 23 A.A.R. 3404, December 15, 2017.

Notice of Expedited Rulemaking Docket Opening: 23 A.A.R. 3431, December 15, 2017.

4. The effective date of the rule:

Pursuant to A.R.S. §41-1027(H), this rulemaking becomes effective immediately upon filing with the office of the Secretary of State.

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

Name: Ray Caccavale

Address: Arizona Department of Environmental Quality

1110 W. Washington St.

Phoenix, AZ 85007

Telephone: (602) 771-8730

Fax: (602) 771-2299
E-mail: rc12@azdeq.gov
Website: <http://www.azdeq.gov/notices>

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking.

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) and National Emission Standards for Hazardous Air Pollutants (NESHAP). ADEQ is proposing to update all of the incorporations by reference in order to continue its delegated authority from the U.S. Environmental Protection Agency (EPA) to implement and enforce NSPS and NESHAP in Arizona, except for those specific authorities retained by the EPA. ADEQ chose to use the expedited rulemaking process since this rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, and since this rulemaking incorporates by reference federal law without material change to federal statutes or regulations, as required by A.R.S. §41-1027(A). To ensure compliance with both A.R.S. §49-1027(A) and (C), ADEQ has also complied with the procedural requirements of both A.R.S. §§49-425 and 49-444 specific to air quality rulemaking and public hearings. Descriptions of new federal subparts and significantly revised subparts to be incorporated into Arizona's rules are summarized from EPA's Notices of Final Rulemakings and appear below, under "Federal Regulations Proposed to be Incorporated." The updates include federal regulations finalized between June 29, 2013 and June 30, 2017.

NSPS and NESHAP Regulations. Federal Regulations already incorporated by reference from Title 40 CFR Parts 60, 61, and 63, are being updated from June 29, 2013 to June 30, 2017 at R18-2-901, R18-2-1101(A), and R18-2-1101(B) and Appendix 2. As explained further below, this includes new subparts and significantly revised subparts in Title 40 CFR Parts 60, 61, and 63. A summary of the original federal register notice is provided, along with any subsequent updates.

Miscellaneous Incorporations by Reference in Appendix 2. The provisions in Appendix 2 have been updated from June 29, 2013 to June 30, 2017. 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 33466, 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 - Emission 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, Standards of Performance 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 19, 2008.
- 5) 40 CFR 60, Subpart Ce – Existing Hospital/Medical/Infectious Waste Incinerators that commenced modification after 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.
- 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

NEW SUBPARTS ADDED:

40 CFR 60 Subpart BBa—Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013, (amended at 79 FR 18951, April 4, 2014) EPA finalized revisions to the new source performance standards for kraft pulp mills. These revised standards include particulate matter emission limits for recovery furnaces, smelt

dissolving tanks and lime kilns, and opacity limits for recovery furnaces and lime kilns equipped with electrostatic precipitators. These revised standards apply to emission units commencing construction, reconstruction or modification after May 23, 2013. This final rule removed the General Provisions exemption for periods of startup, shutdown and malfunction resulting in a standard that applies at all times. This final rule also included additional testing requirements and updated monitoring, recordkeeping and reporting requirements for affected sources, including electronic reporting of performance test data. These revisions to the testing, monitoring, recordkeeping and reporting requirements are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility for the Environmental Protection Agency (EPA), states, tribal governments and communities.

40 CFR 60 Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015 (81 FR 35823, June 3, 2016). EPA finalized amendments to the current new source performance standards (NSPS) and establishes new standards. Amendments to the current standards improved implementation of the current NSPS. The new standards for the oil and natural gas source category set standards for both greenhouse gases (GHGs) and volatile organic compounds (VOC). Except for the implementation improvements, and the new standards for GHGs, these requirements do not change the requirements for operations covered by the current standards.

40 CFR 60 Subpart PPPP [Reserved],

40 CFR, 60 Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces (80 FR 13671, March 16, 2015). EPA took final action to revise the Standards of Performance for New Residential Wood Heaters. This final rule achieved several objectives for new residential wood heaters, including applying updated emission limits that reflect the current best systems of emission reduction; eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process. Residential wood smoke emissions are a significant national air pollution problem and human health issue. These emissions occur in many neighborhoods across the country, including minority and low income neighborhoods, and impact people in their homes. To the extent that children and other sensitive populations are particularly susceptible to asthma, and that minority populations and low-income populations are more vulnerable, this rule will significantly reduce the pollutants that adversely affect their health.

40 CFR 60 Subpart TTTT—Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units (80 FR 64509, October 23, 2015). In this action, EPA issued final standards of performance to limit emissions of GHG pollution manifested as CO₂ from newly constructed, modified, and reconstructed fossil fuel fired electric utility steam generating units (*i.e.*, utility boilers and integrated gasification combined cycle (IGCC) units) and from newly constructed and reconstructed stationary combustion turbines. Consistent with the requirements of CAA section 111(b), these standards reflect the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) that EPA has determined has been adequately demonstrated for each type of unit. These final standards are codified in 40 CFR part 60, subpart TTTT, a new subpart specifically created for CAA 111(b) standards of performance for GHG emissions from fossil fuel-fired EGUs.

Appendix F to Part 60 Quality Assurance Procedure 3 – Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources (Amended at 79 FR 28439, May 16, 2014). EPA promulgated quality assurance and quality control (QA/QC) procedures (referred to as Procedure 3) for continuous opacity monitoring systems (COMS) used to demonstrate continuous compliance with opacity standards specified in new source performance standards (NSPS) issued by the EPA pursuant to section 111(b) of the Clean Air Act (CAA), Standards of Performance for New Stationary Sources.

SUBPARTS SIGNIFICANTLY REVISED:

40 CFR 60, Subpart A—General Provisions (amended at 79 FR 18951, April 4, 2014) EPA finalized revisions to the new source performance standards for kraft pulp mills. These revised standards include particulate matter emission limits for recovery furnaces, smelt dissolving tanks and lime kilns, and opacity limits for recovery furnaces and lime kilns equipped with electrostatic precipitators. These revised standards apply to emission units commencing construction, reconstruction or modification after May 23, 2013. This final rule removed the General Provisions exemption for periods of startup, shutdown and malfunction resulting in a standard that applies at all times. This final rule also included additional testing requirements and updated monitoring, recordkeeping and reporting requirements for affected sources, including electronic reporting of performance test data. These revisions to the testing, monitoring, recordkeeping and reporting requirements are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility for the Environmental Protection Agency (EPA), states, tribal governments and communities.

40 CFR 60 Subpart A – General Provisions (80 FR 64509, October 23, 2015). In this action, EPA issued final standards of performance to limit emissions of GHG pollution manifested as CO₂ from newly constructed, modified, and reconstructed fossil fuel fired electric utility steam generating units (*i.e.*, utility boilers and integrated gasification combined cycle (IGCC) units) and from newly constructed and reconstructed stationary combustion turbines. Consistent with the requirements of CAA section 111(b), these standards reflect the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) that EPA has determined has been adequately demonstrated for each type of unit. These final standards are codified in 40 CFR part 60, subpart TTTT, a new subpart specifically created for CAA 111(b) standards of performance for GHG emissions from fossil fuel-fired EGUs.

40 CFR 60 Subpart A – General Provisions (82 FR 28561, June 23, 2017). EPA took action to correct paragraph numbering in the Incorporations by Reference (IBR) section of our regulations that specifically lists material that can be purchased from the American Society for Testing and Materials (ASTM). This action assigned the appropriate IBR paragraph numbers by correcting paragraph ordering errors. This action corrected paragraph ordering errors in 40 CFR 60.17(h) as highlighted in the editorial note at the end of § 60.17. The editorial note mentions that amendments could not be incorporated into § 60.17(h) as requested in a final rule published August 30, 2016 (Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources (81 FR 59799)), because paragraph (h)(207) already existed as of the effective date. This issue occurred when two rules that both added incorporation by reference paragraphs in § 60.17(h) published out of order.

40 CFR 60 Subpart A—General Provisions (82 FR 21927, May 11, 2017). EPA took direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and Nevada.

40 CFR 60 Subpart A—General Provisions,

40 CFR 60 Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units,

40 CFR 60 Subpart Ec—Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators,

40 CFR 60 Subpart H—Standards of Performance for Sulfuric Acid Plants,

40 CFR 60 Subpart O—Standards of Performance for Sewage Treatment Plants,

40 CFR 60 Subpart BB—Standards of Performance for Kraft Pulp Mills,
40 CFR 60 Subpart GG—Standards of Performance for Stationary Gas Turbines,
40 CFR 60 Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants,
40 CFR 60 Subpart LL—Standards of Performance for Metallic Mineral Processing Plants,
40 CFR 60 Subpart UU—Standards of Performance for Asphalt Processing and Asphalt Roofing
Manufacture,
40 CFR 60 Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC)
Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation
Operations,
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,
Appendix A–1 to Part 60 Test Method 1—Sample and velocity traverses for stationary sources,
Appendix A–1 to Part 60 Test Method 2—Determination of stack gas velocity and volumetric flow
rate (Type S pitot tube),
Appendix A–1 to Part 60 Test Method 2A—Direct measurement of gas volume through pipes and
small ducts,
Appendix A–1 to Part 60 Test Method 2B—Determination of exhaust gas volume flow rate from
gasoline vapor incinerators,
Appendix A–1 to Part 60 Test Method 2D—Measurement of gas volume flow rates in small pipes
and ducts,
Appendix A–2 to Part 60 Test Method 3A—Determination of Oxygen and Carbon Dioxide,
Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure),
Appendix A–2 to Part 60 Test Method 3C—Determination of carbon dioxide, methane, nitrogen,
and oxygen from stationary sources,
Appendix A–3 to Part 60 Test Method 4—Determination of moisture content in stack gases,
Appendix A–3 to Part 60 Test Method 5—Determination of particulate matter emissions from
stationary sources,
Appendix A–3 to Part 60 Test Method 5A—Determination of particulate matter emissions from the
asphalt processing and asphalt roofing industry,
Appendix A–3 to Part 60 Test Method 5E—Determination of particulate matter emissions from the
wool fiberglass insulation manufacturing industry,
Appendix A–3 to Part 60 Test Method 5H—Determination of particulate emissions from wood

heaters from a stack location,

Appendix A–4 to Part 60 Test Method 6—Determination of sulfur dioxide emissions from stationary sources,

Appendix A–4 to Part 60 Test Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure),

Appendix A–4 to Part 60 Test Method 7—Determination of nitrogen oxide emissions from stationary sources,

Appendix A–4 to Part 60 Test Method 7A—Determination of nitrogen oxide emissions from stationary sources—Ion chromatographic method,

Appendix A–4 to Part 60 Test Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure),

Appendix A–4 to Part 60 Test Method 8—Determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources,

Appendix A–4 to Part 60 Test Method 10—Determination of carbon monoxide emissions from stationary sources,

Appendix A–4 to Part 60 Test Method 10A—Determination of carbon monoxide emissions in certifying continuous emission monitoring systems at petroleum refineries,

Appendix A–4 to Part 60 Test Method 10B—Determination of carbon monoxide emissions from stationary sources,

Appendix A–5 to Part 60 Test Method 11—Determination of hydrogen sulfide content of fuel gas streams in petroleum refineries,

Appendix A–5 to Part 60 Test Method 12—Determination of inorganic lead emissions from stationary sources,

Appendix A–5 to Part 60 Test Method 14A—Determination of Total Fluoride Emissions from Selected Sources at Primary Aluminum Production Facilities,

Appendix A–6 to Part 60 Test Method 16A—Determination of total reduced sulfur emissions from stationary sources (impinger technique),

Appendix A–6 to Part 60 Test Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources,

Appendix A–6 to Part 60 Test Method 18—Measurement of gaseous organic compound emissions by gas chromatography,

Appendix A–7 to Part 60 Test Method 23—Determination of Polychlorinated Dibenzop-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources,

Appendix A–7 to Part 60 Test Method 24—Determination of volatile matter content, water content,

density, volume solids, and weight solids of surface coatings,

Appendix A–7 to Part 60 Test Method 25—Determination of total gaseous nonmethane organic emissions as carbon,

Appendix A–7 to Part 60 Test Method 25C—Determination of nonmethane organic compounds (NMOC) in MSW landfill gases,

Appendix A–7 to Part 60 Test Method 25D—Determination of the Volatile Organic Concentration of Waste Samples,

Appendix A–8 to Part 60 Test Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources,

Appendix A–8 to Part 60 Test Method 26A—Determination of hydrogen halide and halogen emissions from stationary sources—*isokinetic method*,

Appendix A–8 to Part 60 Test Method 29—Determination of metals emissions from stationary sources,

Appendix A–8 to Part 60 Test Method 30B—Determination of Total Vapor Phase Mercury Emissions From Coal-Fired Combustion Sources Using Carbon Sorbent Traps,

Appendix B to Part 60 Performance Specification 3—Specifications and Test Procedures for O₂ and CO₂ Continuous Emission Monitoring Systems in Stationary Sources,

Appendix B to Part 60 Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources,

Appendix B to Part 60 Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources,

Appendix B to Part 60 Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources,

Appendix B to Part 60 Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources,

Appendix B to Part 60 Performance Specification 12B— Specifications and Test Procedures for Monitoring Total Vapor Phase Mercury Emissions from Stationary Sources Using a Sorbent Trap Monitoring System,

Appendix B to Part 60 Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources,

Appendix B to Part 60 Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources,

Appendix F to Part 60 Procedure 1— Quality Assurance Requirements for Gas Continuous Emission monitoring Systems used for Compliance Determination,

Appendix F to Part 60—Procedure 2—Quality Assurance Requirements for Particulate matter Continuous Emission Monitoring Systems at Stationary Sources,
Appendix F to Part 60—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 (79 FR 11227, February 27, 2014). EPA promulgated technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contained inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.

40 CFR 60 Subpart A—General Provisions,

40 CFR 60 Subpart GG—Standards of Performance for Stationary Gas Turbines,

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry,

Subpart III—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes,

Subpart LLL—Standards of Performance for SO₂ Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011,

Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations,

Subpart KKKK—Standards of Performance for Stationary Combustion Turbines,

Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction

Commenced After August 23, 2011, and on or before September 18, 2015 (81 FR 42542, June 30, 2016). In Title 40 of the Code of Federal Regulations, Part 60 (§60.1 to end of part 60 sections), revised as of July 1, 2015, EPA made the following corrections: 1. Reinstate the symbol < in the following places: a. On page 85, in § 60.13, paragraph (h)(2)(viii), before the term “30 minutes”; b. On page 667, in § 60.562–1, paragraph (a)(1)(ii) table 3, in row 1., in the second column, after “0.10” and before “5.5”; c. On page 667, in § 60.562–1, paragraph (a)(1)(ii) table 3, in row 3., in the second column, after “5.5” and before “20”; d. On page 706, in § 60.614, (f)(2) table 2, in the first column, in the first two entries, after “HT”; e. On page 719, in § 60.643, paragraph (a)(1)(ii), after “R”; f. On page 734, in § 60.664, paragraph (f)(2) table 2, in the first column, in the first two entries, after “HT”; g. On page 1208, in § 60.5410, paragraph (g)(1)(ii), after “R”; h. On page 1222, in § 60.5415, paragraph (g)(1)(ii), after

“R”. 2. Reinstate the symbol \leq , in the following places: a. On page 501, in § 60.332, paragraph (a)(4), in the first row of the table, after “N” and before “.015”, b. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “50” in the first, second, fifth, sixth, and ninth entries; c. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “850” in the third, seventh, tenth and eleventh entries’ d. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “30” in the twelfth entry. a. On page 649, in § 60.543, paragraph (f)(2)(iv)(I), after “(n” and before “3)”; b. On page 706, in § 60.614, (f)(2) table 2, in the first column, in the third and fourth entries, after “HT”; c. On page 719, in § 60.643, paragraph (a)(1)(i), after “R”; d. On page 734, in § 60.664, paragraph (f)(2) table 2, in the first column, in the third and fourth entries, after “HT”; e. On page 1208, in § 60.5410, paragraph (g)(1)(i), after “R”; f. On page 1222, in § 60.5415, paragraph (g)(1)(i), after “R”. 4. Reinstate the symbol $>$ in the following places: a. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “50” in the third, seventh, tenth, and eleventh entries; b. On pages 1111–1112, in table 1 to subpart KKKK, in the second column, before the number “850” in the fourth and eighth entries; c. On pages 1112, in table 1 to subpart KKKK, in the second column, before the number “30” in the thirteenth entry.

40 CFR 60 Subpart A—General Provisions,

40 CFR 60 Subpart AAA—Standards of Performance for New Residential Wood Heaters

Appendix I to Part 60—Owner's Manuals and Temporary Labels for Wood Heaters Subject to

Subparts AAA and QQQQ of Part 60 (80 FR 13671, March 16, 2015). EPA took final action to revise the Standards of Performance for New Residential Wood Heaters. This final rule achieved several objectives for new residential wood heaters, including applying updated emission limits that reflect the current best systems of emission reduction; eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process. Residential wood smoke emissions are a significant national air pollution problem and human health issue. These emissions occur in many neighborhoods across the country, including minority and low income neighborhoods, and impact people in their homes. To the extent that children and other sensitive populations are particularly susceptible to asthma, and that minority populations and low-income populations are more vulnerable, this rule will significantly reduce the pollutants that adversely affect their health.

40 CFR 60 Subpart A—General Provisions,

40 CFR 60 Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines,

Appendix A–1 to Part 60, Test Method 1—Sample and velocity traverses for stationary sources,
Appendix A–1 to Part 60, Test Method 2—Determination of stack gas velocity and volumetric flow rate (Type S pitot tube),
Appendix A–2 to Part 60, Test Method 2G—Determination of Stack Gas Velocity and Volumetric Flow Rate With Two-Dimensional Probes,
Appendix A–2 to Part 60, Test Method 3C—Determination of carbon dioxide, methane, nitrogen, and oxygen from stationary sources,
Appendix A–3 to Part 60, Test Method 4—Determination of moisture content in stack gases,
Appendix A–3 to Part 60, Test Method 5—Determination of particulate matter emissions from stationary sources,
Appendix A–3 to Part 60, Test Method 5H—Determination of particulate emissions from wood heaters from a stack location,
Appendix A–3 to Part 60, Test Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources,
Appendix A–4 to Part 60, Test Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure),
Appendix A–4 to Part 60, Test Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure),
Appendix A–4 to Part 60, Test Method 10—Determination of carbon monoxide emissions from stationary sources,
Appendix A–4 to Part 60, Test Method 10A—Determination of carbon monoxide emissions in certifying continuous emission monitoring systems at petroleum refineries,
Appendix A–4 to Part 60, Test Method 10B—Determination of carbon monoxide emissions from stationary sources,
Appendix A–5 to Part 60, Test Method 15—Determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources,
Appendix A–6 to Part 60, Test Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources,
Appendix A–6 to Part 60, Test Method 18—Measurement of gaseous organic compound emissions by gas chromatography,
Appendix A–7 to Part 60, Test Method 25C—Determination of nonmethane organic compounds (NMOC) in MSW landfill gases,
Appendix A–8 to Part 60, Test Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources,

Appendix A–8 to Part 60, Test Method 26A—Determination of hydrogen halide and halogen emissions from stationary sources—isokinetic method,

Appendix A–8 to Part 60, Test Method 29—Determination of metals emissions from stationary sources,

Appendix A–8 to Part 60, Test Method 30A, NOT IN eCFR

Appendix A–8 to Part 60, Test Method 30B, NOT IN eCFR

Appendix B to Part 60, Performance Specifications 1—Specifications and test procedures for continuous opacity monitoring systems in stationary sources,

Appendix B to Part 60, Performance Specification 2—Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources,

Appendix B to Part 60, Performance Specification 3—Specifications and Test Procedures for O₂ and CO₂ Continuous Emission Monitoring Systems in Stationary Sources,

Appendix B to Part 60, Performance Specification 4A—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources,

Appendix B to Part 60, Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources,

Appendix B to Part 60, Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources,

Appendix B to Part 60, Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources,

Appendix F of Part 60, Procedure 2— Quality Assurance Requirements for Particulate matter Continuous Emission Monitoring Systems at Stationary Sources (81 FR 59799, August 30, 2016).

EPA promulgated technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions, and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provided flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

40 CFR 60 Subpart A—General Provisions,

40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas

Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015 (81 FR 35823, June 3,

2016). EPA finalized amendments to the current new source performance standards (NSPS) and establishes new standards. Amendments to the current standards improved implementation of the current

NSPS. The new standards for the oil and natural gas source category set standards for both greenhouse gases (GHGs) and volatile organic compounds (VOC). Except for the implementation improvements, and the new standards for GHGs, these requirements do not change the requirements for operations covered by the current standards.

40 CFR 60 Subpart Da—Standards of Performance for Electric Utility Steam Generating Units (81 FR 20171, April 6, 2016). EPA finalized the technical corrections that EPA proposed on February 17, 2015, to correct and clarify certain text of the EPA’s regulations regarding ‘‘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’’. EPA also took final action to remove the rule provision establishing an affirmative defense for malfunction.

40 CFR 60 Subpart Da—Standards of Performance for Electric Utility Steam Generating Units (79 FR 68777, November 19, 2014). EPA took final action on its reconsideration of the startup and shutdown provisions 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) issued pursuant to Clean Air Act (CAA) section 112 are referred to as the Mercury and Air Toxics Standards (MATS), and the new source performance standards (NSPS) issued pursuant to CAA section 111 are referred to as the Utility NSPS. EPA took final action on the standards applicable during startup periods and shutdown periods in MATS and on startup and shutdown provisions related to the PM standard in the Utility NSPS.

40 CFR 60 Subpart F—Standards of Performance for Portland Cement Plants (80 FR 44771, July 27, 2015). EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants. On February 12, 2013, EPA finalized amendments to the NESHAP and the new source performance standards (NSPS) for the Portland cement industry. Subsequently, EPA became aware of certain minor technical errors in those amendments, and thus issued a proposal to correct these errors on November 19, 2014 (79 FR 68821). EPA received 3 comments on the proposal. In response to the comments received and to complete technical corrections, EPA issued final amendments. In addition, consistent with the U.S. Court of Appeals to the DC Circuit’s vacatur of the affirmative defense

provisions in the final rule, this action removed those provisions. These amendments do not affect the pollution reduction or costs associated with these standards.

40 CFR 60 Subpart Ga—Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011 (79 FR 25681, May 6, 2014). EPA corrected document 2012-19691 appearing on pages 48433 through 48448 in the issue of Tuesday, August 14, 2012, on page 48447, corrected Equation 1.

40 CFR 60 Subpart J—Standards of Performance for Petroleum Refineries,
40 CFR 60 Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (80 FR 75177, December 1, 2015). EPA finalized the residual risk and technology review conducted for the Petroleum Refinery source categories regulated under national emission standards for hazardous air pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2. EPA also included revisions to the Refinery MACT 1 and MACT 2 rules in accordance with provisions regarding establishment of MACT standards. EPA also finalized technical corrections and clarifications for the new source performance standards (NSPS) for petroleum refineries to improve consistency and clarity and address issue related to a 2008 industry petition for reconsideration. Implementation of this final rule will result in projected reductions of 5,200 tons per year (tpy) of hazardous air pollutants (HAP) which will reduce cancer risk and chronic health effects.

40 CFR 60 Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (81 FR 45232, July 13, 2016). EPA amended the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries in three respects. First, this action adjusted the compliance date for regulatory requirements that apply at maintenance vents during periods of startup, shutdown, maintenance or inspection for sources constructed or reconstructed on or before June 30, 2014. Second, this action amended the compliance dates for the regulatory requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCU) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014. Finally, this action finalized technical corrections and clarifications to the NESHAP and the New Source Performance Standards (NSPS) for Petroleum Refineries. These amendments are being finalized in response to new information submitted after these regulatory requirements were promulgated as part of the residual risk and technology review

(RTR) rulemaking, which was published on December 1, 2015. This action will have an insignificant effect on emissions reductions and costs.

40 CFR 60 Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (78 FR 76753, December 19, 2013). EPA took direct final action to amend the Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. This direct final rule amends the definition of “delayed coking unit” by removing process piping and associated equipment (pumps, valves, and connectors) from the definition. This final rule also removed a redundant definition of “delayed coking unit” from the rule text.

40 CFR 60 Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units,

40 CFR 60 Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units (81 FR 40955, June 23, 2016). This action sets forth EPA’s final decision on the issues for which it granted reconsideration on January 21, 2015, which pertain to certain aspects of the February 7, 2013, 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). EPA finalized proposed actions on these four topics: Definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” particulate matter (PM) limit for the waste-burning kiln subcategory; fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and the definition of “kiln.” This action also included EPA’s final decision to deny the requests for reconsideration of all other issues raised in the petitions for reconsideration of the 2013 final commercial and industrial solid waste incineration rule for which EPA did not grant reconsideration.

40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015 (80 FR 48262, August 12, 2015). EPA finalized amendments to new source performance standards (NSPS) for the Oil and Natural Gas Sector. On March 23, 2015, EPA re-proposed its definition of “low pressure gas well” for notice and comment to correct a procedural defect with its prior rulemaking that included this definition. EPA also proposed to amend the NSPS to remove provisions concerning storage vessels connected or installed in

parallel and to revise the definition of “storage vessel.” This action finalized the definition of “low pressure gas well” and the amendments to the storage vessel provisions.

40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015 (78 FR 58415, September 23, 2013). EPA finalized the amendments to new source performance standards for the oil and natural gas sector. EPA received petitions for reconsideration of certain aspects of the August 12, 2012, final standards. These amendments are a result of reconsideration of certain issues raised by petitioners related to implementation of storage vessel provisions. The final amendments provide clarity of notification and compliance dates, ensure control of all storage vessel affected facilities and update key definitions. This action also corrected technical errors that were inadvertently included in the final standards.

40 CFR 60 Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or before September 18, 2015 (79 FR 79017, December 31, 2014). EPA finalized amendments to new source performance standards (NSPS) for the oil and natural gas sector. On August 16, 2012, EPA published final NSPS for the oil and natural gas sector. EPA received petitions for administrative reconsideration of certain aspects of the standards. Among issues raised in the petitions were time-critical issues related to certain storage vessel provisions and well completion provisions. On July 17, 2014 (79 FR 41752), EPA published proposed amendments and clarifications as a result of reconsideration of certain issues related to well completions, storage vessels and other issues raised for reconsideration as well as technical corrections and amendments to further clarify the rule. This action finalized these amendments and corrected technical errors that were inadvertently included in the final standards.

40 CFR 60 Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015 (82 FR 25730, June 5, 2017). By a letter dated April 18, 2017, EPA announced the convening of a proceeding for reconsideration of the fugitive emission requirements at well sites and compressor station sites in the final rule, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources,” published in the Federal Register on June 3, 2016. In this action EPA granted reconsideration of additional requirements in that rule, specifically the well site pneumatic pumps standards and the

requirements for certification by professional engineer. In addition, EPA stayed for three months these rule requirements pending reconsideration.

40 CFR 60 Subpart T—Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants

40 CFR 60 Subpart U—Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants

40 CFR 60 Subpart V—Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants

40 CFR 60 Subpart W—Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants

40 CFR 60 Subpart X—Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (80 FR 50385, August 19, 2015). EPA finalized the residual risk and technology review conducted for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized an 8-year review of the current new source performance standards (NSPS) for five source categories. EPA also took final action addressing Clean Air Act (CAA) provisions related to emission standards for hazardous air pollutants, review and revision of emission standards, and work practice standards.

40 CFR 60 Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (81 FR 44212, July 7, 2016). EPA finalized amendments to the standards of performance for stationary compression ignition (CI) internal combustion engines to allow manufacturers to design the engines so that operators can temporarily override performance inducements related to the emission control system for stationary CI internal combustion engines. The amendments apply to engines operating during emergency situations where the operation of the engine or equipment is needed to protect human life, and to require compliance with Tier 1 emission standards during such emergencies. The EPA also amended the standards of performance for certain stationary CI internal combustion engines located in remote areas of Alaska.

40 CFR 60 Appendix B—Performance Specifications. Performance Specification 18-Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources (80 FR 42397, July 17, 2015). In rule document 2015–16385, appearing on pages 38628 through 38652 in the issue of Tuesday, July 7, 2015, EPA made the

following correction: On page 38646, in the first column, in the last paragraph, in the sixth line, “+5” should read “±5”.

40 CFR 60 Appendix B to Part 60—Performance Specification 18- Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission monitoring Systems at Stationary Sources.

Appendix F to Part 60—Quality Assurance Procedure 6. Quality Assurance Requirements for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems Used for Compliance Determination at Stationary Sources (81 FR 31515, May 19, 2016). EPA took direct final action to make several minor technical amendments to the performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS). This direct final rule also marked several minor amendments to the quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. These amendments made several minor corrections and clarify several aspects of these regulations.

40 CFR 60 Appendix B to Part 60—Performance Specification 18- Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission monitoring Systems at Stationary Sources. Appendix F to Part 60—Quality Assurance Procedure 6. Quality Assurance Requirements for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems Used for Compliance Determination at Stationary Sources (80 FR 38628, July 7, 2015). EPA finalized performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS) to provide sources and regulatory agencies with criteria and test procedures for evaluating the acceptability of HCl CEMS. The final performance specification (Performance Specification 18) includes requirements for initial acceptance, including instrument accuracy and stability assessments. This action also finalized quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. The QA procedures (Procedure 6) specify the minimum QA requirements necessary for the control and assessment of the quality of CEMS data submitted to the EPA.

NESHAP - 40 CFR PART 61

SUBPARTS SIGNIFICANTLY REVISED:

40 CFR 61 Subpart A—General Provisions (82 FR 21927, May 11, 2017). EPA took direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New

Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and Nevada.

40 CFR 61 Subpart A—General Provisions,

40 CFR 61 Subpart C—National Emission Standard for Beryllium,

40 CFR 61 Subpart D—National Emission Standard for Beryllium Rocket Motor Firing,

40 CFR 61 Subpart E—National Emission Standard for Mercury,

40 CFR 61 Subpart N—National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants,

Appendix B to Part 61 Test Method 101—Determination of particulate and gaseous mercury emissions from chlor-alkali plants (air streams),

Appendix B to Part 61 Test Method 101A—Determination of particulate and gaseous mercury emissions from sewage sludge incinerators,

Appendix B to Part 61 Test Method 102—Determination of particulate and gaseous mercury emissions from chlor-alkali plants (hydrogen streams),

Appendix B to Part 61 Test Method 104—Determination of beryllium emissions from stationary sources,

Appendix B to Part 61 Test Method 108—Determination of particulate and gaseous arsenic emissions,

Appendix B to Part 61 Test Method 108A—Determination of arsenic content in ore samples from nonferrous smelters (79 FR 11227, February 27, 2014). EPA promulgated technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contained inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.

40 CFR 61 Subpart A—General Provisions,

Appendix B to Part 61 Test Method 107—Determination of vinyl chloride content of in-process wastewater samples, and vinyl chloride content of polyvinyl chloride resin slurry, wet cake, and latex samples (81 FR 59799, August 30, 2016). EPA promulgated technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions, and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

40 CFR 61 Subpart W—National Emission Standards for Radon Emissions From Operating Mill Tailings (82 FR 5142, January 17, 2017). EPA took final action to revise certain portions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Radon Emissions from Operating Mill Tailings. The revisions for this final action are based on EPA’s determination as to what constitutes generally available control technology or management practices (GACT) for this area source category. EPA also added new definitions to the NESHAP, revised existing definitions and clarified that the NESHAP also applies to uranium recovery facilities that extract uranium through the in-situ leach method and the heap leach method.

NESHAP - 40 CFR PART 63

SUBPARTS SIGNIFICANTLY REVISED:

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 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,

40 CFR 63 Subpart N—National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks,

40 CFR 63 Subpart O—Ethylene Oxide Emissions Standards for Sterilization Facilities,

40 CFR 63 Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations,

40 CFR 63 Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities,

40 CFR 63 Subpart GGG—National Emission Standards for Pharmaceuticals Production,

40 CFR 63 Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production,

40 CFR 63 Subpart CCCC—National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast,

40 CFR 63 Subpart UUUU—National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing,

40 CFR 63 Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines,

Appendix A to Part 63 Test Method 306—Determination of Chromium Emissions From Decorative and hard Chromium Electroplating and Chromium Anodizing Operations—Isokinetic Method,

Appendix A to Part 63 Test Method 306A—Determination of Chromium Emissions From Decorative and hard Chromium Electroplating and Chromium Anodizing Operations,
Appendix A to Part 63 Test Method 308—Procedure for Determination of Methanol Emission From Stationary Sources,
Appendix A to Part 63 Test Method 315—Determination of Particulate and Methylene Chloride Extractable matter (MCEM) From Selected Sources and Primary Aluminum Production Facilities,
Appendix A to Part 63 Test Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries,
Appendix A to Part 63 Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions At Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy (79 FR 11227, February 27, 2014). EPA promulgated technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contained inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations,
40 CFR 63 Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries,

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,

Appendix A to Part 63 Test Method 325A—Volatile Organic Compounds from Fugitive and Area Sources: Sampler Deployment and VOC Sample Collection,

Appendix A to Part 63 Test Method 325B—Volatile Organic Compounds from Fugitive and Area Sources: Sampler Preparation and Analysis (80 FR 75177, December 1, 2015). EPA finalized the residual risk and technology review conducted for the Petroleum Refinery source categories regulated under national emission standards for hazardous air pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2. EPA also included revisions to the Refinery MACT 1 and MACT 2 rules in accordance with provisions regarding establishment of MACT standards. EPA also finalized technical corrections and clarifications for the new source performance standards (NSPS) for petroleum refineries to improve consistency and clarity and address issue related to a 2008 industry petition for reconsideration. Implementation of this final rule will result in projected reductions of 5,200 tons per year (tpy) of hazardous air pollutants (HAP) which will reduce cancer risk and chronic health effects.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart AA—National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants,

40 CFR 63 Subpart BB—National Emission Standards for Hazardous Air Pollutants from

Phosphate Fertilizers Production Plants (80 FR 503865, August 19, 2015). EPA finalized the residual risk and technology review conducted for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized an 8-year review of the current new source performance standards (NSPS) for five source categories. EPA also took final action addressing Clean Air Act (CAA) provisions related to emission standards for hazardous air pollutants, review and revision of emission standards, and work practice standards.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart RRR—National Emission Standards for Hazardous Air Pollutants for

Secondary Aluminum Production (80 CFR 56699, September 18, 2015). EPA finalized the residual risk and technology review (RTR), and the rule review, EPA conducted for the Secondary Aluminum Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In this action, EPA finalized several amendments to the NESHAP based on the rule review. These final amendments included a requirement to report performance testing through the Electronic Reporting Tool (ERT); provisions allowing owners and operators to change furnace classifications; requirements to account for unmeasured emissions during compliance testing for group 1 furnaces that do not have add-on control devices; alternative compliance options for the operating and monitoring requirements for sweat furnaces; compliance provisions for hydrogen fluoride; provisions addressing emissions during periods of startup, shutdown, and malfunction (SSM); and other corrections and clarifications to the applicability, definitions, operating, monitoring and performance testing requirements. These amendments will improve the monitoring, compliance and implementation of the rule.

40 CFR 63 Subpart A—General Provisions,

Appendix A to Part 63 Test Method 320—Measurement of Vapor Phase Organic and Inorganic

Emissions by Extractive Fourier (81 FR 59799, August 30, 2016). EPA promulgated technical and editorial corrections and revisions to regulations related to source testing of emissions. EPA made corrections and updates to testing provisions, and added newly approved alternatives to existing testing

regulations. These revisions improved the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (80 FR 62389, October 15, 2015). EPA finalized the residual risk and technology review (RTR) conducted for the Primary Aluminum Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA took final action regarding new and revised emission standards for various hazardous air pollutants (HAP) emitted by this source category based on the RTR, newly obtained emissions test data, and comments EPA received in response to the 2011 proposal and 2014 supplemental proposal. These final amendments included technology-based standards and work practice standards reflecting performance of maximum achievable control technology (MACT), and related monitoring, reporting, and testing requirements, for several previously unregulated HAP from various emissions sources. Furthermore, based on EPA's risk review, EPA finalized new and revised emission standards for certain HAP emissions from potlines using the Soderberg technology to address risk. EPA also added a requirement for electronic reporting of compliance data, eliminating the exemptions for periods of startup, shutdown, and malfunctions (SSM), and not adopting the affirmative defense provisions proposed in 2011, consistent with a recent court decision vacating the affirmative defense provisions. This action will provide improved environmental protection regarding potential emissions of HAP emissions from primary aluminum reduction facilities.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins,

40 CFR 63 Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production,

40 CFR 63 Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production (79 FR 17339, March 24, 2014). EPA finalized the residual risk and technology review conducted for nine source categories regulated under the National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production. The action promulgated amendments concerning the following: Residual risk reviews; technology reviews; emissions during periods of startup, shutdown and malfunction; standards for previously unregulated hazardous air pollutant emission sources; revisions to

require monitoring of pressure relief devices that release to the atmosphere; and electronic reporting of performance test results. This action also lifted the stay of requirements for process contact cooling towers at existing sources in one Group IV Polymers and Resins subcategory, issued on February 23, 2001. The revisions to the final rules maintain the level of environmental protection or emissions control on sources regulated by these rules.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart XXX—National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese (80 FR 37365, June 30, 2015). EPA finalized the residual risk and technology review (RTR) conducted for the Ferroalloys Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). These final amendments included revisions to particulate matter (PM) standards for electric arc furnaces, metal oxygen refining processes, and crushing and screening operations, and expanded and revised the requirements to control process fugitive emissions from furnace operations, tapping, casting, and other processes. EPA also finalized opacity limits, as proposed in 2014. However, regarding opacity monitoring, in lieu of Method 9, EPA is requiring monitoring with the digital camera opacity technique (DCOT). Furthermore, EPA finalized emissions standards for four previously unregulated hazardous air pollutants (HAP): Formaldehyde, hydrogen chloride (HCl), mercury (Hg) and polycyclic aromatic hydrocarbons (PAH). Other requirements related to testing, monitoring, notification, recordkeeping, and reporting are included. This rule is health protective due to the revised emissions limits for the stacks and the requirement of enhanced fugitive emissions controls that will achieve significant reductions of process fugitive emissions, especially manganese.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart XXX—National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese (82 FR 5401, January 18, 2017). This action sets forth EPA's final decision on the issues for which it announced reconsideration on July 12, 2016, that pertain to certain aspects of the June 30, 2015, final amendments for the Ferroalloys Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). EPA amended the rule to allow existing facilities with positive pressure baghouses to perform visible emissions monitoring twice daily as an alternative to installing and operating bag leak detection systems (BLDS) to ensure the baghouses are operating properly. In addition, this final action explained that EPA is maintaining the requirement that facilities must use a digital camera opacity technique (DCOT) method to demonstrate compliance with opacity limits. However, this final action revised the rule such that it

references the recently updated version of the DCOT method. In this action, EPA also explained that no changes are being made regarding the rule provision that requires quarterly polycyclic aromatic hydrocarbons (PAH) emission testing for furnaces producing ferromanganese (FeMn) with an opportunity for facilities to request decreased compliance test frequency from their permitting authority after the first year. Furthermore, in this action, EPA denied the request for reconsideration of the PAH emission limits for both FeMn and silicomanganese (SiMn) production furnaces.

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing,

40 CFR 63 Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (80 FR 65469, October 26, 2015). EPA finalized national emission standards for hazardous air pollutants (NESHAP) for Brick and Structural Clay Products (BSCP) Manufacturing and NESHAP for Clay Ceramics Manufacturing. All major sources in these categories must meet maximum achievable control technology (MACT) standards for mercury (Hg), non-mercury (non-Hg) metal hazardous air pollutants (HAP) (or particulate matter (PM) surrogate) and dioxins/furans (Clay Ceramics only); health-based standards for acid gas HAP; and work practice standards, where applicable. The final rule, which has been informed by input from industry (including small businesses), environmental groups, and other stakeholders, protects air quality and promotes public health by reducing emissions of HAP listed in section 112 of the Clean Air Act (CAA).

40 CFR 63 Subpart A—General Provisions,

40 CFR 63 Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing,

40 CFR 63 Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (80 FR 75817, December 4, 2015). EPA published a final rule in the **Federal Register** on October 26, 2015, titled NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing. These amendments make two technical corrections to the published regulation. **§ 63.14 [Corrected]** 1. On page 65520: a. In the second column, correct amendatory instruction number 2.b. to read “Revising paragraph (h)(76);”. b. In the second column, redesignate paragraph (h)(75) as paragraph (h)(76). **§ 63.8605 [Corrected]** 2. On page 65549, second column, in paragraph (c), fifth line, remove “§ 63.8630(e).” and add “§ 63.8630(c).” in its place.

40 CFR 63 Subpart E—Approval of State Programs and Delegation of Federal Authorities (82 FR 21927, May 11, 2017). EPA took direct final action to update the Code of Federal Regulations delegation tables to reflect the current delegation status of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in Arizona and Nevada.

40 CFR 63 Subpart N—National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (80 FR 22116, April 21, 2015). EPA *CFR* Correction in Title 40 of the Code of Federal Regulations, Part 63, §§ 63.1 to 63.599, revised as of July 1, 2014, on page 478, in § 63.343, paragraph (c)(5)(ii) is correctly revised to read as follows: § 63.343 Compliance provisions. [Corrected] * * * * (c) * * * (5) * * * (ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath. Operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, if the owner or operator is using this value in accordance with paragraph (c)(5)(i) of this section, shall constitute noncompliance with the standards. The surface tension shall be monitored according to the following schedule:

40 CFR 63 Subpart X, - National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting (79 FR 367, January 3, 2014). EPA took direct final action to promulgate amendments to a final rule that revised national emission standards for hazardous air pollutants for existing and new secondary lead smelters. The final rule was published on January 5, 2012. This direct final action amends certain regulatory text to clarify compliance dates. Additionally, EPA made amendments to clarify certain provisions in the 2012 final rule related to monitoring of negative pressure in total enclosures. This action also corrects typographical errors in a table listing congeners of dioxins and furans and the testing requirements for total hydrocarbons.

40 CFR 63 Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries,

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 (81 FR 45232, July 13, 2016). EPA amended the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries in three respects. First, this action adjusted the compliance date for regulatory requirements that apply at maintenance vents during periods of startup,

shutdown, maintenance or inspection for sources constructed or reconstructed on or before June 30, 2014. Second, this action amended the compliance dates for the regulatory requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCU) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014. Finally, this action finalized technical corrections and clarifications to the NESHAP and the New Source Performance Standards (NSPS) for Petroleum Refineries. These amendments are being finalized in response to new information submitted after these regulatory requirements were promulgated as part of the residual risk and technology review (RTR) rulemaking, which was published on December 1, 2015. This action will have an insignificant effect on emissions reductions and costs.

40 CFR 63 Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (80 FR 14247, March 18, 2015). EPA finalized the residual risk and technology review (RTR) conducted for the Off-Site Waste and Recovery Operations (OSWRO) source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction (SSM); add requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); revise the routine maintenance provisions; clarify provisions pertaining to open-ended valves and lines (OELs); add monitoring requirements for pressure relief devices (PRDs); clarify provisions for some performance test methods and procedures; and make several minor clarifications and corrections. The revisions to the final rule increased the level of emissions control and environmental protection provided by the OSWRO NESHAP.

40 CFR 60 Subpart GG— National Emission Standards for Aerospace Manufacturing and Rework Facilities (80 FR 76151, December 7, 2015). EPA finalized the residual risk and technology review (RTR) and the rule review EPA conducted for Aerospace Manufacturing and Rework Facilities under the national emissions standards for hazardous air pollutants (NESHAP). In this action, EPA finalized several amendments to the NESHAP based on the review of these standards. These final amendments add limitations to reduce organic and inorganic emissions of hazardous air pollutants (HAP) from specialty coating application operations; remove exemptions for periods of startup, shutdown and malfunction (SSM) so that affected units will be subject to the emission standards at all times; and revise provisions to address recordkeeping and reporting requirements applicable to periods of SSM. These final amendments include a requirement to report performance testing through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). This action also makes clarifications to the applicability,

definitions, and compliance demonstration provisions, and other technical corrections. EPA estimates that implementation of this rule will reduce annual HAP emissions by 58 tons.

40 CFR 63 Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities (81 FR 51114, August 3, 2016). EPA took direct final action to amend the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities. In this action, EPA clarified the compliance date for the handling and storage of waste.

40 CFR 63 Subpart NN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources,

Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production,

40 CFR 63 Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing (80 FR 45279, July 29, 2015). This action finalized the residual risk and technology reviews (RTR) conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories regulated under national emission standards for hazardous air pollutants (NESHAP). Under this action EPA established pollutant-specific emissions limits for hazardous air pollutants (HAP) that were previously regulated (under a surrogate) and for HAP that were previously unregulated. This action finalized first-time generally available control technologies (GACT) standards for gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities that are area sources. EPA also amended regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); adding requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); and making several minor clarifications and corrections. The revisions in these final rules increased the level of emissions control and environmental protection provided by the Mineral Wool Production and Wool Fiberglass Manufacturing NESHAP.

40 CFR 63 Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards,

40 CFR 63 Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins (79 FR 60897, October 8, 2014). EPA finalized the residual risk and technology review (RTR) conducted for the Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins Production and Polycarbonate Production source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA took final action addressing emissions during periods of startup, shutdown and malfunction, and are adding standards for previously

unregulated hazardous air pollutant (HAP) emissions sources for certain emission points. These changes included revisions made in response to comments received on the proposed rule. These final amendments also included clarifying provisions pertaining to open-ended valves and lines, adding monitoring requirements for pressure relief devices and adding requirements for electronic reporting of performance test results, as proposed. EPA estimated that these final amendments will reduce HAP emissions from these three source categories by a combined 137 tons per year.

40 CFR 63 Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production (79 FR 48073, August 15, 2014). EPA finalized the residual risk and technology review (RTR) conducted for the Flexible Polyurethane Foam (FPUF) Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, EPA finalized amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction (SSM); add requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); clarified the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities; and revise the rule to add a schedule for delay of leak repairs for valves and connectors.

40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (81 FR 48356, July 25, 2016). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry. This direct final rule provided, for a period of 1 year, an additional compliance alternative for sources that would otherwise be required to use an HCl CEMS to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of a calibration gas used for quality assurance purposes. This direct final rule also restored regulatory text requiring the reporting of clinker production and kiln feed rates that was deleted inadvertently.

40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (82 FR 28562, Friday, June 23, 2017). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry. This direct final rule provided a compliance alternative for sources that would otherwise be required to use a hydrogen chloride (HCl) continuous emissions monitoring system (CEMS) to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of the HCl calibration gases used for CEMS quality assurance purposes.

40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (80 FR 44771, July 27, 2015). EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants. On February 12, 2013, EPA finalized amendments to the NESHAP and the new source performance standards (NSPS) for the Portland cement industry. Subsequently, EPA became aware of certain minor technical errors in those amendments, and thus issued a proposal to correct these errors on November 19, 2014 (79 FR 68821). The EPA received 3 comments on the proposal. In response to the comments received and to complete technical corrections, the EPA issued final amendments. In addition, consistent with the U.S. Court of Appeals to the DC Circuit’s vacatur of the affirmative defense provisions in the final rule, this action removes those provisions. These amendments do not affect the pollution reduction or costs associated with these standards.

40 CFR 63 Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (80 FR 54728, September 11, 2015). EPA published a final rule in the Federal Register on July 27, 2015, titled National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants. This final rule made technical corrections and clarifications to the regulations published in that final rule. The rule also included a provision describing performance testing requirements when a source demonstrates compliance with the hydrochloric acid (HCl) emissions standard using a continuous emissions monitoring system (CEMS) for sulfur dioxide measurement and reporting.

40 CFR 63 Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (81 FR 38085, June 13, 2016). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (Secondary Aluminum NESHAP). This direct final rule amended the final rule that was published in the **Federal Register** on September 18, 2015, by correcting inadvertent errors, clarifying rule requirements for initial performance tests and submittal of malfunction reports, providing an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarifying what constitutes a change in furnace operating mode. The direct final rule also updated Web site addresses for the EPA’s Electronic Reporting Tool (ERT) and the Compliance and Emissions Data Reporting Interface (CEDRI). These amendments will help to improve compliance and implementation of the rule.

40 CFR 63 Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (80 FR 72789, November 20, 2015). This action sets forth EPA’s final decision on the issues for which it granted reconsideration on January 21, 2015, that pertain to certain aspects of the January 31, 2013, final amendments to the “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters” (Boiler MACT). EPA retained a minimum carbon monoxide (CO) limit of 130 parts per million (ppm) and the particulate matter (PM) continuous parameter monitoring system (CPMS) requirements, consistent with the January 2013 final rule. EPA made minor changes to the proposed definitions of startup and shutdown and work practices during these periods, based on public comments received. Among other things, this final action addressed a number of technical corrections and clarifications of the rule. These corrections clarified and improved the implementation of the January 2013 final Boiler MACT, but do not have any effect on the environmental, energy, or economic impacts associated with the proposed action. 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 Boiler MACT for which EPA did not grant reconsideration.

40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (81 FR 20171, April 6, 2016). EPA finalized the technical corrections EPA proposed on February 17, 2015, to correct and clarify certain text of the EPA’s regulations regarding “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”. EPA also took final action to remove the rule provision establishing an affirmative defense for malfunction.

40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (82 FR 16736, April 6, 2017). EPA amended the electronic reporting requirements for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil- Fired Electric Utility Steam Generating Units (also known as the Mercury and Air Toxics Standards (MATS)) to allow for the temporary submission, through June 30, 2018, of certain reports using the portable document file (PDF) format and to correct inadvertent errors. With this action owners or operators of Electric Utility Steam Generating Units (EGUs) will be able to continue to use temporarily a single electronic reporting system for MATS data submissions, to rely on correct language for mercury (Hg) relative accuracy test audit (RATA) requirements, and to rely on the correct acceptance criterion for

ongoing quality assurance test requirements for Hg RATAs. This extension will allow EPA the necessary time to develop, implement, and test the code necessary so that all MATS reports required to be submitted electronically can be submitted using the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool.

40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (80 FR 15510, March 24, 2015). On November 19, 2014, EPA proposed amending certain reporting requirements in the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units (Mercury and Air Toxics Standards (MATS)) rule. This final rule amended the reporting requirements in the MATS rule by temporarily requiring owners or operators of affected sources to submit certain required emissions and compliance reports to the EPA through the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool, and the rule temporarily suspends the requirement for owners or operators of affected sources to submit certain reports using the Compliance and Emissions Data Reporting Interface (CEDRI).

40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (79 FR 68777, November 19, 2014). EPA took final action on its reconsideration of the startup and shutdown provisions 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) issued pursuant to Clean Air Act (CAA) section 112 are referred to as the Mercury and Air Toxics Standards (MATS), and the new source performance standards (NSPS) issued pursuant to CAA section 111 are referred to as the Utility NSPS. On November 30, 2012, EPA granted reconsideration of, proposed, and requested comment on a limited set of issues in the February 16, 2012, final MATS and Utility NSPS, including certain issues related to the final work practice standards applicable during startup periods and shutdown periods. On June 25, 2013, EPA reopened the public comment period for the reconsideration issues related to the startup and shutdown provisions of MATS and the startup and shutdown provisions related to the particulate matter (PM) standard in the Utility NSPS. EPA took final action on the standards applicable during startup periods and shutdown periods in MATS and on startup and shutdown provisions related to the PM standard in the Utility NSPS.

40 CFR 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (79 FR 68795, November 19, 2014). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units (Mercury and Air Toxics Standards (MATS)). This direct final rule amended the reporting requirements in the MATS rule by temporarily requiring affected sources to submit all required emissions and compliance reports to the EPA through the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool and temporarily suspending the requirement for affected sources to submit certain reports using the Electronic Reporting Tool and the Compliance and Emissions Data Reporting Interface (CEDRI).

40 CFR 63 Subpart YYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities (80 FR 36247, June 24, 2015). EPA CFR Correction in Title 40 of the Code of Federal Regulations, Part 63 (§ 63.8980 to end of part 63), revised as of July 1, 2014, on page 244, in § 63.10686, paragraph (e) is reinstated to read as follows: § 63.10686 What are the requirements for electric arc furnaces and argon-oxygen decarburization vessels? (e) You must monitor the capture system and PM control device required by this subpart, maintain records, and submit reports according to the compliance assurance monitoring requirements in 40 CFR part 64. The exemption in 40 CFR 64.2(b)(1)(i) for emissions limitations or standards proposed after November 15, 1990 under section 111 or 112 of the CAA does not apply. In lieu of the deadlines for submittal in 40 CFR 64.5, you must submit the monitoring information required by 40 CFR 64.4 to the applicable permitting authority for approval by no later than the compliance date for your affected source for this subpart and operate according to the approved plan by no later than 180 days after the date of approval by the permitting authority.

40 CFR 63 Subpart DDDDDD—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources (80 FR 5938, February 4, 2015). EPA took direct final action to amend the National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources. This direct final rule withdrew the total non-vinyl chloride organic hazardous air pollutant (TOHAP) process wastewater emission standards for new and existing polyvinyl chloride and copolymers (PVC) area sources.

40 CFR 63 Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources (81 FR 63112, September 14, 2016). This action sets forth EPA's final decision on the issues for which it announced reconsideration on

January 21, 2015, that pertain to certain aspects of the February 1, 2013, final amendments to the “National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers” (Area Source Boilers Rule). EPA retained the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. In addition, the EPA amended three reconsidered provisions regarding: The alternative particulate matter (PM) standard for new oil-fired boilers; performance testing for PM for certain boilers based on their initial compliance test; and fuel sampling for mercury (Hg) for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal. EPA made minor changes to the proposed definitions of startup and shutdown based on comments received. This final action also addressed a limited number of technical corrections and clarifications on the rule, including removal of the affirmative defense for malfunction in light of a court decision on the issue. These corrections will clarify and improve the implementation of the February 2013 final Area Source Boilers Rule. In this action, EPA also denied the requests for reconsideration with respect to the issues raised in the petitions for reconsideration of the final Area Source Boilers Rule for which reconsideration was not granted.

40 CFR 63 Appendix A to Part 63—Test Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries (81 FR 83701, November 22, 2016). EPA finalized revisions to better define the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action added language that clarified the criteria used by EPA to determine the competency of Method 303 training providers, but did not change the requirements for conducting the test method. These revisions will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

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.

This proposed expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

The department did not review, or rely on any study for this rulemaking.

9. The agency is exempt from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

The NSPS and NESHAP standards are “applicable requirements” for purposes of the Title V Operating Permit Program. These 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:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

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

ADEQ did not receive any public or stakeholder comments or objections about the expedited rulemaking.

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

There are no other matters prescribed by 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 rules are subject to a Title V General Permit.

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

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:

<u>New and revised incorporations by reference (subparts or larger) as of 6/30/17</u>	<u>Location</u>
40 CFR 60, Subparts A, Da, Db, Ec, F, Ga, H, J, Ja, O, T, U, V, W, X, BB, BBa, GG, KK, LL, UU, AAA, NNN, CCCC, DDDD, IIII, JJJJ, OOOO, OOOOa, PPPP, QQQQ, TTTT and UUUU	R18-2-901
40 CFR 61, Subparts A, C, D, E, N and W	R18-2-1101(A)
40 CFR 63, Subparts A, E, G, N, O, X, Y, AA, BB, CC, DD, GG, LL, NN, YY, GGG, NNN, RRR, III, JJJ, LLL, MMM, OOO, PPP, UUU, XXX, UUU, CCCC, JJJJ, UUUU, ZZZZ, DDDDD, JJJJJ, KKKKK, UUUUU, YYYYY, DDDDDD and JJJJJ	R18-2-1101(B)
<u>New and revised incorporations by reference (all appendices) as of 6/30/17</u>	<u>Location</u>
40 CFR Part 60, Appendices A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, B and F	Appendix 2
40 CFR Part 61, Appendix B	Appendix 2
40 CFR Part 63, Appendix A	Appendix 2

14. The full text of the rule follows:

**TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

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 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of ~~June 28, 2013~~June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel- Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial- Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial- Commercial-Institutional Steam Generating Units.

6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/ Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.

26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
34. Subpart Y - Standards of Performance for Coal Preparation Plants.
35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart BBa – Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013.
- ~~39.~~40. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
- ~~40.~~41. Subpart DD - Standards of Performance for Grain Elevators.
- ~~41.~~42. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
- ~~42.~~43. Subpart GG - Standards of Performance for Stationary Gas Turbines.
- ~~43.~~44. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
- ~~44.~~45. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
- ~~45.~~46. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
- ~~46.~~47. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
- ~~47.~~48. Subpart NN - Standards of Performance for Phosphate Rock Plants.
- ~~48.~~49. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
- ~~49.~~50. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.

~~50~~51. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.

~~51~~52. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.

~~52~~53. Subpart TT - Standards of Performance for Metal Coil Surface Coating.

~~53~~54. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.

~~54~~55. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.

~~55~~56. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.

~~56~~57. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.

~~57~~58. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.

~~58~~59. Subpart AAA - Standards of Performance for New Residential Wood Heaters.

~~59~~60. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.

~~60~~61. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

~~61~~62. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.

~~62~~63. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.

~~63~~64. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

~~64~~65. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.

~~65~~66. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

~~66~~67. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.

~~67~~68. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

~~68~~69. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO₂ Emissions.

~~69~~70. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

~~70~~71. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.

~~71~~72. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.

~~72~~73. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.

- ~~73-74.~~ Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
- ~~74-75.~~ Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
- ~~75-76.~~ Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
- ~~76-77.~~ Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
- ~~77-78.~~ Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
- ~~78-79.~~ Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
- ~~79-80.~~ 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.
- ~~80-81.~~ 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.
- ~~81-82.~~ 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.
- ~~82-83.~~ Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.
- ~~83-84.~~ Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
- ~~84-85.~~ Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.
- ~~85-86.~~ Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.
- ~~86-87.~~ Subpart OOOO - Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.
88. Subpart OOOOa – Standards of Performance for Crude Oil and natural gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015.
89. Subpart PPPP [Reserved].
90. Subpart QQQQ – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.
91. Subpart TTTT – Standards of Performance for Greenhouse Gas Emission for Electric Generating Units.

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of ~~June 28, 2013~~ June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart B - Radon Emissions from Underground Uranium Mines.
3. Subpart C - Beryllium.
4. Subpart D - Beryllium Rocket Motor Firing.
5. Subpart E - Mercury.
6. Subpart F - Vinyl Chloride.
7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.
9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
12. Subpart M - Asbestos.
13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
15. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
16. Subpart Q - Radon Emissions from Department of Energy Facilities.
17. Subpart R - Radon Emissions from Phosphogypsum Stacks.
18. Subpart T - Radon Emissions from the Disposal of Uranium Mill Tailings.
19. Subpart V - Equipment Leaks (Fugitive Emission Sources).
20. Subpart W - Radon Emissions from Operating Mill Tailings.
21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
23. Subpart FF - Benzene Waste Operations.

B. Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of ~~June 28, 2013~~ June 30, 2017, and no future

editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402- 9328.

1. Subpart A - General Provisions.
2. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
3. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
7. Subpart L - National Emission Standards for Coke Oven Batteries.
8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non- Nylon Polyamides Production.
17. Subpart Y -National Emission Standards for Marine Tank Vessel Loading Operations.
18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.

19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
29. Subpart OO - National Emission Standards for Tanks - Level 1.
30. Subpart PP - National Emission Standards for Containers.
31. Subpart QQ - National Emission Standards for Surface Impoundments.
32. Subpart RR - National Emission Standards for Individual Drain Systems.
33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

42. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
43. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
44. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
45. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
46. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
47. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
48. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
49. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
50. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
51. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
52. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
53. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
54. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
55. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
56. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
57. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
58. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
59. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.

60. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
61. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non- Gasoline).
62. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63. Subpart GGGG - National Emission Standards for Hazardous\ Air Pollutants: Solvent Extraction for Vegetable Oil Production.
64. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
65. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
66. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
67. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
68. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
69. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
70. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
71. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
72. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
73. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
74. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
75. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
76. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.

77. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
78. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
79. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
80. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
83. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
84. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
85. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
86. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
87. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
88. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
89. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
90. Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
91. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
92. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
93. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
94. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.

95. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
96. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stand.
97. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
98. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
99. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
100. Subpart TTTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
101. Subpart WWWW - 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 BBBBB - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.
105. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.
106. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.
107. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
108. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.
109. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources-Zinc, Cadmium, and Beryllium.
110. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.
111. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers Area Sources.

112. Subpart LLLLLL - National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.
113. Subpart MMMMMM - National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.
114. Subpart NNNNNN - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.
115. Subpart OOOOOO - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.
116. Subpart PPPPPP - National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.
117. Subpart QQQQQQ - National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.
118. Subpart RRRRRR - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.
119. Subpart SSSSSS - National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.
120. Subpart TTTTTT - National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.
121. Subpart VVVVVV - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.
122. Subpart WWWWWW - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.
123. Subpart XXXXXX - National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.
124. Subpart YYYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.
125. Subpart ZZZZZZ - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and other Nonferrous Foundries.
126. Subpart AAAAAA - National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.
127. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.
128. Subpart CCCCCC - 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 ~~June 28, 2013~~ 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 $\frac{3}{8}$ inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is $< \frac{3}{8}$ 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^2 , the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft^2 , 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 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.

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R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of June 28, 2013, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.
26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
34. Subpart Y - Standards of Performance for Coal Preparation Plants.
35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.

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36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
40. Subpart DD - Standards of Performance for Grain Elevators.
41. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
42. Subpart GG - Standards of Performance for Stationary Gas Turbines.
43. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
44. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
45. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
46. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
47. Subpart NN - Standards of Performance for Phosphate Rock Plants.
48. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
49. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
50. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
51. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
52. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
53. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
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.
56. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
57. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
58. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
59. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
60. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
61. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
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.
64. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
65. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
66. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
67. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
68. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO₂ Emissions.
69. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
70. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
71. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
72. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
73. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
74. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
75. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
76. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
77. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
78. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.

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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.
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.
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.
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.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Section R18-2-901 renumbered to R18-2-1101, new Section R18-2-901 renumbered from R18-2-801 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999, and at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expediated rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

- A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of June 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.
 3. Subpart C - Beryllium.
 4. Subpart D - Beryllium Rocket Motor Firing.
 5. Subpart E - Mercury.
 6. Subpart F - Vinyl Chloride.
 7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
 8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.
 9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
 10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
 11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
 12. Subpart M - Asbestos.
 13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
 14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
 15. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
 16. Subpart Q - Radon Emissions from Department of Energy Facilities.
 17. Subpart R - Radon Emissions from Phosphogypsum Stacks.
 18. Subpart T - Radon Emissions from the Disposal of Uranium Mill Tailings.
 19. Subpart V - Equipment Leaks (Fugitive Emission Sources).

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20. Subpart W - Radon Emissions from Operating Mill Tailings.
 21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
 22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
 23. Subpart FF - Benzene Waste Operations.
- B.** Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of June 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 F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
 3. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
 4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
 5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
 6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
 7. Subpart L - National Emission Standards for Coke Oven Batteries.
 8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
 9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
 10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
 11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
 12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
 13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
 14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
 15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
 16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
 17. Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations.
 18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
 19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
 20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
 21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
 22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
 23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
 24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
 25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
 26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
 27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
 28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
 29. Subpart OO - National Emission Standards for Tanks - Level 1.
 30. Subpart PP - National Emission Standards for Containers.
 31. Subpart QQ - National Emission Standards for Surface Impoundments.
 32. Subpart RR - National Emission Standards for Individual Drain Systems.
 33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

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34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
42. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
43. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
44. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
45. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
46. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
47. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
48. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
49. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
50. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
51. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
52. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
53. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
54. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
55. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
56. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
57. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferrous Alloys Production: Ferromanganese and Silicomanganese.
58. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
59. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
60. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
61. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
62. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
64. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
65. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
66. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
67. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
68. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
69. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
70. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.

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71. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
72. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
73. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
74. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
75. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
76. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
77. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
78. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
79. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
80. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
83. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
84. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
85. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
86. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
87. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
88. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
89. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
90. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
91. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
92. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
93. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
94. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
95. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
96. Subpart PTTTT - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
97. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
98. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
99. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
100. Subpart TTTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
101. Subpart WWWW - 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 ZZZZ - 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 CCCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.
106. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

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- 107.Subpart EEEEEEE - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
- 108.Subpart FFFFFFFF - 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 CCCCCC - 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.

Historical Note

Former Section R18-2-1101 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1101 renumbered from R18-2-901 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secre-

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tary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expediated rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

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 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, 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.

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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/ft², the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft², then proceed to examine the average percent silt content. If the source is an unpaved road and the average percent silt content is 6% or less, the surface is STABLE. If the source is an unpaved parking lot and the average percent silt content is 8% or less, the surface is STABLE. If your field test results are within 2% of the standard (for example, 4%-8% silt content on an unpaved road), it is recommended that you collect 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.

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 expediated rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, 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. Assist the department of health services in recruiting and training state, local and district health department personnel.

15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

16. 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.

17. 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 shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.

18. Provide administrative and staff support for the oil and gas conservation commission.

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.

41-1027. Expedited rulemaking

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

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

8. Adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

41-1028. Incorporation by reference

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

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

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

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

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

DEPARTMENT OF HEALTH SERVICES (R-18-0404)

Title 9, Chapter 4, Article 6 (Proposed), Opioid-Poisoning Related Reporting

New Section: R9-4-601; R9-4-602



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: April 3, 2018

AGENDA ITEM: E-4

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

FROM: Council Staff

DATE: March 20, 2018

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R-18-0404)**
Title 9, Chapter 4, Article 6 (Proposed), Opioid-Poisoning Related Reporting

New Section: R9-4-601; R9-4-602

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Department of Health Services (Department), seeks to create two new rules, related to reporting requirements for opioid poisoning, in A.A.C. Title 9, Chapter 4.

The rulemaking implements directives Executive Orders 2017-04 and 2017-05, within which health care providers, pharmacists, emergency medical service providers, local and state law enforcement agencies, and others were directed to report data on specific opioid-related health conditions to the Department. Opioid-related reporting was first established through the emergency rulemaking process, effective October 9, 2017.

The Department indicates that it will use reported data to monitor incidence patterns for opioid overdoses, assess the success of intervention strategies being deployed to combat the opioid overdose epidemic, identify population subgroups at high risk for morbidity and mortality due to opioid overdoses, and identify regions of the state that are in particular need of intervention programs to reduce the incidence of opioid overdoses.

Proposed Action

- Section 601 is added to provide definitions for terms used in the article.
- Section 602 lays out opioid poisoning-related reporting requirements:
 - Section (A) requires a first response agency to submit a report to the Department within five business days after an encounter with an individual with a suspected opioid overdose.

- Subsection (B) sets forth exemptions from reporting requirements in the article.
- Subsection (C) requires a health professional or administrator of a health care institution to submit a report to the Department within five business days after an encounter with an individual with a suspected opioid overdose.
- Subsection (D) requires a health professional or administrator of a health care institution to submit a report to the Department within five business days after an encounter with an individual with suspected neonatal abstinence syndrome.
- Subsection (E) requires a pharmacist who dispenses naloxone or another opioid antagonist to an individual according to A.R.S. § 32-1979 to submit a report to document the dispensing, as required by A.R.S. § 32-1979.
- Subsection (F) requires a medical examiner to submit a report to the Department within five business days after the completion of the death investigation required in A.R.S. § 11-594 on the human remains of a deceased individual with a suspected opioid overdose.
- Subsection (G) clarifies that information collected on individuals pursuant to the article is confidential.

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

Yes. The Department cites to both general and specific authority for the rules, including A.R.S. § 36-136(G), under which the Department “may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.”

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

No. The rules do not establish a new fee or contain a fee increase.

3. Summary of the agency's economic impact analysis:

The Department notes that 790 individuals in Arizona died of an opioid overdose in 2015. This is a 74% increase from 2012. Poor health outcomes from opioid abuse have increased substantially in Arizona and the United States during the 21st century. The Department's response to this crisis involves a comprehensive data collection program involving multiple stakeholders that interact with individuals abusing opioids in diverse situations and environments.

4. 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 concludes that the rules impose minimal data reporting burdens on most relevant stakeholders. These rules create a data system that will provide valuable information to inform the current opioid epidemic. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department, first response agencies, medical examiners, licensed health care institutions, health care professionals, pharmacists, and the general public.

The Department will have substantial costs associated with the development, maintenance, and use of multiple data collection systems. Department costs include:

- \$10,500 – cost to modify the CSPMP (Arizona Board of Pharmacy’s Controlled Substances Prescription Monitoring Program)
- \$8,000 – cost to modify the MEDSIS (Medical Electronic Disease Surveillance System)
- \$3,600 – cost to temporarily modify the AZ-PIERS (Arizona Prehospital Information and EMS Registry System)
- \$12,000 – cost to permanently modify the AZ-PIERS
- \$4,000 per year – costs for data management de-duplication
- \$65,000 per year – 2.0 FTEs to manage data quality
- \$14,000 per year – 0.25 FTE for an epidemiologist to analyze and disseminate this data

The Department indicates that new FTEs are not required as a result of this rulemaking. FTEs involved in the data collection system have been redeployed from other Department resources.

The Department has been awarded federal grants to help combat the opioid epidemic, including:

- \$3.1 million from the SAMHSA (US Substance Abuse and Mental Health Services Administration)
- \$3.6 million from the CDC (Centers for Disease Control and Prevention)

These rules and the Department’s data systems are intrinsic aspects of the Department’s requirements to monitor the efficacy of projects funded by these grants.

First response agencies will have minimal costs imposed on them in the form of collecting and reporting opioid overdose related information. First response agencies include 78 law enforcement agencies and 131 ambulance services and emergency medical service providers (both public and private). These stakeholders will benefit by having additional data to better serve individuals who may be experiencing an opioid overdose.

Medical examiners in Arizona will have minimal additional reporting responsibilities related to opioid caused deaths. The Department estimates that each report will take 5 to 7 minutes. From June 13, 2017 to January 31, 2018, the Department received 491 fatal opioid overdose reports. The additional reporting requirements provide important data about opioid-related deaths, and the additional reporting requirements for medical examiners is minimal.

There are approximately 5,700 licensed health care facilities in Arizona. These facilities have sundry activities relating to opioids from routine opioid administration to emergency

services for opioid overdoses. The Department requires that these facilities adopt a quality management program to evaluate services and document incidents involving opioids. Licensed health care facilities are also required to report possible opioid-related deaths to the Department within one working day. The Department estimates that this additional reporting requires between 3 and 5 minutes per report. From June 13, 2017 to January 31, 2018, the Department received 3,238 reports from 76 institutions distributed as follows:

- 2,409 reports about suspected non-fatal opioid overdoses
- 242 reports of suspected fatal opioid overdoses
- 587 reports of cases of suspected neonatal abstinence syndrome

While this additional reporting places minimal burdens on licensed health care institutions, it provides data that is necessary to inform the progress of interventions against the opioid overdose epidemic.

Health care professionals will be minimally impacted by these rules. As of January 31, 2018, the Department only received one report from a health care professional outside of a licensed health care institution. The Department anticipates that more health care professionals will begin reporting after these rules take effect; however, the burden on each individual health care professional is anticipated to be minimal.

Pharmacists currently have different reporting requirements under the Department's emergency rules compared to the reporting requirements promulgated by the Arizona Board of Pharmacy. These differences have caused confusion among pharmacists. The Department is changing the current rule so that it simply references the Board's rules. This rulemaking will make compliance and reporting easier for pharmacists.

The Department notes that the general public will not bear any of the burdens associated with the additional data collection requirements. The general public will benefit from data-driven policies that seek to ameliorate the negative impacts associated with the opioid epidemic.

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

Yes. The Department states that it received two public comments on the rulemaking. First, the Department indicates that a representative of a hospital expressed concern that a hospital might consider itself to be an "emergency medical services provider," due to having an emergency department, and believe the hospital had to report under Section 602(A) as well as subsections (C) and (D). In response, a definition of "first response agency" has been added to Section 601 and the phrase "an ambulance service, an emergency medical services provider, or a law enforcement agency" has been replaced with "a first response agency" in Section 602.

Second, a written comment was received from a representative of the Health System Alliance of Arizona. A summary of that comment, along with the Department's responses, can be found on pages 6-7 of the Notice of Final Rulemaking. Council staff believes that the Department has adequately addressed the comment.

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

No. Only non-substantive clarifying changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Department indicates that there are no federal laws that directly correspond to the rules.

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

No. The rules do not require a permit or license.

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

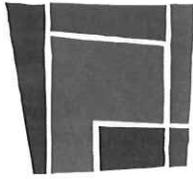
Yes. The Department indicates that it based the need for this rulemaking on the following two documents:

- The Department's "2016 Arizona Opioid Report," available at <http://azdhs.gov/documents/audiences/clinicians/clinical-guidelines-recommendations/prescribing-guidelines/arizona-opioid-report.pdf>; and
- The U.S. Centers for Disease Control and Prevention's Morbidity and Mortality Weekly Report (MMWR) "Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015," published July 7, 2017, available at https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm?s_cid=mm6626a4_w.

The Department indicates that both documents present factual data describing the extent of the opioid epidemic in Arizona and the United States, respectively.

11. Conclusion

If approved, this rulemaking will become effective immediately upon filing with the Secretary of State. The Department requests this immediate effective date under A.R.S. § 41-1032(A)(1) and (A)(4) as the rule is necessary to protect public health and safety and is less burdensome than the emergency rule currently in effect. Council staff recommends approval of the rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 22, 2018

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 4, Article 6 Department of Health Services – Noncommunicable Diseases

Dear Ms. Colyer:

Enclosed is the administrative rule package identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council under A.R.S. § 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-104:

- The close of record:
The close of record was February 22, 2018. Submission of the rules is within the 120 days allowed for Final Rulemaking.
- Procedures followed:
As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on December 8, 2017. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on January 12, 2018. The Department held one oral proceeding on February 22, 2018. The Department received no written or oral comments about the proposed rules.
- Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 4, Article 6 does not relate to a five-year-review report.
- Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:
The rulemaking does not contain a fee.

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

5. Whether the rule contains a fee increase:
The rulemaking does not contain a fee increase.
6. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department is requesting an immediate effective date for this rulemaking.
7. A list of all items enclosed:
 - a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rules; and
 - b. Economic, Small Business, and Consumer Impact Statement.

The Department is requesting that the rules be heard at the Council meeting on April 3, 2018.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

I certify that the Department, as the preparer of the economic, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

R9-4-601 New Section

R9-4-602 New Section

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. § 36-133

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an immediate effective date for this rule under A.R.S. § 41-1032 (A)(1) and (4). This rule is necessary to protect public health and safety and is less burdensome than the emergency rule currently in effect. Therefore, implementing the rule earlier than the usual 60-day time period will provide a benefit to both the regulated entities and the public. No additional penalties are assessed for a violation of this rule compared with the emergency rule.

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 Emergency Rulemaking: 23 A.A.R. 2857, October 13, 2017

Notice of Rulemaking Docket Opening: 23 A.A.R. 3362, December 8, 2017

Notice of Proposed Rulemaking: 24 A.A.R. 93, January 12, 2018

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

Name: Colby Bower, Assistant Director

Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007

Telephone: (602) 542-6383

Fax: (602) 364-4808

E-mail: Colby.Bower@azdhs.gov

or

Name: Robert Lane, Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) §36-133 requires the Department to develop a chronic disease surveillance system for the collection, management, and analysis of information on the incidence of chronic diseases in Arizona. The Department has implemented this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 4. The Department believes that opioid use disorder, which can lead to opioid overdose and death, has become a chronic disease in Arizona. In the last 15 years, prescription opioid sales in the United States have risen by 300%, resulting in more than 33,000 opioid overdose deaths in 2015 nationwide. In Arizona, 790 individuals died in 2016 of an opioid overdose, a 74% increase since 2012.

To successfully prevent and combat opioid use disorder, overdoses, and deaths, the Department needs to be able to obtain complete and accurate data about these events in a timely fashion. Under Executive Order 2017-04, Enhanced Surveillance Advisory, issued by Governor Doug Ducey, on June 13, 2017, health care providers, pharmacists, emergency medical service providers, local and state law enforcement agencies, and others were directed to report data on specific opioid-related health conditions to the Department. This Executive Order was revised and renewed on August 10, 2017, when the Governor issued Executive Order 2017-05, and on October 9, 2017, when opioid-related reporting began under an emergency rule.

The Department has begun using the data being reported under the Executive Orders to monitor incidence patterns for opioid overdoses, and plans to assess the success of intervention strategies being deployed to combat the opioid overdose epidemic, identify population subgroups at high risk for morbidity and mortality due to opioid overdoses, and identify regions of the state that are in particular need of intervention programs to reduce the incidence of opioid overdoses. However, continued reporting is necessary to obtain the data necessary to shape, implement, and assess the success of a public health response to the opioid overdose epidemic. Since there is a

continuing need for data to detect changes in opioid prescribing practices, as well as changes in the number of opioid overdoses and intervention activities, on a real-time basis, after the expiration of the emergency rule, the Department has sought and received an exception from the rulemaking moratorium established by Executive Order 2017-02 and is adopting rules for Opioid Poisoning-Related Reporting by regular rulemaking in 9 A.A.C. 4. The new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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 based the need for this rulemaking on the following two documents:

- a. The Department's "2016 Arizona Opioid Report," available at <http://azdhs.gov/documents/audiences/clinicians/clinical-guidelines-recommendations/prescribing-guidelines/arizona-opioid-report.pdf>; and
- b. The U.S. Centers for Disease Control and Prevention's Morbidity and Mortality Weekly Report (MMWR) "Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015," published July 7, 2017, available at https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm?s_cid=mm6626a4_w.

Both documents present factual data describing the extent of the opioid epidemic in Arizona and the United States, respectively.

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:

Annual costs/revenues changes are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$5,000, and substantial when \$5,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipates that persons affected by the rulemaking include the Department; first response agencies, including ambulance services, emergency medical services providers, and law enforcement agencies; licensed health care institutions; health professionals; medical examiners; pharmacists/pharmacies; individuals

experiencing an opioid overdose or neonatal abstinence syndrome (NAS) and their families; and the general public.

Ambulance services, emergency medical services providers, and law enforcement agencies currently report to the Department through the AZ-PIERS data system, while health care institutions, health professionals, and medical examiners report through the MEDSIS data system. Pharmacists report the dispensing of naloxone through the Arizona Board of Pharmacy's Controlled Substances Prescription Monitoring Program (CSPMP) data system. The Department estimates that it cost the Department approximately \$8,000 to modify the MEDSIS data system and approximately \$3,600 to modify the AZ-PIERS data system. The cost to permanently update AZ-PIERS is estimated to be approximately \$12,000. The Department also paid \$10,500 to modify the CSPMP to accommodate the reported data. Therefore, the cost to the Department to modify the data systems used for collection of the reported information is expected to be substantial. The Department anticipates that de-duplication of information reported by multiple submitters in separate data systems, requesting additional information to complete reports, and entering medical examiner data from Maricopa County may impose a substantial annual cost on the Department. Costs to compile, analyze, and produce reports on the data, as well as to disseminate other information derived from the data, may impose a further substantial annual cost on the Department.

The Department may receive a significant benefit from the information submitted due to the rule in implementing the activities proposed in the Opioid Action Plan, developed by the Department in compliance with the Governor's Declaration of Emergency and Notification of Enhanced Surveillance Advisory on the Opioid Overdose Epidemic. In addition to the significant intrinsic benefit of having a healthier and safer general public as a result of public health activities undertaken by the Department to address the opioid overdose epidemic, the Department has been able to obtain federal funds to help combat the opioid overdose epidemic. The Department may receive up to a substantial benefit if the data derived through the rules enable the Department to obtain additional federal funds.

The new rules may impose a minimal-to moderate-cost on first response agencies, including ambulance services, emergency medical services providers, and law enforcement agencies, for reporting the required information to the Department. The Department is also providing reports derived from the submitted information back to first response agencies, enabling them to improve performance and the effectiveness of their activities. Through the provision of continuing timely data, the Department anticipates that a first response agency may receive a significant benefit from the new rules.

Reports of opioid overdose deaths are required by the new rules to be reported by medical examiners to the Department. To lessen the burden on the Maricopa County medical examiner, which has by far the largest number of opioid overdose deaths, the Department has been entering this data. The Department anticipates that the medical examiners of the other counties may experience a minimal cost to report on these deaths. Medical examiners may also receive a significant benefit from the reports of compiled data provided by the Department, derived from information submitted under the new rules.

Licensed health care institutions are required by the new rules to report suspected non-fatal opioid overdoses, suspected fatal opioid overdoses, and suspected cases of NAS. The Department estimates that 80% of health care institutions would incur minimal costs for this reporting, while the largest reporting health care institutions may experience a minimal-to-moderate annual cost for reporting. Health care institutions may also receive a significant benefit from the reports that may be disseminated by the Department, based on the information received under the new rules. Health professionals may be expected to incur a minimal burden due to reporting, and may receive a significant benefit from additional resources available to them and their patients as a result of the public health response to the opioid overdose epidemic, which is driven by data derived through the reporting.

The emergency rules are not consistent with reporting requirements for naloxone dispensing specified by the Arizona Board of Pharmacy. This inconsistency may cause confusion as to what information must be provided and in what timeframe. To address the discrepancy, the Department has included in the new rules a citation to A.R.S. § 32-1979. The Department believes this change from the requirements in the emergency rules may provide a significant benefit to a pharmacist/pharmacy by reducing confusion about reporting requirements.

The requirements in the rules were designed to provide the data that will allow a public health response to be implemented to improve the health and safety of the citizens of Arizona, including individuals experiencing an opioid overdose or NAS. Therefore, the Department anticipates that individuals experiencing an opioid overdose or NAS and their families may receive a significant benefit from the requirements in the rules. The Department anticipates that the timely monitoring of suspected opioid overdoses, and the effects that public health programs may have on them, may help reduce the number of opioid overdose deaths in Arizona and the number of individuals suffering an opioid overdose as a result of prescribed opioids. Therefore, the Department estimates that this rule may provide a significant benefit to the general public.

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

The following changes were made to the rule between the proposed rulemaking and the final rulemaking:

- A definition of “first response agency” has been added to R9-4-601; and
- Where applicable, the phrase “an ambulance service, an emergency medical services provider, or a law enforcement agency” has been replaced with “a first response agency” in R9-4-602.

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

The Department had a conversation with a representative of a hospital who expressed concern that a hospital might consider itself to be an “emergency medical services provider,” due to having an emergency department, and believe the hospital had to report under R9-4-602(A) as well as subsections (C) and (D). To reduce the chance of confusion, the Department is changing the rule as described under paragraph 10.

The Department received a written comment about the rulemaking from a representative of the Health System Alliance of Arizona after the close of record for this rulemaking but is addressing the concerns expressed in the written comment. A summary of the concerns and the Department’s responses follows:

Comment	Department’s Response
The commenter asked that the Department exclude providers covered under Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2 from reporting under R9-4-602(A).	R9-4-602(A) requires reporting from law enforcement agencies, ambulance services, and emergency medical services providers. This federal regulation is not applicable to these “first response agencies” and should not be included as part of the subsection. The Department is not changing the rule based on this comment.
The commenter asked that the Department clarify R9-4-602(A)(6) to state that hospitals do not have to provide additional reporting of naloxone administration prior to a patient’s arrival at the hospital.	R9-4-602(A)(6) does not pertain to hospitals. The Department is not changing the rule based on this comment.
The commenter asked the Department to clarify that the information required in R9-4-602(C)(3) and (5) must be reported “when known and available.”	The Department understands that sometimes information required in rule may not be available for every patient and includes the choice of “Unknown” in most fields in the database in which reported data is collected. However, the Department believes that most of the information required in these subsections includes information a hospital should be collecting on any patient or information that may be pertinent to treatment or referral decisions. The Department believes that a hospital should make the effort to obtain it. Subsection (C)(5)(f) includes the “if known” qualifier. The Department is not changing the rule based on this comment.

<p>The commenter asked the Department to clarify R9-4-602(C)(6)(b) to state that the requirement for date of death is applicable to deaths that occur “at the facility.”</p>	<p>The rule subsection requires the reporting of “Whether the individual with the suspected opioid overdose: b. Died and, if so, the date of death; and.” The Department does not anticipate that a hospital would continue to follow a patient after discharge to determine if and when the individual dies, sometime in the future. The Department believes that a hospital should report on a suspected opioid overdose death occurring at the hospital or pronounced at the hospital. The Department is not changing the rule based on this comment.</p>
<p>The commenter asked the Department to clarify that the information required in R9-4-602(D)(3), (4)(b), (d), and (e), and (5) must be reported if “known or available.”</p>	<p>As stated above, the Department believes that most of the information required in these subsections includes information a hospital should be collecting on any patient or information that may be pertinent to treatment or referral decisions. The Department believes that a hospital should make the effort to obtain it. Subsection (D)(5) includes the “if known” qualifier. The Department is not changing the rule based on this comment.</p>
<p>The commenter expressed concern that the required reports be submitted in a Department-provided format and wanted the information to be submitted electronically to avoid hospitals having “to dedicate considerable resources in order to comply with these new reporting requirements.”</p>	<p>The reporting requirements in the rule are not new, but are an extension of the reporting already being done by hospitals under the emergency rules. The term “Department-provided format” used in the rule refers to the existing data systems already being used for the collection of reported information. As stated in the economic, small business, and consumer impact statement, it currently takes between three and five minutes to enter a record. The Department estimates that an individual health care institution may incur less than \$1,000 in costs per year for reporting. The Department is not changing the rule based on this comment.</p>

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

a. 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 business competitiveness analysis was received by the Department.

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

Not applicable

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

Notice of Emergency Rulemaking: 23 A.A.R. 2857

Between the emergency rulemaking and the final rulemaking packages, the rule was changed by:

- Adding or revising definitions in R9-4-601;
- Changing R9-4-602(A)(3) to address situations in which:
 - The location of the encounter does not have a street address or is in an unincorporated location in a county, rather than in a city; or
 - The reporting entity does not have complete/correct information about the individual with a suspected opioid overdose or who died of a suspected opioid overdose;
- Changing R9-4-602(A)(6) and (7), (C)(3) to include an opioid antagonist other than naloxone;
- Clarifying requirements in R9-4-602(A)(8) into subsections (A)(8) and (9) related to the disposition of the individual with a suspected opioid overdoses;
- Clarifying exceptions from reporting requirement;
- Removing requirements in R9-4-602(C)(2) and (D)(2) for the address of the point of contact;
- Changing R9-4-602(C)(6) to include requirements related to discharge to a correctional facility and to simplify reporting information about the individual's death;
- Changing subsection (E) to avoid conflicts with rules adopted by the Arizona Board of Pharmacy for pharmacists/pharmacies;
- Removing reporting requirements for clinical laboratories and related cross-references;
- Clarifying the authorities under which the information reported to the Department is confidential; and
- Making the changes described in paragraph 10.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES
ARTICLE 6. OPIOID POISONING-RELATED REPORTING

Section

R9-4-601.

Definitions

R9-4-602.

Opioid Poisoning-Related Reporting Requirements

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

R9-4-601. Definitions

A. In this Article, unless otherwise specified:

1. “Administrator” means the individual who is a senior leader in a health care institution or correctional facility.
2. “Ambulance service” has the same meaning as in A.R.S. § 36-2201.
3. “Business day” means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.
4. “Clinical laboratory” has the same meaning as in A.R.S. § 36-451.
5. “Correctional facility has the same meaning as in A.A.C. R9-6-101.
6. “Dispense” has the same meaning as in A.R.S. § 32-1901.
7. “Emergency medical services provider” has the same meaning as in A.R.S. § 36-2201.
8. “First response agency” means:
 - a. An ambulance service,
 - b. An emergency medical services provider, or
 - c. A law enforcement agency.
9. “Health care institution” has the same meaning as in A.R.S. § 36-401.
10. “Health professional” has the same meaning as in A.R.S. § 32-3201.
11. “Law enforcement agency” has the same meaning as in A.A.C. R13-1-101.
12. “Medical examiner” has the same meaning as in A.R.S. § 36-301.
13. “Naloxone” means a specific opioid antagonist that has been used since 1971 to block the effects of an opioid in an individual.
14. “Neonatal abstinence syndrome” means a set of signs of opioid withdrawal occurring in an individual shortly after birth that are indicative of opioid exposure while in the womb.
15. “Opioid” means the same as “opiate” in A.R.S. § 36-2501.
16. “Opioid antagonist” means a prescription medication, as defined in A.R.S. § 32-1901, that:
 - a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
 - b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.

17. “Opioid overdose” means respiratory depression, slowing heart rate, or unconsciousness or mental confusion caused by the administration, including self-administration, of an opioid to an individual.

18. “Pharmacist” has the same meaning as in A.R.S. § 32-1901.

R9-4-602. Opioid Poisoning-Related Reporting Requirements

A. A first response agency shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with a suspected opioid overdose, that includes:

1. The following information about the first response agency:

a. Name;

b. Street address, city, county, and zip code;

c. Whether the first response agency reporting is:

i. An ambulance service,

ii. An emergency medical services provider, or

iii. A law enforcement agency; and

d. If applicable, the certificate number issued by the Department to the ambulance service;

2. The name, title, telephone number, and email address of a point of contact for the first response agency required to report;

3. The following information about the location at which the first response agency encountered the individual:

a. Street address or, if the location at which the first response agency encountered the individual does not have a street address, another indicator of the location at which the encounter occurred;

b. City, if applicable;

c. County;

d. State; and

e. Zip code;

4. If applicable, the date and time the first response agency was dispatched to the location specified according to subsection (A)(3);

5. The following information, as known, about the individual with a suspected opioid overdose or who died of a suspected opioid overdose:

a. Name,

b. Date of birth,

- c. Age in years,
 - d. Gender,
 - e. Race and ethnicity, and
 - f. Reason for suspecting that the individual had an opioid overdose;
6. Whether naloxone or another opioid antagonist designated according to A.R.S. § 36-2228 was administered to the individual before the first response agency encountered the individual and, if so:
- a. The number of doses of naloxone or other opioid antagonist administered to the individual; and
 - b. As applicable, that the naloxone or other opioid antagonist was administered to the individual by:
 - i. Another individual; or
 - ii. Another first response agency and, if so the type of first response agency that administered the naloxone or other opioid antagonist to the individual;
7. Whether naloxone or another opioid antagonist designated according to A.R.S. § 36-2228 was administered to the individual by the first response agency and, if so, the number of doses of naloxone or other opioid antagonist administered to the individual;
8. Whether the disposition of the individual was that the individual:
- a. Survived the suspected opioid overdose; or
 - b. Was pronounced dead:
 - i. At the location specified according to subsection (A)(3), or
 - ii. After leaving the location specified according to subsection (A)(3);
9. If the individual was transported by a first response agency:
- a. The type of first response agency that transported the individual; and
 - b. Whether the individual was transported to:
 - i. A hospital and, if so, the name of the hospital to which the individual was transported;
 - ii. Another class of health care institution and, if so, the name of the health care institution to which the individual was transported; or
 - iii. A correctional facility and, if so, the name of the correctional facility to which the individual was transported; and
10. The date of the report.
- B.** The following are not required to submit a report under this Article:

1. An administrator of a health care institution licensed under 9 A.A.C. 10, for an opioid overdose resulting from the administration of the opioid to a patient in the health care institution if the opioid overdose is addressed through the health care institution's quality management program; or
2. A pharmacist for naloxone or another opioid antagonist that is dispensed in connection with a surgical procedure, as defined in A.A.C. R9-10-101, or other invasive procedure performed in a health care institution.

C. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2 or as specified in subsection (B), a health professional or the administrator of a health care institution licensed under 9 A.A.C. 10 shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with a suspected opioid overdose, that includes:

1. The name, street address, city, county, zip code, and telephone number of the health professional or health care institution;
2. If different from the person in subsection (C)(1), the name, title, telephone number, and email address of the individual reporting on behalf of the person in subsection (C)(1);
3. The following information about the individual with a suspected opioid overdose:
 - a. The individual's name;
 - b. The individual's street address, city, county, state, and zip code;
 - c. The individual's date of birth;
 - d. The individual's gender;
 - e. The individual's race and ethnicity;
 - f. Whether the individual is pregnant and, if so, the expected date of delivery;
 - g. If applicable, the name of the individual's guardian; and
 - h. Whether naloxone or another opioid antagonist designated according to A.R.S. § 36-2228 was administered to the individual before the health professional or health care institution encountered the individual and, if so:
 - i. The type of first response agency that administered the naloxone or other opioid antagonist to the individual, or
 - ii. That the naloxone or other opioid antagonist was administered to the individual by another individual;
4. The following information about the diagnosis of opioid overdose:
 - a. The reason for suspecting that the individual had an opioid overdose;
 - b. The date of the suspected opioid overdose;

- c. The date of diagnosis; and
 - d. If the diagnosis was confirmed through one or more tests performed by a clinical laboratory, for each test:
 - i. The name, address, and telephone number of the clinical laboratory;
 - ii. The date a specimen was collected from the individual;
 - iii. The type of specimen collected;
 - iv. The type of laboratory test performed; and
 - v. The laboratory test result and date of the result;
5. The following information about the suspected opioid overdose:
- a. Whether the opioid overdose appeared to be intentional or unintentional;
 - b. The location where the opioid overdose took place;
 - c. Whether the individual was alone at the time of the opioid overdose;
 - d. Whether the individual was transported to the health professional or health care institution by a first response agency and, if so, the type of first response agency that transported the individual;
 - e. The specific opioid that appeared to be responsible for the opioid overdose; and
 - f. If known, whether:
 - i. The individual was prescribed an opioid within the 90 calendar days before the date of the suspected opioid overdose;
 - ii. The individual had been referred to receive behavioral health services, as defined in A.R.S. § 36-401; or
 - iii. The opioid overdose was the first time the individual had had an opioid overdose and, if not, the number of previous opioid overdoses the individual was known to have had;
6. Whether the individual with the suspected opioid overdose:
- a. Survived the suspected opioid overdose and:
 - i. Was admitted to the health care institution;
 - ii. Was transferred to another health care institution and, if so, the name of the health care institution;
 - iii. Was discharged to a law enforcement agency or correctional facility and, if so, the name of the law enforcement agency or correctional facility;
 - iv. Was discharged to home; or
 - iv. Left the health care institution against medical advice; or
 - b. Died and, if so, the date of death; and

7. The date of the report.

D. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, a health professional or the administrator of a health care institution licensed under 9 A.A.C. 10 shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with suspected neonatal abstinence syndrome, that includes:

1. The name, street address, city, county, zip code, and telephone number of the health professional or health care institution;
2. If different from the person in subsection (D)(1), the name, title, telephone number, and email address of the individual reporting on behalf of the person in subsection (D)(1);
3. The following information about the individual with suspected neonatal abstinence syndrome:
 - a. The individual's name;
 - b. The individual's date of birth;
 - c. The individual's gender;
 - d. The individual's race and ethnicity;
 - e. The name of the individual's mother; and
 - f. If not the individual's mother, the name of the individual's guardian;
4. The following information about a diagnosis of neonatal abstinence syndrome:
 - a. The reason for suspecting that the individual has neonatal abstinence syndrome;
 - b. The date of the onset of signs of neonatal abstinence syndrome;
 - c. The date of diagnosis;
 - d. If the diagnosis was confirmed through one or more tests performed by a clinical laboratory, for each test:
 - i. The name, address, and telephone number of the clinical laboratory;
 - ii. The date a specimen was collected from the individual;
 - iii. The type of specimen collected;
 - iv. The type of laboratory test performed; and
 - v. The laboratory test result and date of the result; and
 - e. Whether any of the following supported a diagnosis of neonatal abstinence syndrome:
 - i. A maternal history of opioid use,
 - ii. A positive laboratory test for opioid use by the individual's mother, or
 - iii. A positive laboratory test for opioids in the individual;

5. If known, the following information about the suspected neonatal abstinence syndrome:
 - a. The source of the opioid believed to have caused the neonatal abstinence syndrome; and
 - b. If the source of the opioid used by the individual's mother was not through a prescription order, as defined in A.R.S. § 32-1901, the specific opioid used by the individual's mother; and
 6. The date of the report.
- E.** A pharmacist who dispenses naloxone or another opioid antagonist to an individual according to A.R.S. § 32-1979 shall, either personally or through a representative, submit a report as required in A.R.S. § 32-1979 to document the dispensing.
- F.** A medical examiner shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after the completion of the death investigation required in A.R.S. § 11-594 on the human remains of a deceased individual with a suspected opioid overdose, that includes:
1. The following information about the medical examiner:
 - a. Name; and
 - b. Street address, city, county, and zip code;
 2. The following information about the deceased individual with a suspected opioid overdose:
 - a. The deceased individual's name;
 - b. The deceased individual's date of birth;
 - c. The deceased individual's gender;
 - d. The deceased individual's race and ethnicity;
 - e. Whether the deceased individual was pregnant and, if so, the expected date of delivery;
 - f. If applicable, the name of the deceased individual's guardian; and
 - g. Whether naloxone or another opioid antagonist was administered to the deceased individual before the deceased individual's death and, if known:
 - i. The type of first response agency that administered the naloxone or other opioid antagonist to the deceased individual, or
 - ii. That the naloxone or other opioid antagonist was administered to the deceased individual by another individual;
 3. The following information about the diagnosis of opioid overdose:
 - a. The reason for suspecting that the deceased individual had an opioid overdose;

- b. The date of the opioid overdose;
- c. The date of diagnosis; and
- d. If the diagnosis was confirmed by clinical laboratory tests:
 - i. The name, address, and telephone number of the clinical laboratory;
 - ii. The date a specimen was collected from the deceased individual;
 - iii. The type of specimen collected;
 - iv. The type of laboratory test performed; and
 - v. The laboratory test result and date of the result;
- 4. If applicable, a copy of the clinical laboratory test results;
- 5. If known, the following information about the suspected opioid overdose:
 - a. Whether the opioid overdose appeared to be intentional or unintentional;
 - b. The location where the opioid overdose took place;
 - c. Whether the deceased individual was alone at the time of the opioid overdose;
 - d. The specific opioid that appeared to be responsible for the opioid overdose;
 - e. Whether the deceased individual was prescribed an opioid within the 90 calendar days before the date of the opioid overdose; and
 - f. Whether the opioid overdose was the first time the deceased individual was known to have had an opioid overdose and, if not, the number of previous opioid overdoses the deceased individual had had;
- 6. Whether the deceased individual with the suspected opioid overdose:
 - a. Died from the suspected opioid overdose and, if so, the date of death; or
 - b. Died from another cause after experiencing a suspected opioid overdose and, if so, the date of death; and
- 7. The date of the report.

G. Information collected on individuals pursuant to this Article is confidential according to:

- 1. A.R.S. § 36-133(F); and
- 2. If applicable, A.R.S. §§ 36-2401 through 36-2403.

TITLE 9. HEALTH SERVICES

CHAPTER 4. NONCOMMUNICABLE DISEASES

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 4. NONCOMMUNICABLE DISEASES

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) §36-133 requires the Department to develop a chronic disease surveillance system for the collection, management, and analysis of information on the incidence of chronic diseases in Arizona. The Department has implemented this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 4. The Department believes that opioid use disorder, which can lead to an opioid overdose and death, has become a chronic disease in Arizona. In the last 15 years, prescription opioid sales in the United States have risen by 300%, resulting in more than 33,000 opioid overdose deaths in 2015 nationwide. In Arizona, 790 individuals died in 2016 of an opioid overdose, a 74% increase since 2012.

To successfully prevent and combat opioid use disorder, overdoses, and deaths, the Department needs to be able to obtain complete and accurate data about these events in a timely fashion. Under Executive Order 2017-04, Enhanced Surveillance Advisory, issued by Governor Doug Ducey on June 13, 2017, health care providers, pharmacists, emergency medical service providers, local and state law enforcement agencies, and others were directed to report data on specific opioid-related health conditions to the Department. This Executive Order was revised and renewed on August 10, 2017, when the Governor issued Executive Order 2017-05, and on October 9, 2017, when opioid poisoning-related reporting began under an emergency rule.

The Department has begun using the data being reported under the Executive Orders to monitor incidence patterns for opioid overdoses, and plans to assess the success of intervention strategies being deployed to combat the opioid overdose epidemic, identify population subgroups at high risk for morbidity and mortality due to opioid overdoses, and identify regions of the state that are in particular need of intervention programs to reduce the incidence of opioid overdoses. However, continued reporting is necessary to obtain the data necessary to shape, implement, and assess the success of a public health response to the opioid overdose epidemic. Since there is a continuing need for data to detect changes in opioid prescribing practices, as well as changes in the number of opioid overdoses and intervention activities, on a real-time basis, after the expiration of the emergency rule, the Department has sought and received an exception from the rulemaking moratorium established by Executive Order 2017-02 and is adopting rules for Opioid

Poisoning-Related Reporting by regular rulemaking in 9 A.A.C. 4.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

- The Department
- First response agencies, including ambulance services, emergency medical services providers, and law enforcement agencies
- Health professionals
- Health care institutions licensed under 9 A.A.C. 10
- Medical examiners
- Pharmacists
- Individuals experiencing an opioid overdose or neonatal abstinence syndrome
- Families of individuals experiencing an opioid overdose or neonatal abstinence syndrome
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by the Governor's Declaration of Emergency or the emergency rule, except to describe how a burden imposed by or a benefit derived from requirements in the emergency rule was changed during the regular rulemaking. Since the public health activities being implemented by the Department and community partners to address the opioid overdose epidemic may reduce the incidence of overdoses and deaths, the burden of reporting on all stakeholders may be reduced over time. No new FTEs will be required due to this rulemaking. Annual costs/revenues changes are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$5,000, and substantial when \$5,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	<p>Modifying data systems to collect reported information about suspected opioid overdoses, deaths due to a suspected opioid overdose, naloxone administration, dispensing of naloxone or another opioid antagonist, and suspected neonatal abstinence syndrome</p> <p>Ensuring accurate data, including de-duplication, ensuring completeness and consistency of reported data, and entering data for the Maricopa County medical examiner</p> <p>Developing, maintaining, and disseminating accurate and timely opioid-related information (reports to submitters and data on the websites)</p> <p>Establishing improved communication and coordination with law enforcement agencies</p> <p>Developing and implementing a public health response to the opioid overdose epidemic, including obtaining federal funding for these efforts</p>	<p>Substantial</p> <p>Substantial</p> <p>Minimal</p> <p>None</p> <p>Substantial</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Substantial</p>
Law enforcement agencies (public first response agencies)	<p>Collecting and reporting suspected opioid overdose-related information</p> <p>Providing better care to individuals with a suspected opioid overdose</p>	<p>Minimal</p> <p>None-to-minimal</p>	<p>Significant</p> <p>Significant/ substantial</p>
Publicly owned or operated ambulance services and emergency medical services providers (public first response agencies)	<p>Collecting and reporting suspected opioid overdose-related information</p> <p>Providing better care to individuals with a suspected opioid overdose</p>	<p>Minimal-to-moderate</p> <p>None-to-minimal</p>	<p>Significant</p> <p>Significant</p>
Medical examiners	Collecting and reporting information about suspected opioid overdose-related deaths	None-to-minimal	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
B. Privately Owned Businesses			
Privately owned or operated ambulance services and emergency medical services providers (private first response agencies)	Collecting and reporting suspected opioid overdose-related information Providing better care to individuals with a suspected opioid overdose	Minimal-to-moderate None-to-minimal	Significant Significant
Licensed health care institutions	Exception from reporting in R9-4-602(B)(1) Collecting and reporting suspected opioid overdose-related information Collecting and reporting information about suspected cases of neonatal abstinence syndrome Admitting fewer patients for treatment of opioid-related conditions Providing better care to individuals with a suspected opioid overdose	None Minimal-to-moderate Minimal-to-moderate Substantial None	Significant Significant Significant Significant Significant
Health professionals	Collecting and reporting suspected opioid-related information or information about suspected cases of neonatal abstinence syndrome Providing better care to individuals with a suspected opioid overdose	Minimal None	Significant Significant
Pharmacies and pharmacists	Making the reporting of naloxone dosed dispensed consistent with requirements on the Arizona Board of Pharmacy	None-to-minimal	Significant
C. Consumers			
Individuals experiencing an opioid overdose or neonatal abstinence syndrome and their families	Having better access to naloxone or another short-acting opioid antagonist Having access to more targeted public health programs	None-to-minimal None	Significant Significant
General public	Helping reduce the number of opioid overdoses in Arizona	None	Significant

The Department

As mentioned above, 790 Arizonan died in 2016 of an opioid overdose. Between June 13, 2017, when enhanced opioid surveillance began, and January 31, 2018, more than 875 suspected opioid deaths, 5,703 suspected opioid overdoses, and 565 cases of neonatal abstinence syndrome have been reported to the Department. The number of opioid prescriptions issued during January 2018 was 364,434. About 47% of the individuals reported as experiencing a suspected overdose during January 2018, who had a prescription history in the Arizona Board of Pharmacy's Controlled Substances Prescription Monitoring Program (CSPMP) data system, had received opioid prescriptions from 10 or more medical practitioners over the last year. In addition, about 43% of people experiencing suspected opioid overdoses, who had a prescription listed in the CSPMP data system, had been prescribed both benzodiazepines and opioids in 2017, which is relevant because the combined use of these two drug categories has been shown to increase the risk of overdose and death.

Ambulance services, emergency medical services providers, and law enforcement agencies currently report to the Department through the AZ-PIERS data system, while health care institutions, health professionals, and medical examiners report through the MEDSIS data system. Pharmacies and pharmacists report the dispensing of naloxone through the CSPMP data system. In response to the Executive Orders, the Department modified both the AZ-PIERS and MEDSIS data systems to accommodate the new information and paid \$10,500 for changes needed to the CSPMP data system. The same data systems will be used to collect the reported information under the new rules. The Department estimates that it cost the Department approximately \$8,000 to modify the MEDSIS data system and approximately \$3,600 to modify the AZ-PIERS data system. The cost to permanently update AZ-PIERS is estimated to be approximately \$12,000. Therefore, the cost to the Department to modify the data systems used for collection of the reported information is expected to be substantial.

Under information about each of the reporting stakeholders, the Department provides the number of reports submitted, as of a specific date, in each of the reporting categories as an indication of the administrative burden the rules impose on these stakeholders. The numbers of these reports do not reflect the number of actual individuals with a suspected fatal or non-fatal opioid overdose or individuals with suspected neonatal abstinence syndrome because a report may be submitted about the same individual for the same incident from several reporting entities. Since information can be entered into the two Department data systems by multiple reporters about the same individual/incident, the data could be skewed if records were not de-duplicated to ensure that each individual/incident is counted only once. The Department has put mechanisms into place to not only de-duplicate the information entered into each separate reporting system, but also to link information about an individual/incident from one database with information from the other to ensure that a single

individual/incident is not counted multiple times. This results in data that is useful and reflects reality. The Department anticipates that the annual cost for de-duplication could range from \$2,000 to \$4,000 per year, imposing a moderate cost on the Department for this activity.

Two Department-contracted individuals will also be working full-time, reviewing submitted information for completeness and consistency and following up to ensure all reports contain complete information, either by contacting the entity that submitted the information or requesting medical records about a patient with one of the reportable conditions. Because more than half (58% as of January 31, 2018) of all suspected fatal opioid overdose cases came from the Maricopa County Medical Examiner's Office, the Department agreed to enter the required information about these cases into MEDSIS to reduce the burden on Maricopa County and obtain timely and accurate data. These Department-contracted individuals will also be performing this function. The Department anticipates that the personnel costs for these two Department-contracted individuals may exceed \$65,000, imposing a substantial cost on the Department. The Department also incurs costs to analyze, compile reports on, and disseminate information about the collected data. Currently, an epidemiologist in the Department is working 0.25 FTE on these tasks, which may cost the Department almost \$14,000 annually.

One method by which information about the opioid epidemic is disseminated to the public is through the Department's opioid epidemic webpage, available at: <http://www.azdhs.gov/prevention/womens-childrens-health/injury-prevention/opioid-prevention/index.php>. This webpage includes real-time data reported to the Department, as well as information about reporting, naloxone use, training opportunities for law enforcement agencies and emergency medical services providers/ambulance services, where opioid-related suspected overdoses have occurred, and much more. In addition, the Department prepares a weekly summary of opioid-related data submitted to MEDSIS and posts the reports on the Department's Opioid Epidemic webpage. Similar reports are prepared weekly from the AZ-PIERS data system and distributed to ambulance services, emergency medical services providers, and law enforcement agencies. These activities required the preparation of a reporting template and computer coding to create the initial report framework. Subsequent reporting requires minimal staff time resulting in a minimal cost to the Department. The Department also prepares ad-hoc reports to assist agencies seeking more specific information about the incidence of opioid-related activity within their jurisdictions. These reports require a limited amount of an epidemiologist's time as well as time to create GIS mapping reports, resulting in a minimal cost to the Department.

One of the requirements on the Department in the Governor's Declaration of Emergency and Notification of Enhanced Surveillance Advisory on the Opioid Overdose Epidemic, issued June 5,

2017, was for the Department to develop and provide to the Governor a “report on findings and recommendations, including additional needs and response activities, and preliminary recommendations that require legislative action.” In this Opioid Action Plan, the Department included goals to address the opioid epidemic, recommendations to address these goals, and a score card to monitor progress in reaching the goals. This Opioid Action Plan is available at: <http://www.azdhs.gov/documents/prevention/womens-childrens-health/injury-prevention/opioid-prevention/opioid-action-plan.pdf>. The Opioid Action Plan is a key resource in the Department’s Arizona’s development and implementation of a public health response to the opioid overdose epidemic. The Department has posted additional information and resources related to the Opioid Action Plan on: <http://www.azdhs.gov/prevention/womens-childrens-health/injury-prevention/opioid-prevention/opioids/index.php#action-plan>. This webpage provides information about how other states are managing the opioid overdose epidemic, presentations made to various stakeholder groups, and an update on opioid response activities. Although the costs incurred by the Department and the many other agencies and partner entities in developing and implementing the Opioid Action Plan are believed to have been substantial, the Department anticipates that the public health benefit from implementing the recommendations far outweighs the costs. For many of the activities delineated in the Opioid Action Plan, the data needed to assess the effectiveness of the activity can only be obtained from information submitted under the new rules. Thus, the rules are expected to provide a significant benefit to the Department in measuring progress in achieving goals of the activity.

The Department had previously established connections with many of the stakeholders affected by this rulemaking, including health care institutions, medical examiners, emergency medical services providers, and ambulance services. However, most components of the Department have had less direct communication with law enforcement agencies. Through the enhanced surveillance for the opioid overdose epidemic and as part of the emergency rulemaking and this rulemaking, the Department has improved communication and coordination with the law enforcement community. Since law enforcement may be a valuable partner in public health emergencies of any kind, the rulemaking has provided an opportunity for the Department to receive a significant benefit from improved communication and coordination with the law enforcement community.

In addition to the significant intrinsic benefit of having a healthier and safer general public as a result of the public health activities implemented by the Department, the Department has been able to obtain federal funds to help combat the opioid overdose epidemic. For example, the Department has been awarded \$3.1 million by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) for development of a comprehensive first responder opioid/naloxone program in partnership with the University of Arizona and the Arizona Peace Officer Standards and

Training board. The Department received another \$3.6 million grant from the Centers for Disease Control and Prevention to improve awareness of the dangers posed by prescription drugs and their inappropriate use by adults, teens, and children who may have access to them. Therefore, the rules are an intrinsic part of the implementation and monitoring of the efficacy of these projects, may be the foundation on which additional funding may be obtained, and, thus, may provide a substantial benefit to the Department.

· **Law enforcement agencies (public first response agencies)**

Since June 13, 2017, when enhanced opioid surveillance began, 78 law enforcement agencies have registered to have access to the AZ-PIERS data system, enabling them to report the information required first by the enhanced surveillance Executive Orders and currently by the emergency rules. Of these, 35 have submitted reports as of January 31, 2018, with 33 reporting suspected non-fatal overdoses and 14 reporting suspected fatal opioid overdoses. As of January 31, 2018, the Department has received 294 reports of suspected non-fatal overdoses (average of 8.9 each) and 136 reports of suspected fatal opioid overdoses (average of 9.7 each) from law enforcement agencies. Based on these data, the Department estimates that law enforcement agencies may report approximately 500 suspected non-fatal overdoses and 220 suspected fatal opioid overdoses annually. According to AZ-PIERS user estimates, it takes between three and five minutes to enter information about each incident into the data system. Therefore, the Department estimates that the annual reporting cost in personnel time for all law enforcement agencies may be between \$750 and \$1,300 for suspected non-fatal overdoses and between \$300 and \$600 for suspected fatal opioid overdoses.

When estimating the cost to a single law enforcement agency, the Department noted that, as of January 31, 2018, less than half of the law enforcement agencies registered to have access to the AZ-PIERS data system had submitted any reports. Of the 35 that had submitted at least one report, 77% had submitted between one and 10 reports, and 94% had submitted fewer than 30 reports. The Department estimates the annual cost to these law enforcement agencies for submitting reports to be less than \$100. Only two law enforcement agencies had submitted more than 30 reports as of January 31, 2018, with one submitting 101 reports and the other 118 reports. Based on the 118 reports submitted by the law enforcement agency submitting the largest number of reports as of January 31, 2018, the Department anticipates that a single law enforcement agency may incur between \$250 and \$500 per year to submit reports.

In addition, more than 1,000 law enforcement agency personnel have received training through the Department on overdose recognition; appropriate interventions, including naloxone administration and referrals to care; and opioid poisoning-related reporting. To provide better access to naloxone to law enforcement agencies, the Department has distributed over 5,000 naloxone kits to

over 50 law enforcement agencies to help reverse opioid overdoses, providing up to a substantial benefit to a law enforcement agency, depending on the number of naloxone kits received, but not necessarily due to the rules themselves. The Department believes that having these resources has enabled law enforcement agency personnel to provide better service to the citizens they serve and has saved lives. As of January 31, 2018, law enforcement agencies had reported 430 suspected opioid overdoses and had administered naloxone to 134 individuals. Although it is impossible to determine with certainty how many of these individuals would have died if naloxone had not been administered, only 136 of the 430 were reported in AZ-PIERS as having died. The Department is also providing reports derived from the submitted information back to law enforcement agencies, enabling them to improve performance and the effectiveness of their activities. Through the provision of timely data, the Department anticipates that a law enforcement agency may receive a significant benefit from the rules.

· **Ambulance services and emergency medical services providers (both public first response agencies and private first response agencies)**

As of January 31, 2018, 131 ambulance services and emergency medical services providers have registered to have access to the AZ-PIERS data system for the purposes of opioid reporting. Unlike law enforcement agencies, 58 ambulance services and emergency medical services providers had been voluntarily reporting patient care data to AZ-PIERS before enhanced surveillance began. Of these 131 ambulance services and emergency medical services providers, 97 have submitted reports as of January 31, 2018, with 95 reporting suspected non-fatal overdoses and 29 reporting suspected fatal opioid overdoses. As of January 31, 2018, the Department has received 3,150 reports of suspected non-fatal overdoses (average of 33.2 each) and 117 reports of suspected fatal opioid overdoses (average of 4.0 each) from ambulance services and emergency medical services providers. Based on these data, the Department estimates that ambulance services and emergency medical services providers in total may report approximately 5,000 suspected non-fatal overdoses and 200 suspected fatal opioid overdoses annually. According to AZ-PIERS user estimates, it takes between three and five minutes to enter information about each incident into the data system. Therefore, the Department estimates that the annual reporting cost in personnel time for all ambulance services and emergency medical services providers may be between \$7,000 and \$12,000 for suspected non-fatal overdoses and between \$250 and \$500 for suspected fatal opioid overdoses.

Unlike law enforcement agencies, 74% of ambulance services and emergency medical services providers registered to access the AZ-PIERS data system had submitted at least one report as of January 31, 2018. In estimating the cost to a single ambulance service or emergency medical services provider, the Department noted that, as of January 31, 2018, approximately 26% of those

reporting had only submitted one report, 64% had submitted 10 or fewer reports, and 74% had submitted 20 or fewer reports. Only 15.5% of ambulance services and emergency medical services providers that submitted reports to AZ-PIERS reported more than 50 reports each. Of the eight ambulance services and emergency medical services providers submitting more than 100 reports, four submitted between 108 and 160 reports, three others submitted between 330 and 370 reports, and the largest ambulance service or emergency medical services provider reporter submitted 465 reports. Therefore, the Department anticipates that a single ambulance service or emergency medical services provider may incur at most less than \$2,000 in additional costs for reporting.

As of January 31, 2018, only 29 of the 97 ambulance services and emergency medical services providers that submitted reports (30%) reported a suspected fatal opioid overdose. Of these, 24 reported five or fewer suspected fatal opioid overdoses (83%). The Department estimates the annual cost to these ambulance services and emergency medical services providers for submitting reports of suspected fatal opioid overdoses to be less than \$25. During the same period, 48% of ambulance services and emergency medical services providers submitted reports of fewer than five suspected non-fatal opioid overdoses, and 78% reported fewer than 30 suspected non-fatal opioid overdoses. The Department estimates the annual cost to these ambulance services and emergency medical services providers for submitting reports of suspected non-fatal opioid overdoses to be less than \$150. Of the seven ambulance services and emergency medical services providers submitting more than 100 reports, three submitted between 130 and 160 reports, three others submitted between 310 and 360 reports, and the largest ambulance service or emergency medical services provider reporter submitted 449 reports of suspected non-fatal opioid overdoses. The Department estimates that the largest ambulance service or emergency medical services provider reporter may incur less than \$2,000 in costs for the reporting of suspected non-fatal opioid overdoses annually.

AEMTs, EMT-I(99), and Paramedics are considered advanced life support (ALS) emergency medical care technicians (EMCTs), while EMTs are considered basic life support (BLS) EMCTs. All ALS EMCTs and many BLS EMCTs had received training on overdose recognition and treatment before the implementation of enhanced surveillance as part of their standard training. In 2015, in response to the addition of A.R.S. § 36-2228 by Laws 2015, Ch. 313, § 4, the Department had added to the rules in 9 A.A.C. 25, Article 5, prefilled atomizers or auto-injectors of naloxone as optional agents that any class of EMCT can carry and administer, if authorized by the EMCT's administrative medical director. Thus, ambulance services and emergency medical services providers were already administratively prepared to address the opioid overdose crisis in the absence of these rules. As of January 31, 2018, ambulance services and emergency medical services providers had reported 3,267 suspected opioid overdoses and had administered naloxone to 2,460 individuals. As stated for law

enforcement, it is impossible to determine with certainty how many of these individuals would have died if naloxone had not been administered, but only 117 of the 3,267 were reported in AZ-PIERS as having died.

The receipt by the Department of timely opioid-related information as a result of the enhanced surveillance and the emergency rules has allowed the Department to provide reports derived from the submitted information back to ambulance services and emergency medical services providers, enabling them to improve performance and the effectiveness of their activities. Since the new rules will enable the Department to continue to provide reports containing timely data, the Department anticipates that an ambulance service or emergency medical services provider may receive a significant benefit from the rules.

- **Medical examiners**

A.R.S. § 11-593 requires certain deaths to be reported to “the nearest peace officer,” who then notifies the county medical examiner, who takes charge of the dead body and certifies the cause and manner of death, as required in A.R.S. § 11-594. Most individuals with a fatal opioid overdose would be included in the deaths required to be reported according to A.R.S. § 11-593. Thus, medical examiners are in a unique position to provide information as part of opioid poisoning-related reporting.

From June 13, 2017, when enhanced opioid surveillance began, until January 31, 2018, the Department has received 491 reports of fatal opioid overdoses from six medical examiners. Because 425 came from Maricopa County, while the remaining 66 came from the other five medical examiner reporters, the Department agreed to enter the required information about the Maricopa County cases into MEDSIS to reduce the burden on Maricopa County. Therefore, the only economic impact of opioid poisoning-related reporting so far on medical examiners has been due to the 66 reports from the other five medical examiner reporters, with Pima County’s medical examiner reporting the next largest number of fatal opioid overdoses (31). Based on the number of reports received so far, the Department anticipates receiving approximately 110 of these reports annually and estimates that it may take between five and seven minutes to enter each report, causing medical examiners from places other than Maricopa County to incur an aggregate approximate annual cost for reporting of less than \$500. The Department anticipates that Pima County’s medical examiner may incur less than \$250 in annual costs for reporting. Medical examiners may also receive a significant benefit from the reports of compiled data provided by the Department, derived from information submitted under the new rules.

- **Licensed health care institutions**

The Department currently licenses approximately 5,700 facilities as one of 18

classes/subclasses of health care institutions. As of January 31, 2018, these include: 111 hospitals, 44 behavioral health inpatient facilities, 148 nursing care institutions, three recovery care centers, 18 hospice inpatient facilities, 199 outpatient surgical centers, 2,408 outpatient treatment centers, one behavioral health specialized transitional facility, four abortion clinics, four substance abuse transitional facilities, 531 behavioral health residential facilities, 44 unclassified health care institutions, 152 hospice service agencies, 222 home health agencies, 2,108 assisted living facilities, 22 adult day health care facilities, 13 behavioral health respite homes, and 46 adult behavioral health therapeutic homes. Some classes of health care institutions provide treatment to individuals with a suspected opioid overdose. In some facilities, an opioid may be ordered for administration to a patient or prescribed for use outside the health care institution. In others, an opioid prescribed by a patient's medical practitioner may be administered to the patient or the patient may be assisted in the self-administration of an opioid.

All licensed health care institutions, except behavioral health respite homes and adult behavioral health therapeutic homes, have requirements in their respective Articles in 9 A.A.C. 10 for the adoption of a quality management program to evaluate services provided to patients and to identify, document, and evaluate incidents. Quality management for these latter two classes of licensed health care institutions is the responsibility of the collaborating health care institution. All classes of licensed health care institutions, except assisted living facilities, home health agencies, behavioral health respite homes, adult behavioral health therapeutic homes, and counseling facilities, are required under their respective Articles in 9 A.A.C. 10 to address any medication-related incidents as part of their quality management program. The Department is now requiring in the new A.A.C. R9-10-120 that specific processes related to opioids be incorporated into the quality management program of all licensed health care institutions. The new A.A.C. R9-10-120 also requires a licensed health care institution to report to the Department within one working day a patient's death that may be related to an opioid prescribed, ordered as part of treatment, or administered. Therefore, it would be duplicative and an unnecessary burden on health care institutions to require the reporting of an opioid overdose that is already being addressed through the health care institution's quality management program or being reported under another rule. The Department believes that the exception from reporting in R9-4-602(B)(1) may provide a significant benefit to a health care institution.

From June 13, 2017 until January 31, 2018, the Department has received 3,238 reports from 76 health care institutions: 2,409 reports about suspected non-fatal opioid overdoses, 242 reports of suspected fatal opioid overdoses, and 587 reports of cases of suspected neonatal abstinence syndrome. Of the 2,409 reports about suspected non-fatal opioid overdoses, 2,374 were reported by hospitals,

two were reported by two different hospice service agencies, six were reported by two different behavioral health inpatient facilities, 24 were reported by seven different outpatient treatment centers, two were reported by two different counseling facilities, and one was reported by a nursing care institution. Of the 242 reports of suspected fatal opioid overdoses, 230 were reported by hospitals, six were reported by a hospice, three were reported by a behavioral health inpatient facility, two were reported by two different outpatient treatment centers authorized to provide urgent care, and one was reported by another outpatient treatment center. The 587 cases of suspected neonatal abstinence syndrome were all reported by hospitals. Based on this information, the Department estimates that the annual cost for all health care institutions for reporting would be less than \$20,000.

As of January 31, 2018, 72 of the 76 health care institutions had reported suspected non-fatal opioid overdoses (average of 33.5 from each reporting facility). Over half of these submitted 30 or fewer reports each (fewer than 60 annually), and almost 90% submitted fewer than 60 reports each (fewer than 120 annually). According to information received from individuals entering these reports into MEDSIS, it takes between three and five minutes to enter information about each incident of a suspected opioid overdose into the data system. Based on these data, the Department estimates that over 85% of health care institutions would incur costs of less than \$200 per year for reporting a suspected non-fatal opioid overdose. The largest number of reports of suspected non-fatal opioid overdoses from a single health care institution was 173, which would equate to approximately 300 reports annually at an estimated cost of less than \$600 per year.

Suspected fatal opioid overdoses were reported by 48 of the 76 health care institutions (average of 5.0 from each reporting facility) as of January 31, 2018. All but six reported fewer than 10 suspected fatal opioid overdoses, with those six reporting between 11 and 19 suspected fatal opioid overdoses.

As stated above, hospitals were the only health care institutions reporting cases of suspected neonatal abstinence syndrome. Suspected neonatal abstinence syndrome was reported by 34 of the 62 hospitals reporting (average of 17.3 from each reporting facility) as of January 31, 2018. Over half of hospitals reporting a case of suspected neonatal abstinence syndrome submitted fewer than 10 reports. Only three hospitals submitted more than 60 reports. Since the Department has been told that it takes between three and five minutes to enter each case of suspected neonatal abstinence syndrome, the Department estimates that the hospital submitting the largest number of reports thus far (67 reports, or approximately 110 annually) may incur costs of less than \$200 per year to report this information to the Department.

When the number of reports in all categories submitted by individual health care institutions as of January 31, 2018 is reviewed, the average number of reports submitted by reporting health care

institutions was less than 43. Approximately 35% of reporting health care institutions submitted fewer than 10 reports, and approximately 72% submitted fewer than 60 reports. There were eight hospitals that submitted more than 100 reports each, with the three largest submitting 203, 214, and 242 reports. Based on this information, the Department anticipates that an individual health care institution may incur less than \$1,000 in costs per year for reporting.

As with law enforcement agencies, ambulance services, emergency medical services providers, and medical examiners, health care institutions may also receive a significant benefit from the reports that may be disseminated by the Department, based on the information received under the new rules.

The intent of these rules is to obtain real-time data to be used in addressing the opioid epidemic and reduce the number of opioid overdoses and opioid overdose deaths. Therefore, it is possible that a health care institution that provides treatment for individuals with an opioid overdose and bills for that treatment may experience a decrease in revenue from this source of patients if the intent of the rules is achieved. If a health care institution provides treatment to help an individual recover from a substance use disorder and more individuals go into recovery, the health care institution may receive an increase in revenue if the intent of the rule is achieved. It is not possible to determine the extent to which the revenue received by an individual health care institution may be affected by the rules, but the Department believes it could be substantial. However, a health care institution may receive a significant benefit from providing better care to patients.

Health professionals

As of January 31, 2018, the Department is aware of receiving only one report from a health professional outside a licensed health care institution. Therefore, health professionals may be expected to incur a minimal burden due to reporting. However, when rules adopted to comply with Laws 2018, Ch. 1 become effective, more health professionals providing pain management services may begin reporting, which may increase the overall burden on health professionals, although individual reporting health professionals would likely still incur a minimal burden for reporting.

Through the reports generated on the basis of the information submitted under the enhanced surveillance and emergency rules and the public health activities instituted on the basis of this data, the prescribing habits of health professionals seem to be changing. There has been a gradual reduction in the number of opioid prescriptions written by health professionals since enhanced surveillance began. From approximately 350,000 opioid prescriptions per month in July, the number of opioid prescriptions has gradually decreased. In October, the number of opioid prescriptions was 258,370 (a 26.2% decrease), and 267,800 opioid prescriptions were written in November (a 23.5% decrease). However, the number of prescriptions fluctuates (362,651 opioid prescriptions written in

December) by season, so it will be impossible to determine the effects of current public health activities until a year-over-year comparison is made. By continuing to monitor the number of opioid overdoses and opioid overdose deaths in comparison with health professionals' prescribing habits, the Department may be able to better target programs to help health professionals provide better care to their patients. As a result of the public health response to the opioid overdose epidemic, and driven by data derived through the reporting, additional resources, such as more treatment beds, may also be available to health professionals and their patients. These programs, resources, and activities may provide a significant benefit to a health professional.

· **Pharmacies and pharmacists**

Pharmacies and pharmacists report the dispensing of naloxone or other opioid antagonists through the CSPMP data system, and the Arizona Board of Pharmacy provides reports from the CSPMP to the Department on the number of dispensed doses of naloxone or other opioid antagonists. As of January 31, 2018, pharmacists had dispensed more than 7,790 doses of naloxone, including naloxone dispensed under A.R.S. § 32-1979 to individuals “at risk of experiencing an opioid-related overdose or to a family member or community member who is in a position to assist” the individual. Pharmacists who dispense naloxone or other opioid antagonists are required to document the dispensing consistent with rules adopted by the Arizona Board of Pharmacy. The Arizona Board of Pharmacy has adopted rules about “Dispensing an Opioid Antagonist” in A.A.C. R4-23-407.1 and rules for documenting the dispensing of naloxone in other rules in 4 A.A.C. 23.

During enhanced surveillance, all reporters, including pharmacists, were required to report within 24 hours. The emergency rules changed this reporting period for all reporters to within five business days to reduce the burden on reporting entities. However, the policy of the Arizona Board of Pharmacy has been to require the reporting of naloxone or other dispensed opioid antagonists according to A.R.S. § 36-2608, as if it were a controlled substance, and to require reporting daily. The information pharmacists are required to report under the emergency rule also differs from reporting requirements of the Arizona Board of Pharmacy. This has resulted in a discrepancy between the Department's emergency rules for reporting and requirements imposed on pharmacists and pharmacies by their licensing board. Therefore, in the new rules, the Department is requiring reporting of dispensed doses of naloxone or other opioid antagonists by citing to A.R.S § 32-1979 to eliminate any conflict with rules adopted by the licensing board. The Department believes this change from the requirements in the emergency rules may provide a significant benefit to a pharmacist by reducing confusion about reporting requirements, even though it will appear to reduce the time within which a pharmacist has to report.

· **Individuals experiencing an opioid overdose or neonatal abstinence syndrome and their**

families

The requirements in the rules were designed to provide the data that will allow a public health response to be implemented to improve the health and safety of the citizens of Arizona, including individuals experiencing an opioid overdose or neonatal abstinence syndrome. Although not directly tied to reporting, individuals experiencing an opioid overdose or neonatal abstinence syndrome and their families may receive a significant benefit from better targeted public health programs and outreach efforts to increase access to naloxone or another short-acting opioid antagonist. They may also receive a significant benefit from improved training for law enforcement agencies and registered ambulance services/emergency medical services providers in the administration of naloxone, including changes made on the basis of their quality improvement processes, which may be driven by reported information. Therefore, the Department anticipates that individuals experiencing an opioid overdose or neonatal abstinence syndrome and their families may receive a significant indirect benefit from the requirements in the rules.

General public

Many entities are working to address the opioid overdose epidemic and contributing to the reduction of opioid overdose deaths. For example, the Governor's Office of Youth, Faith, and Family has initiated the airing of public service announcements addressing the opioid overdose epidemic. Data obtained through the reporting required by these rules may provide critical information that may help determine how, when, and where these public service announcements should be aired to achieve optimal effectiveness. Other activities initiated as a result of Laws 2018, Ch. 1 may also benefit from the data developed as a result of this reporting. The data may also help in developing more targeted public health programs. These activities may provide a significant benefit to the general public.

Opioid overdoses have a large impact on Arizona's medical care system due to the volume and cost of overdose encounters. In 2015, opioid-related encounters cost Arizona hospitals nearly \$350 million, representing a 26% jump from the previous year. The estimated cost to Arizona hospitals in 2016 was over \$400 million, a further 18% increase in the net annual costs since 2015. The Department estimates that the costs will continue to rise so long as the incidence of opioid overdoses remains the same. The new rules were developed to help combat the opioid overdose epidemic and reduce the number of opioid overdose deaths. The Department anticipates that the timely monitoring of opioid overdoses, and the effects that public health programs will have on them, will help reduce the number of opioid overdose deaths in Arizona and the number of individuals suffering an opioid overdose as a result of prescribed opioids. Therefore, the Department estimates that this rule will provide a significant benefit to the general public.

4. A general description of the probable impact on private and public employment in

businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses affected by the rules may include small licensed health care institutions, small pharmacies, health professionals in private practices, and some registered ambulance services.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rules are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The rules reduce the impact on small businesses by having an exception from reporting for a health care institution for an opioid overdose that is being addressed through the health care institution's quality management program or being reported under another rule. The changes for pharmacist reporting may also reduce the burden on small pharmacies. Allowing five business days to report incidences of suspected opioid overdose, suspected opioid overdose death, naloxone administration, or neonatal abstinence syndrome will allow small business to more effectively schedule and utilize the time for staff assigned to report to the Department.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rules changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

The rulemaking does not include any fees, so the Department does not expect the rules to affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rules.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-133. Chronic disease surveillance system; confidentiality; immunity; violation; classification

A. A central statewide chronic disease surveillance system is established in the department. Diseases in the surveillance system shall include cancer, birth defects and other chronic diseases required by the director to be reported to the department.

B. The department, in establishing the surveillance system, shall:

1. Provide a chronic disease information system.

2. Provide a mechanism for patient follow-up.

3. Promote and assist hospital cancer registries.

4. Improve the quality of information gathered relating to the detection, diagnosis and treatment of patients with cancer, birth defects and other diseases included in the surveillance system.

5. Monitor the incidence patterns of diseases included in the surveillance system.
 6. Pursuant to rules adopted by the director, establish procedures for reporting diseases included in the surveillance system.
 7. Identify population subgroups at high risk for cancer, birth defects and other diseases included in the surveillance system.
 8. Identify regions of this state that need intervention programs or epidemiological research, detection and prevention.
 9. Establish a data management system to perform various studies, including epidemiological studies, and to provide biostatistic and epidemiologic information to the medical community relating to diseases in the surveillance system.
- C. A person who provides a case report to the surveillance system or who uses case information from the system authorized pursuant to this section is not subject to civil liability with respect to providing the case report or accessing information in the system.
- D. The department may authorize other persons and organizations to use surveillance data:
1. To study the sources and causes of cancer, birth defects and other chronic diseases.
 2. To evaluate the cost, quality, efficacy and appropriateness of diagnostic, therapeutic, rehabilitative and preventive services and programs related to cancer, birth defects and other chronic diseases.
- E. The department of health services and the Arizona early intervention program in the department of economic security may use surveillance data to notify the families of children with birth defects regarding services that are available to them and provide these families with information about organizations that provide services to these children and their families.
- F. Information collected on individuals by the surveillance system that can identify an individual is confidential and may be used only pursuant to this section. A person who discloses confidential information in violation of this section is guilty of a class 3 misdemeanor.

36-136. Powers and duties of director; compensation of personnel; rules; definition

- 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. Whenever 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 no 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 fund-raising 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) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. 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 obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods 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.

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 the preservation or storage of 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 preparation of 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 food for commercial purposes pursuant to paragraph 4 of this subsection.

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. For the purposes of this section, "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.

AHCCCS (F-18-0401)

Title 9, Chapter 22, Article 19, Freedom to Work



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: April 3, 2018

AGENDA ITEM: F-1

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

FROM: Council Staff

DATE : March 20, 2018

SUBJECT: AHCCCS (F-18-0401)
Title 9, Chapter 22, Article 19, Freedom to Work

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration) covers 15 rules regarding the Freedom to Work program in A.A.C. Title 9, Chapter 22, Article 19.

The purpose of AHCCCS is “to promote a comprehensive health care system to eligible citizens of this state.” Laws 2013, 1st S.S., Ch. 10, § 53. The Director of AHCCCS has the authority to adopt rules to effectively administer the programs for which AHCCCS is responsible. See A.R.S. § 36-2903.01(F). One of those programs is the provision of insurance to persons who are disabled, but still able to work. See A.R.S. § 36-2929.

In the previous five-year review report on these rules, AHCCCS proposed to amend R9-22-1915 to make the rule consistent with federal regulations. The change has yet not been adopted. AHCCCS is proposing this change again, along with many others, in this report.

Proposed Action

AHCCCS indicates that it plans to begin the expedited rulemaking process to address statutory inconsistency, clarity, and enforcement issues within 180 days of the Council's approval of this report. AHCCCS plans to:

- **R9-22-1901:** Remove federal citation because all the provisions of the cited statute are included in the text of the rules.

- **R9-22-1903:** Change cross reference from R9-22-1406 in subsection (C) to R9-22-302 because the relevant information in the rule was moved.
- **R9-22-1904:** Change cross reference from R9-22-1501(G) to R9-22-307 because the relevant information in the rule was moved.
- **R9-22-1905:** Change cross reference from R9-22-1501(H) to R9-22-306 because the relevant information in the rule was moved.
- **R9-22-1907:** Change cross reference from R9-22-1501(K) to R9-22-312 because the relevant information in the rule was moved.
- **R9-22-1909:** Change cross reference from R9-22-1502 to R9-22-306 because the relevant information in the rule was moved.
- **R9-22-1913:** Update subsection (B) to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
- **R9-22-1915:** Update subsection (2) to read: “Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.”
- **R9-22-1919:** Update subsection (3) to read: “Continues to have a severe medically determinable impairment, as determined under 42 U.S.C. 1396d(v)(1).”
- **R9-22-1922:** Update subsection (B) to read: “Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member’s circumstances, including a change in disability or employment that may affect eligibility.”

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. AHCCCS cites to both general and specific authority for the rules. A.R.S. § 36-2929 requires AHCCCS to provide services to disabled persons and adopt rules for the carrying out of the services.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Administration has determined that prior changes to the rules had minimal to no economic impact on the stakeholders. The proposed changes are merely clarifying, and the Administration anticipates no economic impact from the changes. The stakeholders are contractors, private sector, members, providers, small businesses, political subdivisions, and the Administration.

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

The Administration indicates that the benefits of the rules outweigh the costs, and that, after amendment, the rules will impose the least burden and costs to those who are regulated.

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

No. AHCCCS indicates that it has not received any written criticisms of the rules over the past five years.

5. **Has the agency analyzed the rules clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. AHCCCS indicates that the rules are not generally clear, concise, understandable, consistent with other rules or statutes, or effective. AHCCCS has proposed changes to address these issues.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. AHCCCS indicates that the rules are generally enforced as written, except for Sections 1913, 1915, 1919, and 1922. These four rules are not enforced as written because they are inconsistent with other statutes and rules. AHCCCS has proposed changes that would allow the rules to be enforced as written.

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

No. AHCCCS indicates that the rules are not more stringent than 42 U.S.C. 1396, 42 U.S.C. 1382a and 20 CFR 416, 435.1009, 431.231.

8. **For rules adopted after July 29, 2010, does the rules require a permit or licenses and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

9. **Conclusion**

AHCCCS indicates that it plans to file a Notice of Expedited Rulemaking, to make the changes identified in the report, within 180 days of the Council's approval of the report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval.

January 23, 2018

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 22, Article 19. The report includes all of the documentation required by R1-6-301 (C) and (D).

No rules were left out of this 5-Year Review Report to be expired under A.R.S. § 41-1056 (J). Similarly, this report was not subject to rescheduling.

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Nicole Fries, Associate General Counsel, Office of Administrative Legal Services at (602)-417-4232.

Sincerely,



Matthew Devlin
Assistant Director

Attachment

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 19

January 2018

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01.

Specific Statutory Authority: A.R.S. § 36-2929.

2. The objective of each rule:

Rule	Objective
R9-22-1901	Provides general requirements for the Freedom to Work (FTW) program.
R9-22-1902	Provides the general administrative requirements regarding confidentiality.
R9-22-1903	Describes the application process to apply for the FTW program.
R9-22-1904	Describes the required notification in writing regarding the determination of eligibility for the FTW program.
R9-22-1905	References R9-22-1501(H) as the changes a member must report.
R9-22-1906	Describes when eligibility for FTW can change or be affected.
R9-22-1907	Describes when the Administration may notify a member of an action.
R9-22-1908	Provides the option for a member to request a hearing.
R9-22-1909	Describes conditions that must be met to be eligible for the FTW program.
R9-22-1910	Provides prior quarter coverage under the FTW program.
R9-22-1913	Describes the premium requirement that a member must pay when qualified for FTW.
R9-22-1915	Describes the exclusions from eligibility for certain institutionalized persons.
R9-22-1918	Describes additional eligibility criteria for the Basic Coverage Group.
R9-22-1919	Describes additional eligibility criteria for the Medically Improved Group.
R9-22-1921	Describes the enrollment requirements for a member.
R9-22-1922	Describes when a redetermination of eligibility for FTW must be conducted.

3. Are the rules effective in achieving their objectives?

Yes No

Rule	Explanation
R9-22-1903	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-22-1904	Cross reference to R9-22-1501(G) should be changed to R9-22-307 since the relevant information in the rule was moved.

R9-22-1905	Cross reference to R9-22-1501(H) should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-22-1907	Cross reference to R9-22-1501(K) should be changed to R9-22-312 since the relevant information in the rule was moved.
R9-22-1909	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-22-1913	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-22-1915	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-22-1919	Update Subsection 3 to read: Continues to have a severe medically determinable impairment, as determined under 42 U.S.C. 1396d(v)(1).
R9-22-1922	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member’s circumstances, including a change in disability or employment that may affect eligibility.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

Rule	Explanation
R9-22-1901	Remove federal citation because all of the provisions of the cited statute are included in the text of the rules, incorporation by reference is not needed.
R9-22-1903	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-22-1904	Cross reference to R9-22-1501(G) should be changed to R9-22-307 since the relevant information in the rule was moved.
R9-22-1905	Cross reference to R9-22-1501(H) should be changed to R9-22-306 since the relevant information in the rule was moved.
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R9-22-1909	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-22-1913	Update Subsection B to read:

	The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-22-1915	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-22-1919	Update Subsection 3 to read: Continues to have a severe medically determinable impairment, as determined under 42 U.S.C. 1396d(v)(1).
R9-22-1922	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member’s circumstances, including a change in disability or employment that may affect eligibility.

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

Rule	Explanation
R9-22-1913	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-22-1915	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-22-1919	Update Subsection 3 to read: Continues to have a severe medically determinable impairment, as determined under 42 U.S.C. 1396d(v)(1).
R9-22-1922	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member’s circumstances, including a change in disability or employment that may affect eligibility.

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

Rule	Explanation
R9-22-1901	Remove federal citation because all of the provisions of the cited statute are included in the text of the rules, incorporation by reference is not needed.
R9-22-1903	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-22-1904	Cross reference to R9-22-1501(G) should be changed to R9-22-307 since the relevant

	information in the rule was moved.
R9-22-1905	Cross reference to R9-22-1501(H) should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-22-1907	Cross reference to R9-22-1501(K) should be changed to R9-22-312 since the relevant information in the rule was moved.
R9-22-1909	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-22-1913	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-22-1915	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-22-1919	Update Subsection 3 to read: Continues to have a severe medically determinable impairment, as determined under 42 U.S.C. 1396d(v)(1).
R9-22-1922	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member’s circumstances, including a change in disability or employment that may affect eligibility. This change is required because the Administration is bound to re-determine eligibility if certain factors call into question a member’s possibility of being in the FTW program.

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:**

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying; therefore the economic impact of this chapter remains the same as the prior 5YRR.

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 prior 5YRR specified one recommended change to R9-22-1915, however, the proposed course of action was not adopted due to prior rulemaking moratoria. Therefore, the change has been recommended again in this 5YRR to bring the rule in compliance with federal requirements.

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 changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. In addition they are they impose the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

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

The rules are not more stringent than 42 U.S.C. 1396, 42 U.S.C. 1382a and 20 CFR 416, 435.1009, 431.231.

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.

14. **Proposed course of action**

The Administration intends to request from the Governor's office to begin an expedited rulemaking within 180 days of GRRC's approval of this report in order to make these changes and update the cross references for the ease of use of AHCCCS's members.

ARTICLE 18. RESERVED**ARTICLE 19. FREEDOM TO WORK**

Article 19, consisting of Sections R9-22-1901 through R9-22-1922, made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1901. General Freedom to Work Requirements

Under 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and (XVI), the Administration shall determine eligibility for AHCCCS medical services, under Article 2 of this Chapter, using the eligibility criteria and requirements under this Article for an applicant or member who is:

1. At least 16 years of age, but less than 65 years of age,
2. Employed, and
3. Not income eligible under A.R.S. § 36-2901(6)(a).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1902. General Administration Requirements

The Administration shall comply with the confidentiality rule under R9-22-512(C).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1903. Application for Coverage

- A. A person may apply by submitting an application to an Administration office.
- B. The application date is the date the application is received at an Administration office or outstation location approved by the Director as described under R9-22-1406(A).
- C. The provisions in R9-22-1406(B) and (D) apply to this Section.
- D. The applicant or representative who files the application may withdraw the application for coverage either orally or in writing. An applicant withdrawing an application shall receive a denial notice under R9-22-1904.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1904. Notice of Approval or Denial

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action, and:

1. If approved, the notice shall contain:
 - a. The effective date of eligibility,
 - b. The amount the person shall pay, and
 - c. An explanation of the person's hearing rights specified in 9 A.A.C. 34.
2. If denied, R9-22-1501(G)(3) applies.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1905. Reporting and Verifying Changes

An applicant or member shall report and verify changes, as described under R9-22-1501(H), to the Administration.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1906. Actions that Result from a Redetermination or Change

The processing of a redetermination or change shall result in one of the following actions:

1. No change in eligibility or premium,
2. Discontinuance of eligibility if a condition of eligibility is no longer met,
3. A change in premium amount, or
4. A change in the coverage group under which a person receives AHCCCS medical coverage.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1907. Notice of Adverse Action Requirements

- A. The requirements under R9-22-1501(K)(1) apply.
- B. Advance notice of a change in eligibility or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to discontinue eligibility, or increase the premium amount.
- C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
 1. A member provides a clearly written statement, signed by that member, that services are no longer wanted.
 2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that this must be the result of supplying that information, and the member signs a written statement waiving advance notice;
 3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable subject to reinstatement of discontinued services under 42 CFR 431.231(d);
 4. A member has been admitted to a public institution where a person is ineligible for coverage;
 5. A member has been approved for Medicaid in another state; or
 6. The Administration receives information confirming the death of a member.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1908. Request for Hearing

An applicant or member may request a hearing under 9 A.A.C. 34.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1909. Conditions of Eligibility

Arizona Health Care Cost Containment System - Administration

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count the income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
 - a. The unearned income of the applicant or member shall be disregarded,
 - b. The income of a spouse or other family member shall be disregarded, and
 - c. The deduction for a minor child shall not apply;
6. Comply with the member responsibility provisions under R9-22-1502(D) and (F).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). Section repealed; new Section made by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1910. Prior Quarter Eligibility

A person may be made eligible during a prior quarter period when applying for the Freedom to Work program, as described under Article 3.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-1911. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1912. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1913. Premium Requirements

- A. As a condition of eligibility, an applicant or member shall:
 1. Pay the premium required under subsection (B).
 2. Not have any unpaid premiums for more than one month's premium amount.
- B. The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
 1. A member who has countable income:
 - a. Under \$500, the monthly premium payment shall be \$0.
 - b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
 2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1914. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1915. Institutionalized Person

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution if federal financial participation (FFP) is not available, or
2. Age 21 through age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1916. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1917. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1918. Additional Eligibility Criteria for the Basic Coverage Group

An applicant or member shall meet the following eligibility criteria:

1. Disabled. As a condition of eligibility, an applicant or member shall be disabled. Disabled means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E), except employment activity, earnings, and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability.
2. Employed. As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant or member's work.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1919. Additional Eligibility Criteria for the Medically Improved Group

Arizona Health Care Cost Containment System - Administration

As a condition of eligibility for the Medically Improved Group, a member shall:

1. Be employed. Under this Section, employed means an individual who:
 - a. Earns at least the minimum wage and works at least 40 hours per month, or
 - b. Has gross monthly earnings at least equal to those earned by an individual who is earning the minimum wage working 40 hours per month.
2. Cease to be eligible for medical coverage under R9-22-1918 or a similar Basic Coverage Group program administered by another state because the member, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be disabled; and
3. Continues to have a severe medically determinable impairment, as determined under Social Security Act section 1902(a)(10)(A)(ii)(XVI).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1920. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1921. Enrollment

The Administration shall enroll members under Article 17 of this Chapter. If a member has not paid a required premium, the Administration shall not grant a guaranteed enrollment period.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1922. Redetermination of Eligibility

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under R9-22-1918, the Administration shall determine if the member is eligible under other coverage groups including the medically improved group.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM**R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meaning unless the context explicitly requires another meaning:

"AZ-NBCCEDP" means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-

NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

"Cryotherapy" means the destruction of abnormal tissue using an extremely cold temperature.

"LEEP" means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

"Peer-reviewed study" means that, prior to publication, a medical study has been subjected to the review of medical experts who:

- Have expertise in the subject matter of the study,
- Evaluate the science and methodology of the study,
- Are selected by the editorial staff of the publication, and
- Review the study without knowledge of the identity or qualifications of the author.

"WWHP" means the Well Women Healthcheck Program administered by the Arizona Department of Health Services. The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2002. General Requirements

- A. Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.
- B. Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.
- C. Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.
- D. A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.
- E. A woman qualified under this Article shall pay co-pays as described in R9-22-711.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2003. Eligibility Criteria

- A. General. To be eligible under this Article, a woman shall meet the requirements of this Article and:
 1. Be screened for breast and cervical cancer through AZ-NBCCEDP;
 2. Be less than 65 years of age;
 3. Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;
 4. Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a pre-cancerous cervical lesion, as specified in R9-22-2004;
 5. Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical

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.

36-2929. Services to persons with disabilities; eligibility; premiums

A. Subject to the approval of the centers for medicare and medicaid services, beginning on January 1, 2002, the Arizona health care cost containment system administration shall provide services pursuant to this article to any person with a disability who is defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (g), who meets the income requirements of subsection B of this section and who has too much income to qualify for the system pursuant to section 36-2901, paragraph 6, subdivision (a).

B. A person meets the income requirements of this section if the person's countable income does not exceed two hundred fifty per cent of the federal poverty guidelines. The administration shall use the supplemental security income methodology. For the purposes of this subsection, countable income does not include the person's unearned income, the person's spouse's or any other family member's earned or unearned income or a deduction for a minor child.

C. The administration shall adopt rules for the collection of premiums from persons who qualify for services pursuant to this section. The premium shall not exceed two per cent of the person's countable income.

D. The administration shall develop and implement a process for eligibility determinations for persons who apply for eligibility and annual redeterminations for continued eligibility. The administration shall also develop and implement a process to determine medically improved disabilities. The administration may enter into an intergovernmental agreement with the department of economic security or may contract with participating health plans to conduct eligibility determinations or redeterminations. The administration may not use a resource test to determine or redetermine eligibility.

AHCCCS (F-18-0402)

Title 9, Chapter 28, Article 13, Freedom to Work



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: April 3, 2018

AGENDA ITEM: F-2

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

FROM: Council Staff

DATE : March 20, 2018

SUBJECT: AHCCCS (F-18-0402)
Title 9, Chapter 28, Article 13, Freedom to Work

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration) covers fifteen rules regarding the Arizona Long Term Care System (ALTCSS) Freedom to Work program in A.A.C. Title 9, Chapter 28, Article 13.

The purpose of AHCCCS is “to promote a comprehensive health care system to eligible citizens of this state.” Laws 2013, 1st S.S., Ch. 10, § 53. The Director of AHCCCS has the authority to adopt rules to effectively administer the programs for which AHCCCS is responsible. See A.R.S. § 36-2903.01(F). The Freedom to Work program provides insurance to persons who are disabled, but are still able to work. See A.R.S. § 36-2929.

In the previous five-year-review report, AHCCCS proposed one change to Section 1316 that has not yet been adopted. AHCCCS is proposing this change again, along with many others, in this report.

Proposed Action

AHCCCS intends to amend Sections 1301, 1303, 1304, 1309, 1313, 1316, and 1324 by making clarifying changes and updating cross references. AHCCCS will request approval from the Governor's Office to begin an expedited rulemaking within 180 days of Council approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. AHCCCS cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-2929, which requires AHCCCS to provide services to disabled persons and adopt rules for the carrying out of these services.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration has determined that prior changes to the rules had minimal to no economic impact on the stakeholders. The proposed changes are merely clarifying, and the Administration anticipates no economic impact from the changes. The stakeholders are contractors, private sector, members, providers, small businesses, political subdivisions, and the Administration.

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

The Administration indicates that the benefits of the rules outweigh the costs, and that, after amendment, the rules will impose the least burden and costs to those who are regulated.

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

No. AHCCCS indicates that it has received no written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. AHCCCS indicates that the rules are not fully effective, as cross references need to be changed in Sections 1303, 1304, and 1309. The rules are not fully consistent with other rules and statutes, as Sections 1313, 1316, and 1324 require clarifying language. The above issues, along with a terminology change that can be made to Section 1301, lead AHCCCS to conclude that the rules are not fully clear, concise, and understandable.

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

Yes. With the exception of issues mentioned above, AHCCCS indicates that the rules are enforced as written.

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

No. AHCCCS indicates that the rules are not more stringent than corresponding federal laws, namely 42 U.S.C. 1382a and 20 CFR 416, 435, and 431.231.

8. 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, as the rules have not been amended since 2009.

9. Conclusion

AHCCCS intends to amend Sections 1301, 1303, 1304, 1309, 1313, 1316, and 1324 by making clarifying changes and updating cross references. AHCCCS will request approval from the Governor's Office to begin an expedited rulemaking within 180 days of Council approval of this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.

January 23, 2018

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 28, Article 13. The report includes all of the documentation required by R1-6-301 (C) and (D).

No rules were left out of this 5-Year Review Report to be expired under A.R.S. § 41-1056 (J). Similarly, this report was not subject to rescheduling.

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Nicole Fries, Associate General Counsel, Office of Administrative Legal Services at (602)-417-4232.

Sincerely,



Matthew Devlin
Assistant Director

Attachment

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 13

January 2018

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2932.

Specific Statutory Authority: A.R.S. § 36-2950.

2. The objective of each rule:

Rule	Objective
R9-28-1301	Provides general requirements for the Freedom to Work (FTW) program.
R9-28-1302	Provides the general administrative requirements regarding confidentiality.
R9-28-1303	Describes the application process to apply for the FTW program.
R9-28-1304	Describes the required notification in writing regarding the determination of eligibility for the FTW program.
R9-28-1305	Describes the specific type of changes that a member must report.
R9-28-1306	Describes when eligibility for FTW can change or be affected.
R9-28-1307	Describes when the Administration may notify a member of an action.
R9-28-1308	Provides the opportunity for a member to request a hearing.
R9-28-1309	Describes conditions that must be met to be eligible for the FTW program.
R9-28-1313	Describes the premium requirement that a member must pay when qualified for FTW.
R9-28-1316	Describes the exclusions from eligibility for certain institutionalized persons.
R9-28-1320	Describes additional eligibility criteria for the Basic Coverage Group.
R9-28-1321	Describes how share of cost is determined for a person on ALTCS and the FTW program.
R9-28-1323	Describes AHCCCS's enrollment responsibilities.
R9-28-1324	Describes when a redetermination of eligibility for FTW must be conducted.

3. Are the rules effective in achieving their objectives?

Yes No

Rule	Explanation
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant

	information in the rule was moved.
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4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

Rule	Explanation
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member’s circumstances, including a change in disability or employment that may affect eligibility.

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

Rule	Explanation
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
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6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R9-28-1301	Remove the reference to Article 2 because it is not relevant.
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

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:**

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying; therefore the economic impact of this chapter remains the same as the prior 5YRR.

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 prior 5YRR specified one recommended change to R9-22-1316, however, the proposed course of action was not adopted due to previous rulemaking moratoria. Therefore, the change has been recommended again in this 5YRR to bring the rule in compliance with federal requirements.

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 changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. In addition they are they impose the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

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

The rules are not more stringent than 42 U.S.C. 1382a and 20 CFR 416, 435, 431.231.

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.

14. Proposed course of action

The Administration intends to request from the Governor’s office to begin an expedited rulemaking within 180 days of GRRC’s approval of this report in order to make the below changes and update the cross references for the ease of use of AHCCCS’s members.

Rule	Explanation
R9-28-1301	Remove the reference to Article 2 because it is not relevant.
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration’s Section 1115 IMD waiver or allowed under a managed care contract

	approved by CMS.
R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

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tor establishes the probable existence of first-party liability or third-party liability.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1107. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1108. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

ARTICLE 12. REPEALED

Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-28-1201. Repealed**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

ARTICLE 13. FREEDOM TO WORK

Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1301. General Freedom to Work Requirements

The Administration shall determine eligibility for AHCCCS medical services under Article 2 of this Chapter and A.A.C. R9-22-1901.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1302. General Administration Requirements

The Administration shall comply with the confidentiality rule under A.A.C. R9-22-512(C).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1303. Application for Coverage

- A. A person may apply by submitting an application to an Administration office.
- B. The application date is the date the application is received at an Administration office.
- C. The provisions of A.A.C. R9-22-1406(B) and (D) apply to this Section.
- D. An applicant or representative who files an application may withdraw the application either orally or in writing. The Administration shall send an applicant withdrawing an application a denial notice under R9-28-1304.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1304. Notice of Approval or Denial

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action and:

1. If approved:
 - a. The effective date of eligibility,
 - b. The amount the person shall pay, and
 - c. An explanation of the person's hearing rights specified in 9 A.A.C. 34; or
2. If denied, the information required by R9-28-401.01(G)(2).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1305. Reporting and Verifying Changes

An applicant or member shall report and verify changes as described under R9-28-411(A), to the Administration, including any changes in the spouse's income that may affect the share of cost.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1306. Actions that Result from a Redetermination or Change

The processing of a redetermination or change shall result in one of the following actions:

1. No change in eligibility, share-of-cost, or premium,
2. Discontinuance of eligibility if a condition of eligibility is no longer met,
3. A change in the person's share-of-cost,
4. A change in premium amount, or
5. A change in the coverage group under which a person receives AHCCCS medical coverage.

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Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1307. Notice of Adverse Action

- A.** The requirements under R9-28-411(D)(1) apply.
- B.** Advance notice of a change in eligibility, share of cost, or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to:
1. Discontinue eligibility,
 2. Increase a person's share-of-cost,
 3. Increase the premium amount, or
 4. Reduce benefits from ALTCS to acute care services.
- C.** Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
1. A member provides a clearly written statement, signed by that member, that services are no longer wanted;
 2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that termination of eligibility or reduction of services will be the result of supplying the information and signs a written statement waiving advance notice;
 3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable. A member whose eligibility is discontinued under this subsection is subject to reinstatement of discontinued services under 42 CFR 431.231(d);
 4. A member has been admitted to a public institution where a person is ineligible for coverage;
 5. A member has been approved for Medicaid in another state; or
 6. The Administration receives information confirming the death of a member.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1308. Request for Hearing

An applicant or member may request a hearing under 9 A.A.C. 34.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1309. Conditions of Eligibility

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
 - a. The unearned income of the applicant or member shall be disregarded,

- b. The income of a spouse or other family members shall be disregarded, and
 - c. The deduction for a minor child shall not apply;
6. Reside in a living arrangement specified under R9-28-406(A);
 7. Be determined as physically disabled by meeting the medical criteria under Article 3 of this Chapter; and
 8. Comply with the member responsibility provisions under A.A.C. R9-22-1502(D) and (F).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1310. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1311. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1312. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1313. Premium Requirements

- A.** As a condition of eligibility, an applicant or member shall:
1. Pay the premium required under subsection (B).
 2. Not have any unpaid premiums that exceed the premium amount for one month.
- B.** The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
1. A member who has countable income:
 - a. Under \$500, the monthly premium payment shall be \$0.
 - b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
 2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1314. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1315. Repealed

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Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1316. Institutionalized Person

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution and federal financial participation (FFP) is not available, or
2. Older than age 20 but younger than age 65 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1317. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1318. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1319. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1320. Additional Eligibility Criteria for the Basic Coverage Group

As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant's or member's income.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1321. Share of Cost

The Director shall determine the amount a person shall pay for the cost of ALTCS services (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. Share of cost shall be calculated for people who reside in a medical institution for an entire calendar month under R9-28-408(G) and R9-28-410(C) except that the personal-needs allowance shall be increased by 50 percent of the member's earned income.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1322. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1323. Enrollment

The Administration shall enroll members under R9-28-412 through R9-28-418.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1324. Redetermination of Eligibility

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under Article 3 of this Chapter, the Administration shall determine if the member is eligible under other coverage groups.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

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.

36-2950. Services to persons with disabilities; eligibility; premiums

A. Subject to the approval of the centers for medicare and medicaid services, beginning on January 1, 2002, the Arizona health care cost containment system administration shall provide services pursuant to this article to any person with a disability who is defined as eligible pursuant to section 36-2931, paragraph 5, subdivision (d), who meets the income requirements of subsection B of this section and who has too much income or resources to qualify for the system pursuant to section 36-2934.

B. A person meets the income requirements of this section if the person's countable income does not exceed two hundred fifty per cent of the federal poverty guidelines. The administration shall use the supplemental security income methodology. For purposes of this subsection, countable income does not include the person's unearned income, the person's spouse's or any other family member's earned or unearned income or a deduction for a minor child.

C. The administration shall adopt rules for the collection of premiums from persons who qualify for services pursuant to this section. The premium shall not exceed two per cent of the person's countable income.

D. The administration shall develop and implement a process for eligibility determinations for persons who apply for eligibility and annual redeterminations for continued eligibility. The administration shall also develop and implement a process to determine medically improved disabilities. The administration may enter into an intergovernmental agreement with the department of economic security or may contract with participating health plans to conduct eligibility determinations or redeterminations. The administration may not use a resource test to determine or redetermine eligibility.

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AHCCCS (F-18-0403)

Title 9, Chapter 29, Article 1, Definitions; Article 2, Eligibility; Article 3, Benefits and Services; Article 5, Grievance System Process; Article 6, First- and Third-Party Liability and Recoveries



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: April 3, 2018

AGENDA ITEM: F-3

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

FROM: Council Staff

DATE : March 20, 2018

SUBJECT: AHCCCS (F-18-0403)
Title 9, Chapter 29, Article 1, Definitions; Article 2, Eligibility; Article 3, Benefits and Services; Article 5, Grievance System Process; Article 6, First- and Third-Party Liability and Recoveries

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Health Care Cost Containment System (AHCCCS) covers 20 rules regarding the Medicare Cost Sharing (MCS) Program in A.A.C. Title 9, Chapter 29. The purpose of AHCCCS is "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the director of the AHCCCS Administration ("Administration"), which is established under A.R.S. § 36-2902 and conferred with powers and duties as outlined in A.R.S. §§ 36-2903 and 2903.01.

In the process of paying out benefits to service providers, AHCCCS is a "payor of last resort," meaning that all other responsible parties, including Medicare for those who qualify for both programs, pay before AHCCCS. In that case, AHCCCS pays the difference between the payment made under Medicare and Medicaid. Additionally, under Title XIX of the Social Security Act, the State Medicaid program covers the cost of the Medicare premiums, Medicare copayments (and coinsurance for some individuals), or both. These benefits constitute what is referred to as the MCS Program.

Article 1 contains subject-matter specific definitions for terms used within the rules; Article 2 covers eligibility and the application process for obtaining benefits under the MCS program; Article 3 describes the specific benefit programs and services available and their respective requirements; Article 5 deals with the process for requesting a hearing; and Article 6 relates to first and third-party liability and defines the meaning of third-party liability for this article.

There is no previous five-year-review report on the current Chapter 29 rules, as AHCCCS amended all of the rules in January 2013.

Proposed Action

AHCCCS intends to amend Sections 101, 201, 202, 204, 206, 209, 211, and 213 by making clarifying changes and updating cross references. AHCCCS will request approval from the Governor's Office to begin an expedited rulemaking within 180 days of Council approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. AHCCCS cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-2972(A), under which the director of the Administration is required to "plan for and take all steps necessary to implement the qualified [M]edicare beneficiary program...."

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration has determined that prior changes to the rules had minimal to no economic impact on the stakeholders. The proposed changes are merely clarifying, and the Administration anticipates no economic impact from the changes. The stakeholders are contractors, private sector, members, providers, small businesses, political subdivisions, and the Administration.

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

The Administration indicates that the benefits of the rules outweigh the costs, and that, after amendment, the rules will impose the least burden and costs to those who are regulated.

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

No. AHCCCS indicates that it has received no written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. AHCCCS indicates that the rules are effective in achieving their objectives. The rules are not fully consistent with other rules and statutes, as Sections 101, 202, 206, 209, 211, and 213 require clarifying language. The above issues, along with terminology changes that can be made to Sections 101, 201, 202, 204, and 213, lead AHCCCS to conclude that the rules are not fully clear, concise, and understandable.

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

Yes. With the exception of issues mentioned above, AHCCCS indicates that the rules are enforced as written.

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

No. AHCCCS indicates that the rules are not more stringent than corresponding federal laws, namely 42 CFR 431.625, 42 CFR 435.1003, and 42 CFR 435.212.

8. 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?

No. The rules do not require the issuance of a regulatory permit, license, or agency authorization.

9. Conclusion

AHCCCS intends to amend Sections 101, 201, 202, 204, 206, 209, 211, and 213 by making clarifying changes and updating cross references. AHCCCS will request approval from the Governor's Office to begin an expedited rulemaking within 180 days of Council approval of this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.

January 23, 2018

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 29. The report includes all of the documentation required by R1-6-301 (C) and (D).

No rules were left out of this 5-Year Review Report to be expired under A.R.S. § 41-1056 (J). This 5YRR was originally subject to an extension.

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Nicole Fries, Associate General Counsel, Office of Administrative Legal Services at (602)-417-4232.

Sincerely,



Matthew Devlin
Assistant Director

Attachment

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 29

January 2018

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2972.

Specific Statutory Authority: A.R.S. §§ 36-2972, 36-2973, 36-2974, 36-2975, 36-2976.

2. The objective of each rule:

Rule	Objective
R9-29-101	Provides definitions for terms that apply throughout Chapter 29.
R9-29-201	Provides general eligibility information and confidentiality requirements.
R9-29-202	Provides the application process for eligibility determinations.
R9-29-203	Describes the rights a person assigns to the Administration when applying for services.
R9-29-204	Describes the requirements for a determination of eligibility.
R9-29-205	Provides a description of the income standards used to determine eligibility.
R9-29-206	Explains that R9-22-1402 apply to this Article for an institutionalized person.
R9-29-207	Provides which resources are considered when determining eligibility.
R9-29-208	Provides the timeline requirements for an eligibility determination.
R9-29-209	Provides the requirements of a notice of eligibility determination.
R9-29-210	Provides the eligibility effective dates.
R9-29-211	Provides the circumstances under which eligibility will be discontinued.
R9-29-212	Provides the timeline for renewal of eligibility.
R9-29-213	Provides the reporting requirements for eligible individuals.
R9-29-301	Provides a description of the benefits and services provided for those qualified for the QMB-only program.
R9-29-302	Provides a description of the benefits and services provided for those qualified for the Dual Eligible program.
R9-29-303	Provides a description of the benefits and services provided for those non-qualified Dual Eligible member.
R9-29-304	Provides a description of the benefits and services provided for those qualified for the SLMB and QI-1 program.
R9-29-501	Provides a cross-reference to the Grievance and Hearing requirements that apply to a contractor, member, or provider of the cost-sharing programs.

R9-29-601	Provides a cross-reference to the third-party liability and recovery requirements that apply to members of the cost-sharing programs.
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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
R9-29-101	Remove reference to A.R.S. § 36-2971 and add three new definitions for clarity: "Administration" means the Arizona health care cost containment system administration. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 to provide health care to members under this article either directly or through subcontracts with providers. "Director" means the director of the Arizona health care cost containment system administration. These definitions are consistent with those found in A.R.S. § 36-2971, however some of the other definitions found there do not have the same meaning in Ch. 29 so the Administration would prefer to add the three definition above instead of referring to another place they are located.
R9-29-202	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302(2) since the relevant information in the rule was moved. Cross reference to R9-22-1406 in Subsections D & F should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-29-206	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.
R9-29-209	Cross reference to Article 5 should be changed to Chapter 34 since the relevant information in the rule was moved.
R9-29-211	Update Subsection B to read: Notice. AHCCCS shall follow the discontinuance notice requirements under A.A.C. R9-22-312.
R9-29-213	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.

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

Rule	Explanation
R9-29-202	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302(2) since the relevant information in the rule was moved. Cross reference to R9-22-1406 in Subsections D & F should be changed to R9-22-302 since the relevant information in the

	rule was moved.
R9-29-206	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.
R9-29-209	Cross reference to Article 5 should be changed to Chapter 34 since the relevant information in the rule was moved.
R9-29-213	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.

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

Rule	Explanation
R9-29-101	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-201	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-202	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-204	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-213	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.

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:**

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying; therefore the economic impact of this chapter remains the same as when the rules were promulgated.

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?**

There was no prior 5YRR because five years ago the Administration carried out a rulemaking that affected all articles within this chapter.

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 changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. AHCCCS believes the chapter currently provides the least burden and cost to regulated persons.

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

The rules are not more stringent than 42 CFR 431.625; 42 CFR 435.1003; 42 CFR 435.212.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Administration intends to request from the Governor’s office to begin an expedited rulemaking within 180 days of GRRC’s approval of this report in order to make the changes below and update the cross references for the ease of use of AHCCCS’s members.

Rule	Explanation
R9-29-101	<p>Remove reference to A.R.S. § 36-2971 and add three new definitions for clarity:</p> <p>"Administration" means the Arizona health care cost containment system administration.</p> <p>"Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 to provide health care to members under this article either directly or through subcontracts with providers.</p> <p>"Director" means the director of the Arizona health care cost containment system administration.</p> <p>These definitions are consistent with those found in A.R.S. § 36-2971, however some of the other definitions found there do not have the same meaning in Ch. 29 so the Administration would prefer to add the three definition above instead of referring to another place they are located.</p> <p>Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.</p>
R9-29-201	<p>Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.</p>
R9-29-202	<p>Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302(2) since</p>

	<p>the relevant information in the rule was moved. Cross reference to R9-22-1406 in Subsections D & F should be changed to R9-22-302 since the relevant information in the rule was moved.</p> <p>Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.</p>
R9-29-204	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-206	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.
R9-29-209	Cross reference to Article 5 should be changed to Chapter 34 since the relevant information in the rule was moved.
R9-29-211	Update Subsection B to read: Notice. AHCCCS shall follow the discontinuance notice requirements under A.A.C. R9-22-312.
R9-29-213	<p>Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.</p> <p>Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.</p>

Arizona Health Care Cost Containment System – Medicare Cost Sharing Program

TITLE 9. HEALTH SERVICES

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
MEDICARE COST SHARING PROGRAM

ARTICLE 1. DEFINITIONS

Section	
R9-29-101.	Location of Definitions
R9-29-102.	Repealed

ARTICLE 2. ELIGIBILITY

Section	
R9-29-201.	General
R9-29-202.	Application Process
R9-29-203.	Assignment of Rights
R9-29-204.	Eligibility Requirements
R9-29-205.	Income Standards
R9-29-206.	Institutionalized Person
R9-29-207.	Resources
R9-29-208.	Eligibility Determination
R9-29-209.	Notice of Eligibility Determination
R9-29-210.	Effective Date of Eligibility
R9-29-211.	Discontinuance
R9-29-212.	Renewals
R9-29-213.	Reporting Changes
R9-29-214.	Repealed
R9-29-215.	Renumbered
R9-29-216.	Repealed
R9-29-217.	Repealed
R9-29-218.	Repealed
R9-29-219.	Renumbered
R9-29-220.	Renumbered
R9-29-221.	Renumbered
R9-29-222.	Renumbered
R9-29-223.	Repealed
R9-29-224.	Renumbered

ARTICLE 3. BENEFITS AND SERVICES

Section	
R9-29-301.	QMB Only
R9-29-302.	QMB Dual Member
R9-29-303.	Non-QMB Dual Member
R9-29-304.	SLMB and QI-1

ARTICLE 4. REPEALED

R9-29-401.	Repealed
R9-29-402.	Repealed
R9-29-403.	Repealed
R9-29-404.	Repealed

ARTICLE 5. GRIEVANCE SYSTEM PROCESS

Section	
R9-29-501.	General Provisions for a Grievance and a Request for Hearing
R9-29-502.	Repealed
R9-29-503.	Repealed
R9-29-504.	Repealed

ARTICLE 6. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section	
R9-29-601.	First- and Third-party Liability and Recoveries
R9-29-602.	Repealed

ARTICLE 1. DEFINITIONS

R9-29-101. Location of Definitions

- A. Location of definitions. Definitions applicable to this Chapter are found in the following:

<u>Definition</u>	<u>Section or Citation</u>
“Federal poverty level” or “FPL”	A.R.S. § 36-2981
“Medicare Cost Sharing”	R9-29-101
“Non-QMB Dual”	R9-29-101
“QI-1”	R9-29-101
“QMB Dual”	R9-29-101
“QMB Only”	R9-29-101
“SLMB”	R9-29-101

- B. General definitions. In addition to definitions contained in A.R.S. § 36-2971, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Medicare Cost Sharing” (MCS). The MCS Program is administered by the Administration and provides help to Medicare beneficiaries with costs related to Medicare services. MCS is also referred to as the “Medicare Savings Programs.”

“Non-QMB Dual” means a person who qualifies to receive both Medicare and Medicaid services, but does not qualify for the QMB program.

“QI-1” means a person who qualifies as a Medicare beneficiary and for cost sharing assistance with the person’s Part B premium known as Qualified Individual-1 (QI-1). This person does not qualify for QMB due to the person’s income exceeding the QMB and SLMB FPL level.

“QMB Dual” means a person determined eligible under Article 2 of this Chapter for Qualified Medicare Beneficiary (QMB) and eligible for Acute Care services provided for in 9 A.A.C. 22 or ALTCS services provided for in 9 A.A.C. 28. A QMB Dual person receives both Medicare and Medicaid services and cost sharing assistance. For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5).

“QMB Only” means a person who qualifies to receive Medicare services only and cost-sharing assistance known as Qualified Medicare Beneficiary program (QMB). For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5).

“SLMB” means a person who qualifies as a Medicare beneficiary and for cost sharing assistance with the person’s Part B premium known as Specified Low Income Medicare Beneficiary (SLMB). This person does not qualify for QMB due to the person’s income exceeding the QMB FPL level.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective June 16, 1992 (Supp. 92-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4357,

effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-102. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

ARTICLE 2. ELIGIBILITY

R9-29-201. General

- A.** Eligibility determination. AHCCCS shall determine eligibility for a QMB, SLMB, or QI-1 under this Article.
- B.** Confidentiality. The Administration shall maintain the confidentiality of an applicant or member's records and limit the release of safeguarded information under A.A.C. R9-22-512.
- C.** The Administration will accept applications for the QI-1 program subject to the availability of funds. If the Director determines that monies may be insufficient for the program, the Administration shall stop processing applications for the program. If the Administration stops processing an application because the monies are insufficient, the Administration shall place an applicant on a waiting list and notify the applicant. After the Administration has verified that funding is sufficient, it will resume processing applications.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-202. Application Process

- A.** The Administration shall provide the opportunity to apply without delay.
- B.** To apply for the MCS Program, a person shall submit an application form prescribed by AHCCCS unless the person's application has been referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.
- C.** An application shall be submitted by a person listed in A.A.C. R9-22-1406(B) unless the person's application has been referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.
- D.** The date of application is the date a signed application is received as described under A.A.C. R9-22-1406 or the date of an application referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.
- E.** Applicant's representative. AHCCCS shall allow a person of an applicant's choice to accompany, assist, and represent the applicant in the application process or assistance can be provided by AHCCCS. If requested, AHCCCS shall help a person complete an application.
- F.** AHCCCS shall determine whether an application is complete under A.A.C. R9-22-1406.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective June 16, 1992 (Supp. 92-2). Section repealed; new Section adopted effective April 14, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp.

03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-203. Assignment of Rights

A person determined eligible for QMB benefits assigns rights to medical benefits to which the person is entitled to AHCCCS, under A.R.S. §§ 36-2903 and 36-2972.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Section repealed; new Section adopted effective April 14, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-203 repealed; new Section R9-29-203 renumbered from R9-29-207 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-204. Eligibility Requirements

To be eligible for MCS a person shall:

1. Provide information necessary to establish paternity and enforce medical support obligations, when requested by AHCCCS for the QMB program,
2. Furnish a SSN or apply for a SSN,
3. Be a United States citizen or a qualified alien under A.R.S. § 36-2903.03,
4. Be a resident of Arizona,
5. Apply for potential benefits that may be available to the person, if requested by AHCCCS,
6. Provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility, and
7. Receive Medicare Part A benefits or be determined conditionally entitled to Medicare Part A benefits by the Social Security Administration.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2). New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). R9-29-204 repealed; new Section R9-29-204 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-205. Income Standards

- A.** To be eligible, a person's income shall meet the following federal poverty levels (FPL), adjusted annually:
 1. QMB. Income is equal to or less than 100 percent of the FPL.
 2. SLMB. Income is greater than 100 percent but equal to or less than 120 percent of the FPL.
 3. QI-1. Income is at least 120 percent but equal to or less than 135 percent of the FPL.
- B.** AHCCCS shall calculate income under A.A.C. R9-22-1503.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-205 repealed; new Section R9-29-205 renumbered from R9-29-213 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-206. Institutionalized Person

The provisions in A.A.C. R9-22-1402 apply to this Article for an institutionalized person.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-206 repealed; new Section R9-29-206 renumbered from

Arizona Health Care Cost Containment System – Medicare Cost Sharing Program

R9-29-215 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-207. Resources

Resources such as, cash, financial accounts, real property, vehicles, trusts, and life insurance are not considered in determining a person's QMB, SLMB or QI-1 eligibility.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-207 renumbered to R9-29-203; new Section R9-29-207 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-208. Eligibility Determination

- A. AHCCCS shall make an eligibility determination within 45 days of the date of application, except when:
1. The agency cannot reach a decision because the applicant delays or fails to take a required action, or
 2. When there is an administrative or other emergency beyond the agency's control.
- B. AHCCCS shall not use the time to determine eligibility as a waiting period before determining eligibility; or as a reason for denying eligibility when a determination has not been made within the time standards.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-208 repealed; new Section R9-29-208 renumbered from R9-29-219 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-209. Notice of Eligibility Determination

- A. Notice. AHCCCS shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of the person's hearing rights specified in Article 5.
- B. Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility.
- C. Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
 2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard if applicable; and
 3. The legal authority supporting the decision.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-209 repealed; new Section R9-29-209 renumbered from R9-29-220 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-210. Effective Date of Eligibility

- A. QMB. The effective date of eligibility is the first day of the month following the month in which AHCCCS makes the eligibility decision.
- B. SLMB. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period.
- C. QI-1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period and no earlier than the first day of the current calendar year. QI-1 members are entitled to receive cost sharing assistance through the end of the calendar year in which they qualified for the program.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-210 repealed; new Section R9-29-210 renumbered from R9-29-221 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 3323, November 30, 2014 (Supp. 13-4).

R9-29-211. Discontinuance

- A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B. Notice. AHCCCS shall follow the discontinuance notice requirements under A.A.C. R9-22-1415, except where it states "Department" replace the term with "Administration."

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-211 repealed; new Section R9-29-211 renumbered from R9-29-222 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-212. Renewals

- A. QMB and SLMB. AHCCCS shall renew a person's eligibility for QMB or SLMB at least one time every 12 months.
- B. QI-1. A person receiving QI-1 benefits shall reapply every 12 months.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-212 repealed; new Section R9-29-212 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-213. Reporting Changes

A person eligible under this Article shall report to an ALTCS or Social Security Insurance Medical Assistance Only (SSI-MAO) office the following changes for the person, the person's spouse, or the person's dependent children:

1. A change of address;
2. An admission to, or discharge from, a public institution, as specified in A.A.C. R9-22-1402;
3. A change in household composition;
4. A change in income;
5. A determination of eligibility for other benefits;
6. A death;
7. A change in marital status;
8. A change in Arizona state residency;
9. A change in citizenship or alien status;
10. Receipt of a SSN;
11. A change in Medicare receipt or eligibility; and
12. For QMB recipients, 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.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-213 renumbered to R9-29-205; new Section R9-29-213 renumbered from R9-29-224 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-214. Repealed**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-

214 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-215. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-215 renumbered to R9-29-206 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-216. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-216 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-217. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-217 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-218. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-218 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-219. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-219 renumbered to R9-29-208 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-220. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-220 renumbered to R9-29-209 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-221. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-221 renumbered to R9-29-210 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-222. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-222 renumbered to R9-29-211 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-223. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-223 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-224. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-224 renumbered to R9-29-213 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

ARTICLE 3. BENEFITS AND SERVICES

R9-29-301. QMB Only

- A.** QMB benefits. For a person determined eligible as a QMB Only, the Administration shall provide payment of:
1. Medicare Part A premium,
 2. Medicare Part B premium, and
 3. Medicare coinsurance and Medicare deductible for Medicare services covered under Title XVIII of the Social Security Act to the provider.
- B.** Payment of QMB Only benefits. The Administration shall not pay coinsurance or deductible to a member.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-302. QMB Dual Member

- A.** Covered services. A person determined to be a QMB Dual eligible member shall receive medical services provided under 9 A.A.C. 22, Article 2, or services provided under 9 A.A.C. 28, Article 2, in addition to the Medicare-related payments under R9-29-301(A).
- B.** Premiums. The Administration pays Medicare part A and B premiums for a QMB Dual member enrolled with a contractor in a plan or AHCCCS Fee-For-Service.
- C.** The Administration's payment responsibilities.
1. The Administration shall pay the following costs for members not enrolled with contractors. When services are received from an AHCCCS registered provider and the service is covered:
 - a. By Medicare only, the Administration shall pay the Medicare coinsurance and deductible.
 - b. By Medicaid only, the Administration shall pay the lesser of billed charges or the Capped Fee-For-Service Schedule rate for the services covered under 9 A.A.C. 22, Article 2 and 9 A.A.C. 28, Article 2.
 - c. By both Medicare and Medicaid, the Administration shall pay Medicare coinsurance and deductible.
 2. When services are received from a non-registered provider and the service is covered, the Administration shall not pay the Medicare coinsurance and deductible.
- D.** The contractor's payment responsibilities. Unless the subcontract with the provider sets forth different terms, when the enrolled member receives services from an AHCCCS registered provider in or out of network and the service is covered:
1. By Medicare only, the contractor shall pay the Medicare coinsurance and deductible.
 2. By Medicaid only, the contractor shall pay the provider in accordance with the contract.
 3. By both Medicare and Medicaid, the contractor shall pay the lesser of:
 - a. The Medicare copay, coinsurance or deductible, or
 - b. The difference between the Health plan contracted rate and the Medicare paid amount.
- E.** Member responsibilities. A QMB Dual eligible member who receives services under 9 A.A.C. 22, Article 2 or 9 A.A.C. 28,

Arizona Health Care Cost Containment System – Medicare Cost Sharing Program

Article 2 from a registered provider is not liable for any Medicare copay, coinsurance or deductible associated with those services and is not liable for any balance of billed charges.

- F.** Coordination of prescription drug benefit with Medicare Part D. Notwithstanding subsections (A) through (D), services do not include pharmaceutical services to the extent limited under 42 U.S.C. 1396u-5(d). A contractor is not liable for any Medicare copay, coinsurance or deductible associated with pharmaceutical services subject to the limitation under 42 U.S.C. 1396u-5(d).

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 12 A.A.R. 864, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-303. Non-QMB Dual Member

- A.** Covered services. A person determined to be a Non-QMB Dual eligible member shall receive medical services and provisions under 9 A.A.C. 22, Article 2, or services and provisions under 9 A.A.C. 28, Article 2.
- B.** Premiums. The Administration pays Medicare part B premiums for a Non-QMB dual member enrolled with a contractor in a plan or AHCCCS Fee-For-Service for the following individuals:
1. An individual described in 42 CFR 431.625;
 2. An individual enrolled in ALTCS but who does not qualify as a QMB, SLMB or QI;
 3. An individual who is eligible for Medicaid under a mandatory or optional Title XIX coverage group for the aged, blind, or disabled (SSI-MAO);
 4. An individual who is eligible for continued coverage while eligibility redetermination is pending as described under 42 CFR 435.1003;
 5. An individual who is in the guaranteed enrollment period described in 42 CFR 435.212 and the state was paying the individual's Part B premium before eligibility terminated.
- C.** The Administration's payment responsibilities.
1. The Administration shall pay the following costs for members not enrolled with contractors. When services are received from an AHCCCS registered provider and the service is covered up to the limitations described within 9 A.A.C. 22, Article 2:
 - a. By Medicare only, the Administration shall not pay the Medicare copay, coinsurance or deductible.
 - b. By Medicaid only, the Administration shall pay the lesser of billed charges or the Capped Fee-For-Service Schedule rate for the services covered under 9 A.A.C. 22, Article 2 and 9 A.A.C. 28, Article 2.
 - c. By both Medicare and Medicaid, the Administration shall pay the Medicare copay, coinsurance or deductible.
 2. When services are received from a non-registered provider and the service is covered, the Administration shall not pay the Medicare copay, coinsurance or deductible.
- D.** The contractor's payment responsibilities.
1. When an enrolled member receives services within the network of contracted providers and the service is covered up to the limitations described within 9 A.A.C. 22, Article 2:
 - a. By Medicare only, the contractor shall not pay the Medicare copay, coinsurance or deductible.

- b. By Medicaid only, the contractor shall pay the provider in accordance with the subcontract.
 - c. By both Medicare and Medicaid, unless the subcontract with the provider sets forth different terms, the contractor shall pay the lesser of:
 - i. The Medicare copay, coinsurance or deductible, or
 - ii. Any amount remaining after the Medicare paid amount is deducted from the subcontracted rate.
2. When an enrolled member receives services from a non-contracting provider and the service is covered:
- a. By Medicare only, the contractor has no responsibility for payment.
 - b. By Medicaid only, and the contractor has not referred the member to the provider or has not authorized the provider to render services and the services are not emergent, the contractor has no responsibility for payment.
 - c. By Medicaid only, and the contractor has referred the member to the provider or has authorized the provider to render services or the services are emergent, the contractor shall pay in accordance with A.A.C. R9-22-705.
 - d. By both Medicare and Medicaid, and the contractor has not referred the member to the provider or has not authorized the provider to render services and the services are not emergent, the contractor has no responsibility for payment.
 - e. By both Medicare and Medicaid, and the contractor has referred the member to the provider or has authorized the provider to render services or the services are emergent, the contractor shall pay the lesser of:
 - i. The Medicare copay, coinsurance or deductible, or
 - ii. Any amount remaining after the Medicare paid amount is deducted from the amount otherwise payable under A.A.C. R9-22-705.
- E.** Member responsibilities.
1. A Non-QMB Dual eligible member who receives covered services under 9 A.A.C. 22, Article 2 or 9 A.A.C. 28, Article 2 from a provider within the contractor's network is not liable for any Medicare copay, coinsurance or deductible associated with those services and is not liable for any balance of billed charges unless services have reached the limitations described within 9 A.A.C. 22, Article 2.
 2. When an enrolled member chooses to receive services out of network that are covered by both Medicare and Medicaid, the member is responsible for any Medicare copay, coinsurance or deductible associated with those services unless the contractor is responsible as described in A.A.C. R9-22-705 and the provider has complied with A.A.C. R9-22-702.
- F.** Coordination of prescription drug benefit with Medicare Part D. Notwithstanding subsections (A) through (D), services do not include pharmaceutical services to the extent limited under 42 U.S.C. 1396u-5(d). A contractor is not liable for any Medicare copay, coinsurance or deductible associated with pharmaceutical services subject to the limitation under 42 U.S.C. 1396u-5(d).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-303 repealed; new Section R9-29-303 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-304. SLMB and QI-1

AHCCCS shall pay the Medicare Part B premiums.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

ARTICLE 4. REPEALED**R9-29-401. Repealed****Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-401 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-402. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2).

R9-29-403. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2).

R9-29-404. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2). Repealed text removed from Section Supp. 01-2.

ARTICLE 5. GRIEVANCE SYSTEM PROCESS**R9-29-501. General Provisions for a Grievance and a Request for Hearing**

A request for hearing under this Chapter shall comply with 9 A.A.C. 34. For the purposes of this Article, "hearing" means an administrative hearing under Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-502. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4).

R9-29-503. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-503 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-504. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2).

ARTICLE 6. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**R9-29-601. First- and Third-party Liability and Recoveries**

The provisions specified in 9 A.A.C. 22, Article 10 apply to this Section. For the purposes of this Article, "third-party liability" means the resources available from a person, entity, or program that is or may be, by agreement, circumstance, or otherwise, liable to pay all or part of the medical expenses incurred by an applicant or member.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-602. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4).

36-2972. Rights, authority and responsibilities of the director and the administration

- A. Subject to continued federal financial participation as provided in sections 36-2919 and 36-2958, the director shall plan for and take all steps necessary to implement the qualified medicare beneficiary program under title XIX of the social security act, as amended.
- B. The administration and the director have full operational responsibility for this article. Except as provided in this article or required by federal law or the section 1115 waiver, the provisions of articles 1 and 2 of this chapter are fully applicable to this article and the director and administration have all the rights, powers, duties and responsibilities accorded to the system under articles 1 and 2 of this chapter. Services shall be delivered in accordance with federal law and the section 1115 waiver for articles 1 and 2 of this chapter.
- C. The administration shall coordinate benefits provided under this article to members so that costs for services payable by the system are costs avoided or recovered from a third party payor. The director may require that program contractors, contractors and noncontracting providers are responsible for the coordination of benefits for services provided pursuant to this article. Benefit coordination requirements for noncontracting providers are limited to coordination of benefits with standard health insurance and disability or medicare supplemental health insurance policies and similar programs for health coverage. The director shall require members to assign to the system rights to all types of medical benefits to which the member is entitled.
- D. Notwithstanding section 36-2911, the program contractors or contractors shall pay all premiums, deductibles and coinsurance amounts for the member to obtain coverage or secure services as required by the administration. For members not enrolled with a contractor or program contractor the administration may pay the premiums, deductibles and coinsurance amounts.

36-2973. Qualified medicare beneficiary only; eligibility determination; application; enrollment

A. The administration shall determine the eligibility of all applicants who may be eligible as qualified medicare beneficiaries only. The administration shall ensure that the calculation of income eligibility requirements is in accordance with federal law and the section 1115 waiver. On determination of qualified medicare beneficiary only eligibility, the administration shall enroll the member in the system.

B. The administration may enroll the member who has been determined eligible as a qualified medicare beneficiary only in a fee-for-service arrangement. The director may enter into a contract with a medicare risk contractor that, in accordance with section 1876 of the social security act, has a contract with the health care financing administration and may pay premiums for enrollment of that member.

36-2974. Dual eligibles; qualifications for coverage; enrollment

- A. For purposes of this section all contractors and program contractors are required to provide services to members.
- B. For a member who is dually eligible the director may implement a policy permitting a choice of contractors or program contractors to the extent the director deems feasible consistent with the section 1115 waiver and federal law. If the director does not implement a choice of contractor policy, the director may enroll the member, at the time eligibility is determined, with an available contractor or program contractor located in the geographic area of the member's residence.
- C. The department shall assist the administration in the screening of all persons who are applying to become eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who are entitled to services under title XVIII but not title XVI of the social security act to determine if the person meets the eligibility criteria of this section. If a person is determined to be eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and this article, the administration shall make the person dually eligible. On determination of dual eligibility the administration shall enroll the person pursuant to this article and notify the person of the dual eligibility.
- D. The administration shall screen all persons who are entitled to services under title XVIII of the social security act and who are applying to become eligible pursuant to section 36-2901, paragraph 6, subdivision (a), as prescribed by title XVI of the social security act or section 36-2931, paragraph 5, to determine if the person meets the eligibility criteria of this section. If a person is determined to be eligible pursuant to section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and this article, the administration shall make the person dually eligible. On determination of dual eligibility by the administration, the administration shall enroll the person pursuant to this article and notify the person of the dual eligibility.
- E. Calculation of income and resource eligibility requirements by the department and the administration pursuant to this section shall be in accordance with title XIX of the social security act, as amended.
- F. Program contractors and contractors shall pay medicare deductibles, coinsurance and copayment amounts for services provided to dual eligibles pursuant to this article and as required by the administration for services that are provided by or under referral from a primary care physician or primary care practitioner.

36-2975. Specified low income medicare beneficiary; eligibility

The administration shall determine the eligibility of all persons who are specified low income medicare beneficiaries in accordance with federal law. The administration shall pay the monthly premiums under part B of title XVIII of the social security act on behalf of each specified low income medicare beneficiary.

36-2976. Qualifying individuals

A. The administration shall determine the eligibility of all persons who are determined to be qualifying individuals pursuant to section 36-2971, paragraphs 12 and 13.

B. The administration shall pay the medicare part B monthly premiums on behalf of each qualifying individual 1 and shall pay the medicare part B monthly amount that is attributable to home health coverage for each qualifying individual 2.

EXPOSITION AND STATE FAIR BOARD (F-18-0404)

Title 3, Chapter 12, Article 1, Definitions; Article 2, Game Descriptions and Standards; Article 3, Concessionaires



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: April 3, 2018

AGENDA ITEM: F-4

TO: Members of the Governor's Regulatory Review Council
FROM: Council Staff
DATE: March 20, 2018
SUBJECT: ARIZONA EXPOSITION AND STATE FAIR BOARD (F-18-0404)
Title 3, Chapter 12, Article 1, Definitions; Article 2, Game Descriptions and Standards; Article 3, Concessionaires

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report:

The Arizona Exposition and State Fair Board (Board) was established to maintain the state fairgrounds and coliseum facilities, to use the facilities for the enjoyment of Arizonans, to direct and conduct state fairs, exhibits, contests, and entertainments in order to advance the interests of the state and counties of Arizona, and to “[g]enerate sufficient monies to defray the operating expenses of the state fairgrounds and the veterans memorial coliseum,” Laws 1994, Ch. 75, § 4.

This five-year-review report covers 16 rules in A.A.C. Title 3, Chapter 12. The rules protect the public's safety and welfare, as well as regulate all games played during the Arizona State Fair. The rules were last amended in 2002.

Proposed Action

The Board indicates that the rules accomplish their intended purpose and function well; and therefore, the Board does not propose any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Board cites applicable statutory authority for the rules reviewed. Pursuant to A.R.S. § 3-1003, the Board is required to adopt rules to ensure exclusive custody and direction of state fair property, direct and conduct events which advance the interests of the several counties and of the state, produce sufficient revenue to defray the expenses incurred by the Board in

conducting events, and appoint ground marshals with the authority of peace officers and give prizes or premiums for exhibits and contests.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board indicates that the Board's rules are very similar to rules of other fairs and most, if not all, game operators have worked within these rules for years. Since these rules have existed for a long period of time, little or no economic impact exists because compliance is necessary at other stops along the fair circuit. Stakeholders include the Board, game operators, contractors, and the public.

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

Yes. The Board indicates that the rules keep game operators and the public safe from wrongful practices with little or no cost as they have been in place for years. The benefits of the rules outweigh the costs.

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

No. The Board indicates that it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Board indicates that the rules are effective, consistent with other rules and statutes, and clear, concise, and understandable.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board indicates that the rules are enforced by the Department of Public Safety officers, who are trained by the State Fair personnel regarding carnival games. There have been no enforcement issues with the rules in the last five years.

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

No. The Board indicates that the rules do not correspond to any federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

9. Conclusion

As mentioned above, the Board believes that the rules are working well and accomplish their intended purpose, and has no plans to amend the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.



Nicole O. Colyer, Chair
Governor's Regulatory Review Council
100 N. 15th Ave. Suite 305
Phoenix, AZ 85007

January 26, 2018

RE: Five Year Rules Review Report

Dear Mrs. Colyer:

Attached is the Arizona Exposition and State Fair Board (Board) Five Year Rules Review report required by A.R.S. 41-1056. As required under A.R.S. 41-1056(A), the Board certifies that it is in compliance with A.R.S. 41-1091 regarding rules and substantive policy directory. If you have any questions, please call Grant Pearson at 602-257-7195.

Sincerely,

A handwritten signature in black ink, appearing to read "Wanell Costello".

Wanell Costello
Executive Director

**ARIZONA EXPOSITION AND
STATE FAIR BOARD**

**FIVE-YEAR REVIEW REPORT
TITLE 3, CHAPTER 12 ARTICLES 1-3**

**FOR THE
GOVERNOR'S REGULATORY REVIEW
COUNCIL (GRRC)**

Submitted January 26, 2018

I. Introduction

The rules adopted by the Arizona Exposition and State Fair Board (“Board”) regulate all games played during the Arizona State Fair. The rules serve the primary purpose of protecting the public’s safety and welfare. Each game operator pays the Board for a space on the grounds during the Arizona State Fair. Payment is based on 25% of the total game sales. Because the fair would not have any games unless the game operators make a profit, certain of the Board’s rules protect the game owner from persons taking unfair advantage of the game. The rules have functioned well and accomplished their purposes since their adoption.

II. Identical Information Regarding Rules

The following information is identical for all of the Board’s rules. Because the information is the same for each rule listed, it is not included in the analysis of the individual rules.

A. Statute Authorizing Rules

The Board adopted the rules contained in A.A.C. Title 3, Chapter 12 pursuant to A.R.S. sec. 3-1003 (A)(10), a copy of which is attached to this report.

B. Effectiveness

The stated objective for all of the Agency’s rules is effectively met.

C. Consistency

There are no other statutes and rules that apply to or conflict with these rules.

D. Enforcement

The rules are all enforced by Department of Public Safety officers trained regarding carnival games and by State Fair personnel. The rules are uniformly and fairly enforced and there have been no enforcement issues during the past five years.

E. Clarity, Conciseness and Understandability

In 2002, the Board amended the rules to correct certain minor stylistic problems and make the rules consistent with the Secretary of State’s requirements. The rules remain clear and concise and both game owners and the public can easily understand the rules.

F. Criticisms

The Board has not received any written criticisms of any of its rules during the past five years.

G. Economic, small business and consumer impact comparison with the 2002 Rulemaking

The economic, small business and consumer impact statement prepared for the Board's 2002 Rulemaking is attached. The Board's analysis of the impact the rules have had on the public and the game owners is substantially as predicted in the 2002 impact statement. The rules continue to perform as indicated and because these rules have existed in one form or another for over 25 years, the economic impact is negligible.

H. Any analysis submitted that the rule's impact on the state's business competitiveness compares to the competitiveness of businesses in other states.

The Board has received no such analysis.

I. The Board's progress toward completing the needed actions identified in the previous Five-year review report.

The Board had no plans to amend its rules since the last rules review.

J. 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 regulate persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

These rules keep both game operators and the public safe from wrongful practices. The rules do so with little costs or recurring costs because the industry trend for at least ten to fifteen years has been to require uniforms by employees.

K. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of federal law.

No federal law applies to the Board's rules.

L. For rules 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.

None of the rules were made after July 29, 2010.

M. Planned course of action.

The Board has no current plans to amend its rules. The rules are working well and accomplish their intended purposes.

III. Analysis of Individual Rules

A. R3-12-101 – Definitions

Objective

The objective is to ensure that all those using or interpreting the rules do so using the consistent and well defined terms.

B. R3-12-201 – Hoop and Ring Toss Games

Objective

The objective is to set forth the types of hoop and ring toss games allowed at the Arizona State Fair and to regulate such games so that the games constitute a form of legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

C. R3-12-202 – Dart Games

Objective

The objective is to set forth the types of dart games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

D. R3-12-203 – Ball Toss Games

Objective

The objective is to set forth the types of ball toss games allowed at the Arizona State Fair and to regulate such games so that the games

constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

E R3-12-204 – Shooting Games

Objective

The objective is to set forth the types of shooting games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

F R3-12-205 – Coin Games

Objective

The objective is to set forth the types of coin games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

G. R3-12-206 – Other Games

Objective

The objective is to set forth all other types of games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

H. R3-12-301 – Safety

Objective

The objective is to protect the consumer and ensure a safe environment for those attending the Arizona State Fair.

I. R3-12-302 – Posting Prizes and Game Standards

Objective

The objectives are to ensure that all customers know the rules of each game played and to prevent game owners from modifying the game in the middle of play.

J. R3-12-303 – Prizes

Objective

The objective is to keep the Fairgrounds safe for all customers and provide players with an opportunity to win a quality prize for the money the consumer spends.

K. R3-12-304 – Valuable Prize Limit

Objective

The objective is to protect the concessionaire from highly successful players by limiting any player to one most valuable prize per game per day.

L. R3-12-305 – Lease Standards

Objective

The objective is to ensure that all games are booked in accordance with current Arizona State Fair policies.

M. R3-12-306 – Uniforms

Objective

The objective is to ensure that all concessionaires are responsible for all their employees and that the employees are neat, clean and well kept.

N. R3-12-307 – Concession Location

Objective

The objective is to maintain the orderly movement of customers within the fairgrounds.

O. R3-12-308 – Sound Control

Objective

The objective is to provide a pleasant environment for customers and competing concessionaires on the fairgrounds.

P. R3-12-309 – Height and Line Designation

Objective

The objective is to provide customers with a fair opportunity to win at the games by ensuring playing distance uniformity for all players and to ensure public safety.

TITLE 3. AGRICULTURE

CHAPTER 12. ARIZONA EXPOSITION AND STATE FAIR BOARD

Former Title 3, Chapter 12, Article 2, Section R4-12-201, renumbered to Title 3, Chapter 9, Article 3, Section R4-9-301; new Title 3, Chapter 12, Article 1, Section R3-4-101 renumbered from Title 3, Chapter 4, Article 1, Section R3-4-101; new Title 3, Chapter 12, Article 2, Sections R3-12-201 through R3-12-212, renumbered from Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-212 (Supp. 91-4).

(Authority: A.R.S. § 3-1003)

ARTICLE 1. DEFINITIONS

Section

R3-12-101. Definitions

ARTICLE 2. GAME DESCRIPTIONS AND STANDARDS

Article 2, consisting of Sections R3-12-201 through R3-12-212, repealed; new Article 2, consisting of Sections R3-12-201 through R3-12-206, made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

Section

R3-12-201. Hoop or Ring Toss Games
R3-12-202. Dart Games
R3-12-203. Ball Toss Games
R3-12-204. Shooting Games
R3-12-205. Coin Games
R3-12-206. Other Games
R3-12-207. Repealed
R3-12-208. Repealed
R3-12-209. Repealed
R3-12-210. Repealed
R3-12-211. Repealed
R3-12-212. Repealed

ARTICLE 3. CONCESSIONAIRES

Section

R3-12-301. Safety
R3-12-302. Posting Prizes and Game Standards
R3-12-303. Prizes
R3-12-304. Valuable Prize Limit
R3-12-305. Lease Standards
R3-12-306. Uniforms
R3-12-307. Concession Location
R3-12-308. Sound Control
R3-12-309. Height and Line Designation

ARTICLE 1. DEFINITIONS

R3-12-101. Definitions

In this Chapter, the following definitions apply unless the context requires otherwise:

“Arizona State Fair Games Inspector” or “Inspector” means any person employed by the Director to enforce this Chapter. The term includes the Midway Coordinator, the person employed by the Director to coordinate midway rides, concessions, and games and assist in placing equipment assigned to the midway.

“Board” means the Arizona Exposition and State Fair Board.

“Concession” means any business that sells merchandise or services, conducts games, or provides other entertainment regulated by the Board.

“Concessionaire” means any person who owns, operates, or leases a concession and includes any person acting as an agent of the concessionaire.

“Director” means the Executive Director of the Board or a Deputy Director if the Executive Director is unable to act.

“Game” means any concession that accepts payment for providing an activity of amusement.

“Location” means the stall, stand, booth, or site from which the concessionaire operates or sells merchandise or services, conducts games, or provides other entertainment.

“Person” has the meaning prescribed in A.R.S. § 1-215.

“Player” means any person who plays a game at the Fair, whether or not the person is attempting to win a prize.

“Prize” means an item won by a player after successful completion of a game’s activity.

“State Fair” or “Fair” means the Arizona State Fair, an annual exposition conducted by the Board.

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-101 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

ARTICLE 2. GAME DESCRIPTIONS AND STANDARDS

Article 2, consisting of Sections R3-12-201 through R3-12-212, repealed; new Article 2, consisting of Sections R3-12-201 through R3-12-206, made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-201. Hoop or Ring Toss Games

- A.** In General. A player tosses each hoop or ring over a target. The object of the game is for the hoop or ring to land on the target, with a portion of the target passing through the hoop or ring.
- B.** Specific Standards. A concessionaire shall:
 - 1. Advise the player regarding the extent of the target that must pass through the hoop or ring; and
 - 2. Ensure that hoops or rings of the same color at a location are the same size or advise the player of different sizes by posting signs or using color codes to denote different sizes.

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Amended effective Sept. 9, 1988 (Supp. 88-3). Amended effective September 25, 1991 (Supp. 91-3). Renumbered from R3-4-201 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-202. Dart Games

- A.** General Standards. A concessionaire shall:
 - 1. Ensure that the target area for metal-tip dart games is made of material that will accept and retain a metal tip dart;
 - 2. Use darts with metal, velcro, or suction cup tips;
 - 3. Ensure that darts are thrown by hand or propelled by a mechanical device;
 - 4. Place the target at the back of the location, at least 3 feet but not more than 15 feet from the foul line;
 - 5. Ensure that the target is stationary at all times; and
 - 6. Construct the location in a manner that prevents darts from reaching adjoining locations or aisles.
- B.** Game Descriptions and Specific Standards
 - 1. Balloon or Balloon Smash. The targets are inflated balloons. A player throws one or more darts to burst a predetermined number of balloons. If the player bursts the predetermined number of balloons with the darts, the player wins the designated prize.
 - 2. Dart Throw. The targets are shapes of various sizes located on the target area. A player throws or propels darts individually at a target. If the player hits a predetermined target and the dart remains in or on that target, the player wins the designated prize.
 - 3. Tic-Tac-Toe Dart. The target is a tic-tac-toe board located on the target area. If a player sticks a dart in each of 3 adjacent spaces on the tic-tac-toe board, either vertically, horizontally, or diagonally, the player wins the designated prize.
 - 4. Add ‘Em Up Darts. The target consists of numbered squares located on the target area. A concessionaire awards prizes based on the total score, calculated by adding the numbers on each square holding a dart. If a dart is stuck on a line, a player may throw the dart again.

Historical Note

Adopted effective September 25, 1991 (Supp. 91-3). Renumbered from R3-4-202 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-203. Ball Toss Games

- A.** General Standards. A concessionaire shall ensure that:
 - 1. Each ball used at a location is the same weight and size; and
 - 2. Targets are either of identical weight and size or color-coded to show target differences, or any target difference is described on a sign.
- B.** Game Descriptions and Specific Standards
 - 1. Milk Bottle. A player tosses or throws a specified number of balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off a raised platform as designated by the concessionaire. A Concessionaire may vary the number of bottles and balls used in each game. A concessionaire shall ensure that:
 - a. The bottles are constructed of wood, metal, plastic, or a combination of these materials;
 - b. There are no floating or loose weights in bottles; and
 - c. The weight of each bottle does not exceed 7.5 pounds.
 - 2. Milk Can. If a player tosses a ball into the opening of a milk can, cone, or similar object, the player wins the designated prize.
 - 3. Football and Tire. If a player tosses or throws a football through a stationary tire or hoop, the player wins the designated prize.

4. Basketball and Hoop. If a player tosses or throws a basketball through a basketball or similar hoop, the player wins the designated prize.
5. Bushel Basket. If a player tosses each ball into a bushel basket or similar object mounted on a stationary backdrop at a fixed angle, and the ball stays in the basket, the player wins the designated prize. If a ball hits the rim and stays in the basket, the player wins the designated prize.
6. Cat, Circle, Star, or Diamond. If a player tosses each ball into a simulated cat's mouth or a round, diamond-shaped, or star-shaped hole, the player wins the designated prize.
7. Ping-Pong Ball and Floating Target. A player tosses each ping-pong ball into a dish, saucer, cup, or ashtray floating in water. If a predetermined number of balls remain in the dishes, saucers, cups, or ashtrays, the player wins the designated prize. A concessionaire shall ensure that dishes, saucers, cups, or ashtrays are:
 - a. Not stacked on top of each other; and
 - b. In the water and floating at water level.
8. Break the Plate, Record, or Bottle. A player tosses or throws a specified number of balls at a plate, phonograph record, or bottle. The player wins a designated prize based upon the number of targets broken.
9. Punk Rack. The targets for this game are rows of dolls or cats on a ledge at the back of the location. If the player knocks the correct number of dolls or cats over or off of the ledge, the player wins the designated prize. A concessionaire shall ensure that:
 - a. The dolls or cats are filled with sawdust, polystyrene, cotton, or a similar material;
 - b. The hair protruding from the side of the dolls or cats does not exceed three inches.
10. Rolldown. The player rolls a specified number of balls down an alley. The object of the game is to place the balls in numbered slots at the end of the alley. The concessionaire calculates the total score by adding the numbers of the slots that contain a ball at the end of the game. If a player achieves a score above or below a predetermined number, the player wins the designated prize. A concessionaire shall ensure that the alley surface is smooth.
 - a. 3-Pin. The player rolls a specified number of balls down an alley. The object of the game is to knock over all three pins sitting on designated spots in a triangle. A concessionaire shall:
 - i. Set the triangle with the two front pins on a line that is perpendicular to a line coming from the player;
 - ii. Set the front pins so the ball may knock down both pins if the player's roll is between the pins;
 - iii. Mark the alley with a grid and spots for the pins;
 - iv. Ensure that the designated spots are no larger than the base of the pins; and
 - v. Ensure that the alley is a smooth, level surface no more than six feet long.
 - b. Sidewinder. The object of the game is for the player to control a ball rolling down a downward-slanted, multi-curved alley by tilting the alley to one side or the other with a steering wheel. The player wins by putting the ball through a hole at the end of the alley without the ball falling off the alley. Side rails may be used on part of the alley to help the player control the ball. A concessionaire shall ensure that the alley is a smooth, flat surface with a downward angle of no more than 15 degrees.
11. Skee Ball. A player rolls a specified number of balls up a mechanical alley into numbered targets. A mechanical scorer or computer calculates the score to determine whether the player wins the designated prize. A concessionaire shall ensure that the alley surface is smooth.
12. Bank Ball. The object of the game is for a player to bank a ball off the front surface of a sandwich board into a basket located in front of the board's legs. The player shall use only the front surface of the board. A concessionaire shall:
 - a. Ensure that the board is a sandwich board that, together with its legs, is not more than six feet high;
 - b. Ensure that there are two chains attached to the legs to secure the board when it is opened to the standing position;
 - c. Secure the basket to the legs of the sandwich board so that the basket is a minimum of nine inches in front of the board's legs; and
 - d. Ensure that the board surface is smooth.
13. Kiddie Toss. A player throws a velcro-covered ball at a velcro target. If the player hits the target, the player wins the designated prize. If a ball does not stick to a target, the player may throw again with a different ball.

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-203 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-204. Shooting Games

- A. In General. A player uses a weapon to shoot a target at the rear of the location. The target may be stationary or mobile.
- B. Game Descriptions and Specific Standards
 1. Shoot-Out-The-Star or Machine Gun. A concessionaire provides a player with an automatic air pellet gun and 100 pellets to shoot at a star-shaped target. If the player shoots out the entire target, the player wins the designated prize. The concessionaire shall ensure that the star is not more than 1 and 1/4 inch from point to point.
 2. Water Racer. The game involves group competition. A player wins a prize based on the number of players competing. Each player, using a water pistol, shoots water into a target. Water striking the target causes a balloon to inflate or advances an object to ring a bell. The player who bursts the balloon or rings the bell first is the winner.
 3. Rapid Fire. The game involves group competition. Each player uses an electronic pistol to shoot at a target. Hits on the target increase the player's score. The first player to reach a predetermined score is the winner.

4. Cork Gallery. A player uses a cork gun to shoot at targets located on a shelf. If the player knocks a target over or off the shelf, the player wins a prize. The prize is based on the target knocked over or off the shelf or on the number of targets knocked over or off the shelf. A concessionaire shall ensure that the base of each target has a uniform shape, front and rear.
5. Gun Ball. A player shoots balls at stationary targets in the location. The player wins by knocking down all the targets. A concessionaire shall ensure that:
 - a. The balls are of identical size and weight; and
 - b. The targets are of identical size and weight.

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-204 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-205. Coin Games

- A. In General. A player uses a token or coin of U.S. denomination. The player pitches or tosses the coin so that it lands and remains on or in a target within the location. The target may be stationary or mobile.
- B. Game Descriptions and Specific Standards
 1. Spot Pitch or Lucky Strike. A player pitches a coin at colored spots located on a table in the center of the location. If the player pitches the coin so that it either touches or stays inside of a spot, the player wins the designated prize.
 2. Plate Pitch. A player pitches a coin onto a glass plate. If the coin remains on the plate, the player wins the designated prize.
 3. Glass Pitch. A player pitches a coin into or onto bowls, ashtrays, dishes, or glasses. If the coin remains in one of the top “target” glass items, the player wins that item.

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-205 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-206. Other Games

- A. Tip-Em-Up Bottle. A concessionaire provides a player with a pole that has a string attached to it at one end. A hoop or ring is attached to the other end of the string. If the player, using this “fishing” pole with a hoop or ring, raises a bottle lying on its side to an upright position, the player wins the designated prize.
- B. Hi-Striker. A player, using a wooden or metal maul, strikes a lever that causes a metal weight to rise on a guide line or track and ring a bell. If the player rings the bell a predetermined number of times, the player wins the designated prize.
- C. Rope Ladder. A player climbs a rope ladder that is anchored at both ends, but swivels. If the player rings the bell or buzzer at the top of the ladder, the player wins the designated prize.
- D. Whac-A-Mole. A player hits as many animated moles as possible with a rubber mallet in a five hole target area. The animated moles pop up and down at random in the holes. The first player to hit a predetermined number of moles wins the designated prize.
- E. Speed Bump Bowling. A player rolls a bowling ball or similar ball over a hump in a track. If the player rolls the ball to the other side of the hump and the ball remains there, the player wins the designated prize.
- F. Speedball Radar. A player throws a specified number of balls past a radar device to establish the speed at which the balls are thrown. This enables the player to estimate the speed of the ball. If the player accurately estimates the speed of the last ball thrown, the player wins the designated prize. A concessionaire shall ensure that the radar device is mounted in a stationary position.
- G. Horse Race Derby. A player advances a horse by shooting or rolling a ball into a target area. The faster and more skillfully the player shoots or rolls the ball into the target area, the faster the player’s horse will run. If the player’s horse is the first to cross the finish line, the player wins the designated prize.
- H. Shuffleboard. A player pushes a specified number of pucks down a shuffleboard alley to knock over pins at the end of the alley. If the player knocks down all of the pins, the player wins the designated prize.
- I. Beanbag. A player tosses or throws a specified number of beanbags or simulated beanbag at cans, bottles, or other objects on a raised platform. If the player knocks one or more objects off of the raised platform or tips one or more targets over, the player wins the designated prize.
- J. Soccer Kick. If a player kicks a soccer ball through a hole in the target area, the player wins the designated prize.
- K. Pool Table. A player using a pool cue and solid white cue ball is given a fixed number of chances to shoot a fixed number of multicolored balls into targets or pockets on a pool table. The number of chances and multicolored balls used is based on the type of prize offered. The first shot is to break or separate the multicolored balls from their racked position on the table. During the first shot, any multicolored balls that strike targets or fall into pockets count toward the player’s total score. After the first shot, the player shall specify the colored ball or balls and the target or pocket for the ball or balls. If, after the first shot, the specified ball or balls do not strike the target or fall into the pocket specified, the player loses the game. If the solid white cue ball strikes a target or falls into a pocket on any shot, the player loses the game. If the player shoots all balls on the table into the specified targets or pockets using the allotted number of successive shots, the player wins the designated prize. A concessionaire shall ensure that the pool table surface is smooth, level, and in good repair.
- L. Put Out The Light. A player drops five metal plates measuring four inches in diameter onto a target surface measuring six and 3/8 inches in diameter in an effort to completely cover the target surface. The player drops the plates from a designated height, marked by an electric beam that triggers a buzzer. The buzzer sounds to alert the player and concessionaire of any height violation. If the buzzer sounds and the player drops a plate, the player loses the game. Once dropped, plates are not moved until the concessionaire makes a final determination of a winner. If the player completely covers the surface with the plates, the player wins the designated prize. The

concessionaire may change surface and disk size in proportion to the measurements listed above. These changes are subject to the approval of the Arizona State Fair Games Inspector who shall rule on the requested changes immediately.

- M.** Fisharama. A concessionaire provides a player with a pole that has a string attached to it at one end. A magnet is attached to the other end of the string. The player uses the magnet to catch a predetermined target that is visually distinguishable from other targets floating in a water-filled elliptic trough. If the player catches the predetermined target, the player wins the designated prize. The concessionaire shall ensure that the magnets can stick to and pick up each of the potential targets.
- N.** Flipgame. A player propels an object into a target by using a mechanical launching device. The player positions the object on the launching device and then propels the object by striking the device with a rubber mallet. If the player flips the object into the target, the player wins the designated prize. The target may be stationary or mobile.
- O.** Wacky Wire. A player passes a metal wire with a minimum one-inch circular opening in the middle of the wire down a curved wire moving clockwise during play. The player wins by passing the wire down to the base of the moving curved wire without touching the moving curved wire. A buzzer signifies any touch by a player.

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-206 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-207. Repealed

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-207 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-208. Repealed

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-208 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-209. Repealed

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-209 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-210. Repealed

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-210 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-211. Repealed

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-211 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-212. Repealed

Historical Note

Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-212 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

ARTICLE 3. CONCESSIONAIRES

R3-12-301. Safety

- A.** A concessionaire shall:
 - 1. Operate a concession in a safe manner; and
 - 2. Use equipment that is in good, safe operating condition.
- B.** A concessionaire shall use material in the construction of the concession that is in good, safe condition for the concession's intended use.
- C.** If an Arizona State Fair Games Inspector believes there is a hazard in concession operation, equipment, or construction, or any component of the equipment or construction materials, the Inspector shall close the concession until satisfied that the concessionaire has corrected the hazardous condition.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-302. Posting Prizes and Game Standards

- A.** For every game a concessionaire shall conspicuously post, during all times of operation, a sign stating:
 - 1. The price of the game;

2. Clear game instructions and standards; and
 3. The exact task the player is required to complete to win the designated prize.
- B.** A concessionaire shall use a sign made of wood, metal, masonite, or a similar sturdy material, with block lettering of a contrasting color, at least two inches high.
- C.** The concessionaire shall not charge more than one price to play a game, except that the concessionaire may charge a separate price for children. If the concessionaire charges a separate price for children, the concessionaire shall post a sign that states the maximum age for the children's price.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-303. Prizes

- A.** A concessionaire shall display all prizes while the game is open to the public.
- B.** A concessionaire shall not:
1. Award prizes that are not displayed;
 2. Award cash prizes;
 3. Buy back for cash or any combination of prizes, articles, tickets, numbers, or other medium of exchange, any prize won by a player at the Fair; or
 4. Offer the following merchandise prizes:
 - a. Weapons of any kind, such as firearms, knives, whips, martial art items, bike chains, studded jewelry and accessories, water pistols or guns, or pea or bean shooters;
 - b. Fireworks of any kind;
 - c. Handcuffs or fingercuffs;
 - d. Melted glass bottles;
 - e. Items that are inconsistent with the state's interest in providing entertainment for families and children;
 - f. Eyeglasses, other than sunglasses;
 - g. Medicine or drugs of any kind; or
 - h. Fowl or animals, except goldfish.
- C.** An Arizona State Fair Games Inspector may prohibit other prizes, based on prize or merchandise:
1. Safety;
 2. Legality; or
 3. Value.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-304. Valuable Prize Limit

- A.** A concessionaire with a valuable prize may request authorization from the Board to limit the number of valuable prizes any player may win to one prize from each game location during each day of the Fair. The concessionaire shall make the request before the Fair opens. The Board shall authorize the valuable prize limit if:
1. The wholesale value of the prize is \$25.00 or more; and
 2. The prize is won by successfully completing the game's activity once.
- B.** If authorized, the concessionaire shall post a sign at the game location that indicates the valuable prize limit.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-305. Lease Standards

- A.** A person shall not operate a concession at the Fair without first leasing a location for the concession from the Board.
- B.** An applicant shall provide a document, incorporated by a reference in the lease, that lists the dollar value and total number of each type of prize merchandise that will be offered at the Fair.
- C.** An applicant shall provide a document, incorporated by a reference in the lease, that lists all prices that will be charged for merchandise, services, games, or other entertainment provided to patrons of the Fair.
- D.** Any person may apply to lease a location at the Fair for a game. An applicant shall send a letter to the Board that contains the name of the game, a description of the game, location requirements, the exact location for all game components, the applicant's name and address, and a current photograph of the stand. A lease is nontransferable. The lease for each game applies only to the concessionaire who enters into the lease.
- E.** The Board shall determine the rent to be paid under each game concession lease and ensure that this dollar amount is specified in the lease. For front stand games, the rent is computed by multiplying the footage requirements for the front of the game space by a dollar amount determined by the Board and adding any insurance and utility costs. For center stand games, the rent is computed by multiplying the footage requirements for the front and one side of the game space by a dollar amount determined by the Board and adding any insurance and utility costs. The Board shall not use less than a 10-foot minimum footage requirement in its rent calculations.
- F.** A separate lease is required for each game concession at the Fair unless:
1. All games are in the same location;

2. The games are not separated by a wall or partition;
 3. The games are identical;
 4. The prizes for each game are identical; and
 5. The price for each game is identical;
- G.** Upon consideration of the factors in subsections (F)(1) through (F)(5), the Board may include up to 10 games under one lease.
- H.** A concessionaire shall operate during the hours specified in the lease.
- I.** The Board and the concessionaire may mutually agree to modify the terms of a lease and shall memorialize any modification in an amended lease.
- J.** The Board shall not lease a location to an applicant if the applicant makes a material misrepresentation on the application or in documents submitted with the application. If a concessionaire has made a material misrepresentation to the Board, the Board shall cancel the concessionaire's lease, using the applicable provision in the lease, and remove the concession from the Fair.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-306. Uniforms

A concessionaire shall supply uniforms for agents. A concessionaire shall ensure that agents keep the uniforms in a clean and serviceable condition and wear the uniforms during the hours of the Fair.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-307. Concession Location

A concessionaire shall not sell merchandise or services, conduct games, or provide other entertainment more than four feet from the concession location.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-308. Sound Control

A concessionaire operating any loudspeaker at the Fair shall control the volume so that the loudspeaker does not interfere with other concessions or adversely affect Fair patrons. For the game concession area, the maximum decibel level for a loudspeaker is 90.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-309. Height and Line Designation

A concessionaire shall designate a line behind which players stand to play a game. If the game is trailer mounted, an Inspector shall designate the height of the base on which the game is set, based upon safety considerations of R3-12-301 and fairness to the player.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

3-1003. [Arizona exposition and state fair board; powers and duties; compensation of employees](#)

A. The Arizona exposition and state fair board shall:

1. Have exclusive custody and direction of all state fair property, construct and maintain necessary improvements in connection therewith, and assist in raising funds therefor.
2. Direct and conduct state fairs, exhibits, contests and entertainments for the purposes of promoting and advancing the pursuits and interests of the several counties and of the state, and of producing sufficient revenue to defray the expenses incurred by the board in conducting such events.
3. Charge entrance fees and gate money, and temporarily lease stalls, stands, booths and sites for the purpose of defraying the expenses incurred.
4. Give prizes or premiums for exhibits and contests which are presented or sponsored by the board in connection with the annual state fair.
5. Subject to title 41, chapter 4, article 4, employ an executive director, coliseum manager and comptroller.
6. Delegate to the executive director any of the administrative functions, powers or duties that the board believes the executive director can competently, efficiently and properly perform.
7. When necessary in connection with business of the board, appoint fair or ground marshals with the authority of peace officers.
8. Have the power to promote, co-promote or lease the state fairgrounds for such events, exhibitions, entertainments or other purposes it deems proper.
9. Have power to accept donations of money or other property from any source, and expend them in accordance with directions of the donor. Monies received pursuant to this paragraph shall not be placed in the general fund.
10. Adopt rules necessary to carry out the provisions of this chapter.
11. Prohibit the issuance of a free pass, ticket or box to any person for any activity at the Arizona coliseum and exposition center, except that this paragraph shall not apply to the state fair and any lessees of the Arizona coliseum and exposition center.

B. The board may exempt from subsection A, paragraphs 2 and 3 such educational, agricultural and mineral exhibits as in its opinion are in the best interest of the state and not contrary to any outstanding obligations the board might have incurred.

C. Compensation of all employees shall be as determined pursuant to section 38-611.

GRAIN RESEARCH AND PROMOTION COUNCIL (F-18-0406)

Title 3, Chapter 9, Article 2, Arizona Grain Research and Promotion Council



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: April 3, 2018

AGENDA ITEM: F-5

TO: Members of the Governor's Regulatory Review Council (Council)
FROM: Council Staff
DATE: March 20, 2018
SUBJECT: **GRAIN RESEARCH AND PROMOTION COUNCIL (F-18-0406)**
Title 3, Chapter 9, Article 2, Arizona Grain Research and Promotion Council

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Grain Research and Promotion Council (GRPC), housed within the Department of Agriculture, covers five rules in A.A.C. Title 3, Chapter 9, Article 2. These rules cover the assessment fees, hearing procedures, record keeping requirements, and the process of obtaining grants from GRPC.

The purpose of the GRPC is "to assist the development of the grain industry in this state." Laws 2013, Ch. 180, § 3. The GRPC is empowered to create programs and projects "that the council [GRPC] determines appropriate to provide education, publicity or other assistance to facilitate further development of the Arizona grain industry." See A.R.S. § 3-584. The GRPC does this by collecting a fee and using the fee collected to fund research projects. See A.R.S. § 3-584. The GRPC is empowered to adopt the necessary rules to ensure effective administration of the statutory scheme. See A.R.S. § 3-584(C).

The GRPC proposed no action on the rules in its 2013 five-year-review report, and took no action on the rules during the last five years.

Proposed Action

The GRPC is proposing no action on the rules in this report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The GRPC has cited to both general and specific authority for the rules. A.R.S. § 3-584 gives the GRPC authority to adopt rules necessary to effectively administer the Article. A.R.S. § 3-587 instructs the GRPC to assess fees on grain sold, and A.R.S. § 3-584(5) allows the GRPC to provide grants for research using the fees collected.

2. Summary of the agency's economic impact comparison and identification of stakeholders.

Key stakeholders are the GRPC and Arizona grain producers. The GRPC indicates that the assessment on grain sold was increased from \$0.40 per ton to \$0.50 per ton for the 2013 – 2016 growing seasons and reduced back to \$0.40 per ton for the 2017 growing season. GRPC distributed the following funds through grant awards over the past several years:

- FY13: \$17,660
- FY14: \$34,564
- FY15: \$25,814
- FY16: \$51,084
- FY17: \$61,974

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

The GRPC indicates that the rules impose the least burden and costs to persons regulated by the rules, and the benefits of the rules outweigh the costs.

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

No. The GRPC indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The GRPC indicates that the rules are effective, are clear, concise, understandable, and are consistent with other rules and statutes.

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

Yes. The GRPC indicates that the rules are enforced as written.

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

No. The GRPC indicates that there are no corresponding federal laws.

8. For rules adopted after July 29, 2010, does the rules require a permit or licenses and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules were adopted before July 29, 2010, and do not require a permit or license.

9. Conclusion

No action is proposed on the rules. This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

DOUGLAS A. DUCEY
Governor

DAVID SHARP
Chairman

Arizona Grain Research & Promotion Council

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

January 26, 2018



Nicole Ong Colyer, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Five-Year Review Report for 3 A.A.C. 9, Article 2

Dear Ms. Colyer:

Enclosed herewith, the Arizona Grain Research and Promotion Council submits its five-year review report for 3 A.A.C. 9, Article 2. All of the rules in the Article have been reviewed, and there is no intention for a rule to expire under A.R.S. § 41-1056(E). Also enclosed is a copy of the rules.

The Council also certifies, in accordance with A.R.S. § 41-1056(A), that it is in compliance with A.R.S. § 41-1091.

Please contact Lisa James at (602) 542-3262 or ljames@azda.gov with any questions about this report.

Sincerely,

David Sharp,
Chairman

Enclosures: Five-Year Review Report
Current Rules

ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

2018 FIVE YEAR REVIEW REPORT

3 A.A.C. 9

ARTICLE 2
ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Statutory authority

Unless otherwise indicated, the following is the general and specific authority for the rules.

General: A.R.S. § 3-584(C).

Specific: A.R.S. § 3-584(C).

3. Analysis of effectiveness in achieving the objective

The stated objectives of the rules are effectively met.

4. Consistency

These rules are consistent with statutes and other rules.

List of statutes or rules used in determining consistency:

A.R.S. §§ 3-581 through 3-594.

5. Agency enforcement policy

The Council enforces the rules as written.

6. Clarity, conciseness, and understandability

The rule is clear, concise and understandable.

7. Written criticisms

The Council has not received any written criticisms of these rules within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The Council's assessment on grain sold was increased from \$0.40 per ton to \$0.50 per ton for the 2013 - 2016 growing seasons and reduced back to \$0.40 per ton for the 2017 growing season. The following is a history of Council funds distributed through grant awards over the past several years:

FY13	\$17,660
FY14	\$34,564
FY15	\$25,814
FY16	\$51,084
FY17	\$61,974

The rules in this article were effective and last revised on the following dates:

<u>Rule</u>	<u>Effective Date</u>	<u>Last Review</u>
R3-9-201	December 11, 2002	2013
R3-9-202	August 28, 1986	2013
R3-9-203	December 11, 2002	2013
R3-9-204	December 11, 2002	2013
R3-9-205	February 3, 2007	2013

9. **Analysis submitted by another person**

None

10. **Completion of course of action from prior review**

No changes were proposed

11. **Determination that rule imposes least burden and costs**

The Council believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Determination that rule is not more stringent than corresponding federal law**

These rules are not more stringent than a corresponding federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

None of these rules were adopted after July 29, 2010.

14. Proposed course of action

The Council proposes to maintain the rules as is.

INFORMATION THAT IS NOT IDENTICAL

R3-9-201. Definitions

2. Objective

This rule sets out the definitions used for specific terms in this Article.

R3-9-202. Fees; Grain Assessment and Refund

1. Statutory authority

Specific: A.R.S. § 3-592.

2. Objective

This rule establishes the assessment on commercially sold grain and prescribes a procedure for obtaining a refund.

R3-9-203. Hearings

2. Objective

This rule prescribes the procedures for governing hearings and the procedures for handling requests for rehearing or review.

4. Consistency

List of additional statutes used in determining consistency:
A.R.S. §§ 41-1092 through 41-1092.12

R3-9-204. Records

1. Statutory authority

Specific: A.R.S. § 3-586.

2. Objective

This rule prescribes the time and place where the Council's records may be inspected, as required by A.R.S. § 3-586.

R3-9-205. Grants

2. Objective

This rule establishes the procedures for applying for and awarding grants funded by the Council.

4. Consistency

List of additional statutes used in determining consistency:
A.R.S. § 41-2706(B)(6)

TITLE 3. AGRICULTURE
CHAPTER 9. DEPARTMENT OF AGRICULTURE - AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

R3-9-201. Definitions

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“AGRPC” means the Arizona Grain Research and Promotion Council.

“Department” means the Arizona Department of Agriculture.

Historical Note

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-202. Fees; Grain Assessment and Refund

- A.** The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.
- B.** The person who pays the fee required under subsection (A) shall ensure that:
1. The grain assessment fee is remitted to the AGRPC; and
 2. The following information is provided to the AGRPC on a form obtained from the Department:
 - a. First buyer’s name, address, and telephone number;
 - b. Report date and months covered by the report;
 - c. Total amount remitted to the AGRPC for the reporting period;
 - d. Producer’s name, address, and telephone number;
 - e. Type of grain and tonnage by grain type; and
 - f. First buyer’s or designee’s signature.
- C. Refund.**
1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
 - a. Producer’s name, address, telephone number, and signature;
 - b. Name of the first buyer;
 - c. Amount of grain sold subject to the refund request; and
 - d. First buyer’s or designee’s notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
 2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

Historical Note

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-203. Hearings

- A.** The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.
- B.** A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C.** The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party’s rights:
1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence; or
 4. Excessive or insufficient sanction.
- D.** The AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14

Department of Agriculture – Agricultural Councils and Commissions
A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-205. Grants**A. Definitions.**

"Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

"Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.

"Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

"Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
3. The AGRPC shall ensure that the grant application and manual contain the following items:
 - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
 - b. A statement that the information contained in a grant application is not confidential;
 - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AGRPC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AGRPC award;
 - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
 - j. Any other information necessary for the grant application.
4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

1. The applicant's successful completion of prior research projects, if applicable;
2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
3. The extent to which the proposed project addresses future issues facing the grain industry;
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
5. The appropriateness of the budget request in achieving the project objectives;
6. The appropriateness of the proposal time-frame to the stated project objectives; and
7. Relevant experience and qualifications of the applicant.

D. Public participation.

1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.

Department of Agriculture – Agricultural Councils and Commissions

1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
 2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
 4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
 5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
 6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G.** Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H.** Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
 2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
 3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AGRPC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

3-584. Powers and duties of the council

A. The council shall:

1. Meet at least once during each calendar quarter and more frequently on the call of the chairman, vice-chairman or any three members of the council.
2. Annually elect a chairman from among its members.
3. Elect a secretary and a treasurer from among its members.
4. Establish an executive committee, consisting of the chairman, secretary and treasurer. The executive committee shall act pursuant to direction received from the full council, or if the situation arises, the executive committee shall act and then bring the subject and its action before the full council at the next regular meeting of the council for review and ratification.
5. Establish fees to be assessed within the limits prescribed in section 3-587 to be held in trust in, and subject to the terms and conditions prescribed for, the Arizona grain research trust fund established by section 3-590.

B. Programs and projects authorized under this article may include:

1. Cooperation in state, regional, national or international activities with public or private organizations or individuals to assist in developing and expanding markets and reducing the cost of marketing grain and grain products.
2. Participation in research projects and programs to assist in reducing fresh water consumption, developing new grain varieties, improved production and handling methods, research and design of new or improved harvesting and handling equipment.
3. Any program or project that the council determines appropriate to provide education, publicity or other assistance to facilitate further development of the Arizona grain industry.

C. The council may:

1. Adopt administrative rules necessary to promptly and effectively administer this article.
2. Appoint subordinate officers and employees of the council, prescribe their duties and fix their compensation.
3. Accept donations of monies, property, services or other assistance from public or private sources for the purpose of furthering the objectives of this article. All donations of monies shall be held in trust in, and subject to the terms and conditions prescribed for, the Arizona grain research trust fund established by section 3-590.

4. Investigate and prosecute in the name of this state any action or suit to enforce the collection or ensure payment of the fees authorized and sue and be sued in the name of the council.

5. Make grants to research agencies for financing appropriate studies, research projects and programs to assist in reducing fresh water consumption, developing new grain varieties, improved production and handling methods and research and design of new or improved harvesting and handling equipment.

3-586. Records of the council

The council shall maintain all records for three years. The records of the council are public records available for inspection for any lawful purpose. The council shall adopt reasonable rules concerning the time or place of the inspection or the manner in which the information is made available.

3-592. Refund of fees

A producer may by the use of forms provided by the council, and on presentation of such proof as the council may require, have the fee refunded. A request for refund must be received in the office of the council within sixty days following the payment of the fee by the first buyer or the first purchaser. The council shall direct the state treasurer, as trustee, to make refunds within thirty days of the request for refund if the fee sought to be refunded has been received. The council shall adopt such rules as are necessary to further ensure that the fees are refunded promptly.

DEPARTMENT OF TRANSPORTATION (F-18-0407)
Title 17, Chapter 8, Article 6, Motor Fuel Refunds



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: April 3, 2018

AGENDA ITEM: F-6

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

FROM: Council Staff

DATE: March 20, 2018

SUBJECT: DEPARTMENT OF TRANSPORTATION (F-18-0407)
Title 17, Chapter 8, Article 6, Motor Fuel Refunds

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report:

This five-year review report from the Arizona Department of Transportation (Department) covers 11 rules in A.A.C. Title 17, Chapter 8, Article 6, related to the process of requesting motor fuel tax refunds.

The rules were adopted on March 8, 2008 and have not been amended since.

In the previous five-year-review report, approved by the Council on April 3, 2013, the Department proposed to make changes to the rules by January 2015. The Department indicates that it did not complete the proposed actions because the amendments were noncritical and did not rise to the level of importance above other agency rulemaking priorities.

Proposed Action

The Department indicates that it plans to request a moratorium exemption from the Governor's Office and file a Notice of Proposed Expedited Rulemaking within 180 days of Council's approval of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites applicable general and specific statutory authority for the rules reviewed. Of particular significance is A.R.S. § 28-366, which requires the director of the Department to "adopt rules pursuant to [T]itle 41, [C]hapter 6 as the director deems necessary for enforcement of the provisions of the laws the director administers or enforces."

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department indicates that the industry has benefited from a more clearly identified process, while costs have been minimal. There were 208 (4%) refund applications returned in FY 2017, compared to the 425 (6.3%) in FY 2006. The review and approval of studies required to test the amount of fuel consumed while in off-highway status did not involve as many employees as anticipated.

Key stakeholders are the Department, fuel suppliers, interstate fuel users, restricted distributors, and use fuel vendors.

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?

Yes. The Department indicates that the benefits of the rules outweigh the costs and impose the least burden and costs to persons regulated by the rules while achieving the underlying regulatory objective.

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

No. The Department indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are effective in achieving their objectives. In addition, the Department indicates that the rules are consistent with other rules and statutes, with one exception. Section 603(B), related to refunds for unlicensed use fuel vendors, is inconsistent with A.R.S. § 28-5626 (C), under which any person who sells use fuel for delivery directly into a vehicle fuel tank must be licensed as a vendor.

The Department indicates that the rules are generally clear, concise, and understandable, but the following amendments would improve clarity and are necessary for accuracy:

- All Sections: The term “Division” needs to be replaced with “Department” to reflect organizational changes made within the Department. In addition, references need to be updated throughout the rules.
- Section 601: Definitions should be alphabetized. Remove the term “authorized representative” and replace it with “claimant.” Update references to reflect correct regulations. In addition to other specific clarifying changes, subsection (B)(2)(c) should be amended to note that applications for refunds must be submitted for whole month periods or for multiple whole month periods.

- Section 602: Subsection (A) should be amended to remove the term “use” before “fuel tax paid,” as the rule applies to all motor fuel and is not limited to use fuel, and change “request for refund” to “complete application for refund.” In addition, the rule should be updated to reflect changes in the import/export process in Mexico.
- Section 603: In subsection (A)(2), “restricted distributor” should be used instead of “distributor,” to conform with A.R.S. § 28-5625. Subsection (B) should be removed since it contradicts with A.R.S. § 28-5625 and the licensing process has changed.
- Section 604: In subsection (B)(2), “model” and “gallon capacity” should be removed and “equipment type,” “VIN or equipment serial number,” and “gross vehicle weight” should be added to better reflect the Department’s requirements from the claimants. In addition, International Fuel Tax Agreement should be removed from subsection (B)(3) as a source of valid proof.
- Section 605: In subsection (B)(1)(b)(ii), “vehicle make, model, year, and VIN” should be deleted and replaced with “number of the equipment or vehicle” for clarity. Additionally, in subsection (C)(8), “a period” should read “periods” and “includes” should read “capture.”
- Section 606: Subsection (B)(1)(e) should be amended to replace “purchaser’s” with “seller’s” for accuracy. In addition, subsection (C) should be revised to better reflect the Department’s requirements.
- Section 607: Subsection (A) and (B) should be revised for clarity and to better reflect the Department’s requirements for a complete application.
- Section 608: References to the “Arizona Department of Commerce” should be changed to the “Arizona Commerce Authority.” In subsection (B)(1), “Healthy Forest Enterprise Use Fuel Vehicle Schedule” should be replaced with equipment and vehicle listing since the Department prefers that claimants submit an equipment and vehicle listing. Additionally, the rule should be modified to include a provision requesting claimants to submit purchase invoices of the use fuel as the Department needs that information for adequate documentation and proof for the refund.
- Section 609: In subsection (B), add “complete” before “application” and add “for refund, as prescribed under R17-8-601” after “application” for clarification.
- Section 610: Subsection (C)(1)(f) should be amended to delete “motor” from “contaminated motor fuel” to align with the defined term in Section 601.
- Section 611: In subsection (B), add “complete” before “application” and add “for refund, as prescribed under R17-8-601” after “application” for clarification.

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

Yes. The Department indicates that the rules are enforced as written, with the following exceptions:

- Section 601: Subsection (B)(2)(c) should be updated to reflect the Department’s current practice. The Department allows claimants to make one request for multiple months as long as the coverage is for the entire month.
- Section 603: The Department no longer allows the exception provided in subsection (B), as it is inconsistent with A.R.S. § 28-5626 (C). Additionally, the licensing process has changed and is handled electronically.

- Section 608: The Department no longer requires claimants to submit the Arizona Commerce Authority's Use Fuel Schedule required under subsection (B), instead the Department prefers that the claimants submit an equipment and vehicle listing and purchase invoices of use fuel.

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

No. The Department indicates that the rules are not more stringent than federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

9. **Conclusion**

The Department plans to file a Notice of Proposed Expedited Rulemaking within 180 days following Council approval of this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.

January 25, 2018

Ms. Nicole O. Colyer, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

Subject: Five-year Review of 17 A.A.C. Chapter 8, Article 6

Dear Ms. Colyer:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 8, Article 6. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Rules Analyst, at (602) 712-4534.

Sincerely,



John S. Halikowski
ADOT Director

Enclosure: ADOT Five-year Review Report



Government Relations and Policy Development Office

**A.A.C. Title 17 – Transportation
Chapter 8
Department of Transportation
Fuel Taxes**

Article 6 – Motor Fuel Refunds

Five-Year Review Report

Douglas A. Ducey

Governor

John S. Halikowski

ADOT Director

Submitted to the Governor's Regulatory Review Council
January 2018

Governor’s Regulatory Review Council

Five-Year-Review Report

17 A.A.C. Chapter 8, Article 6

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 28-366

Specific Statutory Authority: A.R.S. §§ 28-373, 28-401, 28-5602, 28-5605, 28-5606, 28-5610, 28-5611, 28-5612, 28-5613, 28-5614, 28-5615, 28-5616, 28-5617, 28-5618, 28-5619, 28-5620, 28-5621, 28-5622, 28-5623, 28-5625, 28-5626, 28-5924, and 28-5925

2. The objective of each rule:

Rule	Objective
R17-8-601	This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article and the general procedures for motor fuel tax refunds.
R17-8-602	This rule specifies the requirements to qualify for a refund of taxes paid on exported motor fuel.
R17-8-603	This rule specifies the requirements to qualify for a refund of the use fuel tax differential.
R17-8-604	This rule specifies the requirements to qualify for a refund of taxes paid on motor fuel consumed in this state while a vehicle is off-highway.
R17-8-605	This rule specifies the requirements to qualify for a refund of taxes imposed on motor fuel consumed by a vehicle in idle status.
R17-8-606	This rule specifies the requirements to qualify for a refund of taxes imposed on motor fuel consumed by a vehicle owned by or leased to a tribal government.
R17-8-607	This rule specifies the requirements to qualify for a refund of taxes on motor fuel purchased by enrolled members of a tribe on the reservation of the tribe in which the member is enrolled if the motor fuel was not used off the reservation for a commercial purpose.
R17-8-608	This rule specifies the requirements to qualify for a refund of the tax on motor fuel used to transport forest products.
R17-8-609	This rule specifies the requirements to qualify for a refund on motor vehicle fuel used to power aircraft.
R17-8-610	This rule specifies the requirements to qualify for a refund of the tax on motor fuel lost due to fire, theft, accident, or contamination.
R17-8-611	This rule specifies the requirements for a refund of taxes paid on the bulk purchase of use fuel dispensed into a light class or exempt use class vehicle.

3. Are the rules effective in achieving their objectives?

Yes X 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
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4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

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
R17-8-603	Subsection (B) is inconsistent with A.R.S. § 28-5626. Under A.R.S. § 28-5626(C), any person who sells use fuel for delivery directly into a vehicle fuel tank must be licensed as a vendor.

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

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
R17-8-601	Subsection (B)(2)(c) is not enforced as written since the Department allows all claimants to make one request covering multiple months as long as the coverage is for the whole month and not for partial month periods. The Department had made a decision to allow for this to make it easier for the claimants, but claimants may still choose to use one request per month.
R17-8-603	Since subsection (B) is inconsistent with A.R.S. § 28-5626, the Department does not allow the exception provided in subsection (B). In addition, the process for licensing has changed and is handled electronically. The Fuel Tax Refund Compliance Unit will verify with Licensing if the vendor is licensed and if the applicant is not, the claim for refund is rejected and the claimant informed that they need to be licensed.
R17-8-608	The Department does not require claimants to submit the Arizona Commerce Authority's Use Fuel Schedule required under subsection (B), instead the Department prefers claimants to submit an equipment and vehicle listing and purchase invoices of use fuel.

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

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.

While the Department believes the rules under this Article are generally clear, concise, and understandable, the Department has determined that the following changes would improve clarity and are necessary for accuracy.

Rule	Explanation
Throughout the Article	The Department needs to make various grammatical and technical amendments throughout this Article that will help ensure consistency and conformity with the Arizona Administrative Procedure Act and Secretary of State rulemaking format and style requirements. The changes needing correcting that occur in various Sections throughout the Article include: <ul style="list-style-type: none"> a. Incorrect or missing punctuation. b. Use of inconsistent and incorrect terminology:

	<ol style="list-style-type: none"> 1. “Division”: Replace the term with “Department” to reflect organizational changes made within the Department. 2. “Claimant”: Make the term lowercase to ensure consistency and conformity with the Secretary of State rulemaking format and style requirements. 3. “Card lock”: Make it one word to be consistent with statute and industry. 4. “Bulk motor fuel”: Replace the word “motor” with “use” since the refunds are for bulk use fuel as opposed to motor fuel which allows for more fuel types (this change does not apply to the term use in R17-8-606(B)(3)). 5. “Power-take-off”: Remove the hyphen between “power” and “take” to be consistent with industry terminology. <p>c. Internal references: Correct the internal references that are missing the word “subsection” and in R17-8-601(B)(5)(d), correct the internal reference to R17-8-601(B)(2)(e) to read “subsection (B)(2)(d).”</p> <p>d. Incorrect or missing placement of “and” or “or” with enumerated lists.</p>
R17-8-601	<ol style="list-style-type: none"> a. Definitions: In subsection (A), reorder and ensure the definitions are properly alphabetized. b. “Authorized representative” and “Claimant”: Remove the term “authorized representative” and place the applicable wording into “claimant” since that is the only use of “authorized representative.” c. “Complete application”: Insert the word “all” after “includes” and insert “for the period of the refund claim” after “schedules” for clarification. d. “Daily log”: Correct the CFR reference to 49 CFR 395.8. e. “GPS”: Add language to clarify that it is the Global Positioning System and that it is a navigation system. f. “Mexican Pedimento”: Remove “Mexico’s state-owned, nationalized petroleum company” due to the change in import/export process in Mexico with the change to Petróleos Mexicanos. g. A complete application: In subsection (B)(2)(a), to clarify the accepted submittals of refund applications, add provisions stipulating that claimants may combine several months’ totals in one application, which will require the removal of subsections (B)(2)(b)(ii), since it is now unnecessary and (B)(2)(c), since that language is contradictory, and require the renumbering of the subsection and applicable references; add provision stipulating that a complete application shall be for the whole calendar month and not for a partial month; and add a provision stipulating that supplemental applications covering the same period already paid are not permitted. h. Address: In subsections (B)(4)(a) and (B)(4)(b), update the addresses to conform to the organizational changes made within the Department, in addition clarifying language needs to be added to include mail submitted by a delivery service requiring a street address and to place certified and registered mail with United States Postal Service, which allows those delivery options to a post office box and not just to a street address. i. Supporting documentation: In subsection (B)(5)(a), add language for the option to submit documentation electronically via a CD or flash drive.

R17-8-602	<ul style="list-style-type: none"> a. Qualifications for Refund: In subsection (A), add “under this Article” after “To qualify”, remove the term “use” before “fuel tax paid” because this rule applies to all motor fuel and is not limited to use fuel, and change “request for refund” to “complete application for refund.” b. Exports to another state: In subsection (A)(1)(a), add the option of a delivery ticket as proof. c. Exports to Mexico: In subsection (A)(2), due to the change in import/export process in Mexico with the change to Petróleos Mexicanos, remove the references to documentation from Petróleos Mexicanos and add language to the Mexican Pedimento to stipulate that it must indicate authorization for import and verification of the motor fuel import to the end of the sentence for better clarity and renumber the subsection. d. Exports to Navajo Nation: In subsection (A)(3)(c), correct the term for the tax return to be for a motor fuel “distributor” tax return not “distribution” tax return.
R17-8-603	<ul style="list-style-type: none"> a. Complete application: In subsection (A)(1), add a reference and language to tie in the complete application as prescribed under R17-8-601. b. Invoices: In subsection (A)(2), add “restricted” before “distributor” so it reads “restricted distributor” to conform with A.R.S. § 28-5625. c. Supporting documentation: In subsection (A)(3), in order to clarify the requirements, amend language in subsection (A)(3)(a) to indicate that the fuel log is for pumps labeled for use class but dispensed into a light class or exempt use class vehicle, correct terminology and ensure the fuel log contains the same elements as in the Department’s form as used by the applicants, remove the incorrect reference to subsection (D)(2) in subsection (A)(3)(a)(vii), and replace the language in subsection (A)(3)(b), which is unnecessary since fuel dispensed only at these pumps do not need any additional supporting documentation, with new language for the requirement of a report of the total pump sales by use fuel vendors who have both use class pumps and light class or exempt use class pumps, which the vendors currently submit. d. Unlicensed vendors: Remove subsection (B) since it contradicts A.R.S. § 28-5626 and the language is outdated since the licensing process has changed and is now an electronic process; this will also require a renumbering of this Section and applicable internal references to be updated. e. Acquisition invoices: In subsection (C)(2), update the invoice terminology by replacing “acquisition” with “purchase.” f. Cardlock Declaration of Status: In subsection (D)(2)(a), remove the end verbiage regarding being “labeled for light class or exempt use class vehicles” since it is unnecessary language. g. Mobile fueling vendors: Add language for the requirements, which are similar to the cardlock use fuel facility, of the mobile fuel vendors, who dispense motor fuel from tank vehicles into the fuel tanks of motor vehicles.
R17-8-604	<ul style="list-style-type: none"> a. Scope: In subsection (A), add “under this Article” after “refund” for clarification and consistency with other rules. b. Application: In subsection (B), add “a complete” before “application for refund” and add “as prescribed under R17-8-601” after “refund” for clarification and to tie-in with the complete application requirements under that Section.

	<p>c. Motor fuel log summary: To clarify, add “when applicable” at the end of subsection (B)(1)(b) to indicate that not all logs would need this information.</p> <p>d. Equipment and vehicle listing: In subsection (B)(2), remove “model” and “gallon capacity” and add “equipment type”, “VIN or equipment serial number”, and “gross vehicle weight” to be more accurate and better indicate what is needed by the Department from the claimants. In addition, in subsection (C)(1)(b), correct the equipment or vehicle identification number verbiage to be the equipment or vehicle listing.</p> <p>e. Proof of fuel purchase: In subsection (B)(3), remove the option of the International Fuel Tax Agreement report since it does not contain the necessary information for valid proof.</p> <p>f. Power take-off refunds: In subsection (C)(2)(d)(iv)(4), replace “151” with “150” so that it reads “More than 150 vehicles” because the number of exactly 151 vehicles is not addressed.</p>
R17-8-605	<p>a. Application: In subsection (B), add “a complete” before “application for refund” and add “as prescribed under R17-8-601” after “refund” for clarification and to tie-in with the complete application requirements under that Section.</p> <p>b. Fuel log information: In subsection (B)(1)(b)(ii), delete “vehicle make, model, year, and VIN” and replace with “number of the equipment or vehicle” for clarity and in subsection (B)(1)(b)(iii), replace “a” with “the” for clarity.</p> <p>c. Study Results: In subsection (C)(8), amend language so “a period” reads “periods” and “includes” reads “capture” for clarity.</p>
R17-8-606	<p>a. Application: In subsection (B), add “a complete” before “application for refund” and add “as prescribed under R17-8-601” after “refund” for clarification and to tie-in with the complete application requirements under that Section.</p> <p>b. Fuel receipt: In subsection (B)(1)(e), correct the term “purchaser’s” with “seller’s” for accuracy.</p> <p>c. Vehicle and equipment listing: In subsection (C), remove “model” and “gallon capacity” and add “equipment type”, “VIN or equipment serial number”, and “gross vehicle weight” to be more accurate and better indicate what is needed by the Department from the claimants.</p>
R17-8-607	<p>a. Scope: In subsection (A), add “as prescribed under R17-8-601” before “for a refund” for clarification.</p> <p>b. Complete application: In subsection (B), add “a complete” before “application for refund” and add “as prescribed under R17-8-601” after “refund” for clarification and to tie-in with the complete application requirements under that Section.</p>
R17-8-608	<p>a. Application: In subsection (B), add “a complete” before “application” and add “for refund, as prescribed under R17-8-601” after “application” for clarification and to tie-in with the complete application requirements under that Section. In addition, remove “obtained from the Arizona Department of Commerce” at the end of the sentence since not all of the documentation is obtained from the Arizona Commerce Authority.</p> <p>b. “Arizona Department of Commerce”, change the term to “Arizona Commerce Authority” to conform to the change in that agency.</p> <p>c. Equipment and vehicle listing: In subsection (B)(1), replace the “Healthy Forest Enterprise</p>

	Use Fuel Vehicle Schedule” with the equipment and vehicle listing since the Department prefers claimants to submit an equipment and vehicle listing. d. Purchase invoices: Add a provision for the claimants to submit the purchase invoices of the use fuel since the Department has determined that it needs this as adequate documentation and proof for the refund.
R17-8-609	Application: In subsection (B), add “a complete” before “application” and add “for refund, as prescribed under R17-8-601” after “application” for clarification and to tie-in with the complete application requirements under that Section.
R17-8-610	a. Application: In subsection (C), add “a complete” before “application” and add “for refund, as prescribed under R17-8-601” after “application” for clarification and to tie-in with the complete application requirements under that Section. b. Contaminated fuel. In subsection (C)(1)(f), delete “motor” from “contaminated motor fuel” to conform with the defined term in R17-8-601(A).
R17-8-611	a. Scope: In subsection (A), add “as prescribed” before “under R17-8-601(B) for clarity.” b. Application: In subsection (C), add “a complete” before “application for refund” and add “as prescribed under R17-8-601” after “refund” for clarification and to tie-in with the complete application requirements under that Section.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison:**

In fiscal year 2017, the total amount of motor fuel taxes reported to the Department by suppliers, interstate users, restricted distributors and use fuel vendors was \$774,150,394.00 and the total amount of refunds issued by the Department to suppliers, interstate users, restricted distributors and use fuel vendors was \$34,030,467.07. The total number of refunds issued was 5,154.

The costs of these rules were anticipated to be minimal and they have been to date. The industry has benefitted from a more clearly identified process regulating requests for refunds and costs to the industry have been minimal. There has been a decrease in the number of filing errors since the rules were originally adopted; there were 208 (4%) refund applications returned in fiscal year 2017 compared to the 425 (6.27%) rejected in 2006. The review and approval of studies required to test the amount of fuel consumed while in off-highway status did not involve as many employees, and were not as involved, as anticipated.

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.

The Department proposed to make and submit rule changes to the Council by January 2015. The Department did not complete the course of action indicated in the previous five-year review report for the rules because the indicated amendments were noncritical and did not rise to the level of importance above other agency rulemaking priorities. The following indicated amendments were mainly technical and tended to be clarifying changes:

1. R17-8-601, the Department proposes to amend the rule to alphabetize the definitions; to replace “Division” with “Department” to reflect organizational changes made within the Department; to correct the use of “month’s” in subsection (B)(2)(b)(ii); to add language to subsection (B)(2)(c) to clarify that applications for refunds must be submitted for whole month periods or for multiple whole month periods but not for partial months or overlapping months; to add language to clarify the different start dates for the three-year refund period for use fuel vendors, based on whether the use fuel is sold at the light class or use class fuel pump and for the light class differential of eight cents is claimed at the cash register by signing the light class log, the period starts on the purchase date in the log; to correct the address in subsections (B)(4)(a) and (b); and to correct the internal reference to subsection (3) in subsection (B)(4)(b)(ii).
2. R17-8-602, the Department proposes to amend the rule to clarify the verbiage regarding the term “Division”, to delete the term “use fuel” in subsection (A), and to replace “distribution” with “distributor” in subsection (A)(3)(c).
3. R17-8-603, the Department proposes to amend the rule to delete subsection (B) relating to refunds for unlicensed use fuel vendors, to clarify the verbiage regarding the term “Division”, to add the term “restricted” to modify “distributor” in subsection (A)(2), to replace “acquisition invoices” with “purchase invoices” in subsection (C), and to add a provision to address mobile fueling vendors.
4. R17-8-604, the Department proposes to amend the rule to clarify verbiage regarding the term “Division” and to replace “more than 151 vehicles” with “151 or more vehicles” in subsection (C)(2)(d)(iv)(4).
5. R17-8-605, the Department proposes to amend the rule to clarify the verbiage regarding “Division”, to add “and” after the comma in subsection (B)(1)(a)(v), to delete “vehicle” and to add “of the vehicle” after “VIN” in subsection (B)(1)(b)(ii), “a period” should read “periods” and “includes” should read “capture” in subsection (C)(8), and to add “and” after the semicolon in subsection (C)(9).
6. R17-8-606, the Department proposes to amend the rule to clarify the verbiage regarding “Division.”
7. R17-8-607, the Department proposes to amend the rule to clarify the verbiage regarding “Division.”
8. R17-8-608, the Department proposes to amend the rule to change “Arizona Department of Commerce” to “Arizona Commerce Authority.”
9. R17-8-610, the Department proposes to amend the rule to clarify the verbiage regarding “Division” and to delete “motor” from “contaminated motor fuel” in subsection (C)(1)(f) to conform with the defined term in R17-8-601(A).
10. R17-8-611, the Department proposes to amend the rule to clarify the verbiage regarding “Division.”

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:

In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. These rules impose minimal costs. Therefore, the Department has determined

that the following rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

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)?

There are federal fuel taxes, but these rules are for the requirements to make a claim for a refund of the state fuel taxes and are separate from the federal fuel taxes and the federal fuel tax laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The whole Article was adopted prior to July 29, 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 to amend the rules in Article 6 as identified in item 6. The Department plans to request a moratorium exemption from the Governor's Office, pursuant to Executive Order 2018-02, and file a Notice of Proposed Expedited Rulemaking for Chapter 8, Article 6, within 180 days of approval of this report and have the Notice of Final Expedited Rulemaking filed for the Council's January 2019 agenda.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 8, Article 6

Rule Text

ARTICLE 6. MOTOR FUEL REFUNDS

R17-8-601. Definitions and General Provisions

A. Definitions. The following definitions apply to this Article unless otherwise specified:

“Application” means a request for refund of motor fuel taxes, made on a form provided by the Division.

“Authorized representative” means a person who has authority to file an application on behalf of the Claimant, as authorized by a notarized power of attorney.

“Card lock use fuel facility” has the same meaning as a vendor as prescribed under A.R.S. § 28-5601(40), and satisfies requirements under A.R.S. § 28-5605.

“Claimant” means the taxpayer or an authorized representative of the taxpayer, also referred to as applicant.

“Complete application” means an application that includes supporting documentation and schedules, Claimant signature, and provides all information required on the application.

“Contaminated Fuel” means motor fuel under A.R.S. § 28-5601(18), which is accidentally tainted, and which is unsalable for highway use.

“Declaration of Status” means a statement on a form provided by the Division that a light class or exempt use class vehicle qualifies for use fuel tax differential under A.R.S. § 28-5606(B)(2).

“Daily log” means notations made by a driver of a commercial motor vehicle which records a daily record of duty status as specified under 49 CFR 395.5.

“Destination state” means a state in the United States, other than the state of Arizona.

“Diversion” means delivery of motor fuel to a destination state other than the intended destination as signified on a carrier bill of lading.

“Exempt use class motor vehicle” means a vehicle exempt from gross weight fees under A.R.S. § 28-5432.

“GPS” means a Global Positioning System of satellites and receiving devices used to compute vehicle position and time information.

“Highway” has the meaning prescribed under A.R.S. § 28-5601(11), and also includes a:

Port of entry,

Weigh station, or

Public rest area.

“Idle status” means a vehicle that is stationary, its engine continues to operate, and it is located in Arizona, but off-highway.

“Light class motor vehicle” has the same meaning as prescribed under A.R.S. § 28-5601(17).

“Licensee” has the same meaning as prescribed under A.R.S. § 28-5613.

“Mexican Pedimento” means an authorizing permit document issued by Mexico’s state-owned, nationalized petroleum company.

“Motor fuel” has the meaning prescribed under A.R.S. § 28-5601(18).

“Motor fuel tax” means any tax on motor fuel imposed under A.R.S. Title 28, Chapter 16, Article 1.

“Notification date” means the date on a notice sent by the Division.

“Off-highway” means any location that is not on a highway in this state.

“Person” has the same meaning prescribed under A.R.S. § 28-5601(21).

“Power-take-off” means the operation of vehicle-mounted, auxiliary equipment that is powered by energy supplied by the same engine that propels the motor vehicle, but does not include equipment related to the operation of a vehicle and powered by the vehicle’s engine, including air conditioning, alternator, automatic transmission, and power steering.

“Tribal agreement” means an agreement between the Division and a Native American tribe for the administration of motor fuel taxes.

“Trip” means travel within or through Arizona’s state borders with a designated beginning and ending location.

“Use class motor vehicle” has the meaning prescribed under A.R.S. § 28-5601(37).

“Use fuel” has the same meaning as prescribed under A.R.S. § 28-5601(38).

“Use fuel tax differential” means the difference between the use fuel tax rate applicable to light class motor vehicles or exempt use class motor vehicles, and the use fuel tax rate applicable to use class motor vehicles.

“Vendor” has the same meaning as prescribed under A.R.S. § 28-5601(40).

“VIN” means Vehicle Identification Number.

B. General Provisions.

1. Scope. For purposes of administering A.R.S. § 28-5612 this Article applies to a person or licensee under A.R.S. §§ 28-5612 and 28-5613.
2. Application.
 - a. A complete application for refund of motor fuel tax shall be submitted to the Division.
 - b. An application for refund for an amount of \$10 or less:
 - i. Shall be accepted only once within a consecutive six-month period, and
 - ii. If the aggregate monthly total of a request for refund is less than \$10 the applicant may combine several month’s totals on one request for refund.
 - c. A Claimant shall submit to the Division a separate application for refund for each calendar month.
 - d. When the Division determines that an application is incomplete under these rules and A.R.S. Title 28, Chapter 16, Article 1, the Division shall suspend processing of the application for refund and
 - i. Notify the Claimant of the deficiencies, and
 - ii. Return the application to the Claimant.
 - e. A Claimant whose application is returned as incomplete under A.R.S. Title 28, Chapter 16, Article 1 and these rules shall have 60 days from the notification date to remedy the deficiencies.
 - f. If the Claimant fails to remedy the deficiencies under subsection (B)(2)(d) within 60 days of the notification date and return a complete application, the Division shall deny the application for refund.
 - g. If the Division denies an application because the Claimant failed to remedy a deficiency, the deadline to submit a new application shall be governed by the time-frames established in subsection (B)(3).
3. Application filing. A complete application for refund shall be submitted to the Division as provided within the following table:

Refund Type	Claimant Status	
	Licensee	Non-Licensee
Sections		
R17-8-602. Exports	3 years from date of export	3 months from date of export
R17-8-603. Use Fuel Vendor	3 years from date of sale	6 months from date of sale
R17-8-604. Off-Highway	3 years from date of purchase	6 months from date of purchase
R17-8-606. Indian Tribal Government	If no Tribal Agreement with the Division, 6 months from date of purchase	
R17-8-607. Indian Tribal Member		
R17-8-608. Transport of Forest Products; Healthy Forest Initiative	March 1st of the year following calendar year consumed	
R17-8-609. Motor Vehicle Fuel Used in Aircraft	6 months from date of purchase	
R17-8-610. Motor Vehicle Fuel Losses Caused by Fire, Theft, Accident, or Contamination	3 years from date of event	6 months from date of event
R17-8-611. Bulk Purchase of Motor Fuel	3 years	6 months

4. Filing location and timely filing. A Claimant shall submit an application under this Article to the Division as provided under A.R.S. § 1-218, and this subsection:
 - a. Hand delivered, certified or registered mail:
 - i. Arizona Department of Transportation, Motor Vehicle Division
Fuel, Licensing, & Refund Compliance Unit
1801 W. Jefferson St., Rm. 201
Phoenix, AZ 85007;
 - ii. Hand delivered: the Division time and date stamp will be used to determine whether a complete application was received within the required time-frames established under subsection (B)(3).
 - iii. Certified or registered mail: the date of receipt by the designated delivery service shall be used to determine whether an application was received by the Division within the required time-frame established under subsection (B)(3).
 - b. United States Postal Service:
 - i. Arizona Department of Transportation, Motor Vehicle Division
Fuel, Licensing, & Refund Compliance Unit, Mail Drop 521M
P.O. Box 2100
Phoenix, AZ 85001
 - ii. The postmark date will be used to determine whether an application was received by the Division within the required time-frames established under subsection (3).
5. Supporting documentation.
 - a. The Division shall accept any of the following forms of documentation to support a claim for refund, which may be admissible to the same extent as an original:

- i. Photocopies,
 - ii. Duplicates, or
 - iii. Document image.
 - b. The Division shall not return documentation submitted to support an application for refund once an application for refund has been accepted as complete.
 - c. If the Division determines that the supporting documentation required under these rules does not provide sufficient evidence of motor fuel tax paid, the Division may require the Claimant to produce additional information.
 - d. Failure to produce additional documentation as requested by the Division, within the time prescribed under R17-8-601(B)(2)(e), shall result in a denial of refund request being issued by the Division.
6. Record retention and review.
 - a. A licensee shall maintain the records relied upon to support the application for refund as specified under A.R.S. Title 28, Chapter 16, Article 1 and these rules, and produce those records to the Division when requested.
 - b. Unless required by A.R.S. Title 28, Chapter 16 to maintain records relied upon to substantiate an application for refund for a shorter or longer period of time, a licensee shall retain the records required to support an application for refund for three years from the issuance date of refund by the Division.
 - c. The Division reserves the right to review a Claimant's records used to substantiate an application for refund under these rules.
7. If at any time, the Division discovers an overpayment of motor fuel tax refunded to a Claimant under these rules, the Division shall recover payment under A.R.S. § 28-5612.
8. Notification; violation; suspension; administrative hearing.
 - a. Denial of request for refund. If the Division denies an applicant's request for refund the Division shall send notification of denial to the Claimant.
 - b. Administrative Hearings. Hearings, rehearings, and appeals shall be noticed and conducted in accordance with A.R.S. § 28-5924 and A.A.C Title 17, Chapter 1, Article 5.
 - c. Suspension due to violation of A.R.S. § 28-5612.
 - i. If the Division finds that a Claimant is in violation of A.R.S. § 28-5612, the Division shall send notification to the Claimant identifying the violation.
 - ii. A Claimant determined by the Division to be in violation of state laws and regulations under A.R.S. § 28-5612 and these rules, may be suspended from filing motor tax fuel refunds for six consecutive months from the notification date of the Division for motor fuel tax paid during the suspension period.
 - iii. If a suspension is set aside under A.R.S. § 28-5612, a Claimant may again apply to the Division for refund.
 - iv. The time-frame requirements under subsection (B)(3) shall not toll while pursuit of remedy by the Claimant or the Division under this subsection.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-602. Exports

- A.** To qualify for a refund of Arizona use fuel tax paid on motor fuel exported, a Claimant shall provide the following documents to support a request for refund:
1. Export to another state within the United States:
 - a. Terminal, carrier, or bulk plant bill of lading showing the point of origin and destination of the motor fuel;
 - b. Invoice or monthly supplier report schedule indicating that the Arizona tax was paid;
 - c. Motor fuel invoice or shipping document reflecting final destination and gallons exported;
 - d. Tax report establishing that the destination state's tax was reported;
 - e. Name and license number issued by the destination state of the licensee responsible for payment of motor fuel tax and tax reporting to the destination state; and
 - f. If the export of motor fuel is a diversion, the Claimant shall provide the following documents to the Division:
 - i. A carrier bill of lading; and
 - ii. Other documentation which supports the delivery of motor fuel to a specific location, other than its intended destination, and
 2. Exports to Mexico:
 - a. Documentation under (A)(1),
 - b. Documentation that Petróleos Mexicanos authorized the motor fuel import,
 - c. U.S. Department of Commerce export documentation, and
 - d. Copy of Mexican Pedimento.
 3. Exports to Navajo Nation:
 - a. Documentation under (A)(1),
 - b. Name and license number of the Navajo Nation distributor,
 - c. Copy of Navajo Nation manifest or copy of the Navajo Nation monthly motor fuel distribution tax return, and
 - d. Invoice showing the Navajo Nation tax was included in total amount due.
- B.** The description of the motor fuel exported shall be identical on all documentation submitted in support of a request for refund of motor fuel tax paid on export.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-603. Use Fuel Vendors

- A.** To qualify for refund of the use fuel tax differential, a use fuel vendor shall submit to the Division:
1. A complete application;

2. Supplier or distributor invoice, documenting the use fuel taxes that the vendor paid for the fuel; and
 3. Supporting documentation:
 - a. For sales of use fuel dispensed from a pump which is labeled for use class and light class vehicles, a fuel log of use fuel tax differential sales, submitted on a format approved by the Division that includes the following vendor information:
 - i. Vendor name;
 - ii. Vendor address;
 - iii. Retail branch location;
 - iv. Division issued vendor license number;
 - v. Date of sale to consumer;
 - vi. License plate number and name of jurisdiction that issued the license plate of the motor vehicle into which the fuel was dispensed;
 - vii. Number of gallons of use fuel that were purchased and dispensed into the fuel tank of a qualifying vehicle under subsection (D)(2);
 - viii. Amount of fuel tax refunded to purchaser; and
 - ix. Purchaser's signature indicating receipt of the refund made by a vendor of use fuel, submitted on a vendor use fuel refund log, provided by the Division.
 - b. For sales of use fuel dispensed from a pump that is labeled for light class or exempt use class only, items under subsection (A)(1) and (2).
- B.** The Division shall not accept an application for a period that a vendor of use fuel was not licensed under A.R.S. § 28-5605, except as provided under this subsection.
1. An application for a period that a vendor was not licensed under A.R.S. § 28-5605 will be accepted by the Division if the Claimant submits an application to the Division for a vendor license at the time initial application for refund is submitted.
 2. The unlicensed use fuel vendor shall demonstrate compliance with A.R.S. § 28-5605(B), at the time of the applicable use fuel sale to the satisfaction of the Division by the following means:
 - a. Photographs,
 - b. Diagrams,
 - c. Statements, and
 - d. Any other documentation approved by the Division which demonstrates compliance.
- C.** A licensed use fuel vendor shall maintain the following records under R17-8-601(B)(6):
1. Records of daily sales to light class or exempt use class motor vehicles which provides details for each use fuel sale to include the following:
 - a. Gallonage,
 - b. Transaction date,
 - c. Price per gallon, and
 - d. Product description.

2. Acquisition invoices of use fuel,
3. Inventory records of use fuel, and
4. Vendor use fuel refund log under subsection (A)(3)(a).

D. Card lock use fuel facility.

1. Applicability. For purposes of receiving a refund from the Division for use fuel sold to a light class or exempt use class vehicle at a card lock use fuel facility, the vendor shall:
 - a. Submit documentation to the Division under subsection (A)(3), except subsection (A)(3)(a)(ix);
 - b. Have controlled access to the card lock use fuel facility in compliance with A.R.S. § 28-5605;
 - c. Restrict use of a card lock use fuel facility to those approved purchasers that have completed a Declaration of Status; and
 - d. Shall maintain records under subsection (C).
2. Declaration of Status.
 - a. A vendor shall require that a purchaser of use fuel for use in light class or exempt use class vehicles complete and submit to the vendor a Declaration of Status for each vehicle that will have the ability to obtain fuel at a card lock use fuel facility labeled for light class or exempt use class vehicles.
 - b. A Declaration of Status must be completed for each additional vehicle prior to purchase of motor fuel at a card lock use fuel facility.
 - c. A Declaration of Status shall be made on a form provided by the Division and may be obtained at www.azdot.gov.
 - d. The original signature of the purchaser shall be included on the Declaration of Status.
 - e. A vendor who operates a card lock use fuel facility must retain all original Declarations of Status received from a purchaser in the vendor's files under R17-8-601(B)(6), and shall make the Declarations of Status available for review by the Division.
3. Labeling. A card lock vendor shall comply with state law by placing a label with verbiage and specifications as required under A.R.S. § 28-5605.
 - a. Card lock use fuel facilities shall post a use fuel tax rate label provided by Division.
 - b. Vendors found in violation of labeling regulations shall be subject to penalties under A.R.S. § 28-5605.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-604. Off-Highway

- A.** The Division shall refund the Arizona motor fuel tax paid on the motor fuel consumed in Arizona while the vehicle is off-highway.
- B.** An application for refund shall include the following supporting documentation:
 1. System or manual motor fuel log summary by VIN which includes the following:
 - a. Items under subsection (C)(1)(a), and
 - b. Mileage consumed off-highway.

2. Equipment and vehicle listing which includes year, make, model, gallon capacity, and
 3. Proof of fuel purchase which may include:
 - a. Motor fuel invoices,
 - b. Motor fuel purchase receipts,
 - c. Computerized fuel purchase statement, and
 - d. International Fuel Tax Agreement reports.
- C. A Claimant shall provide the following documentation to the Division for the identified refund types:
1. Refrigeration unit:
 - a. Fuel log summary consisting of, at a minimum, the following information:
 - i. Fuel type,
 - ii. Date fuel dispensed,
 - iii. Number of gallons dispensed, and
 - iv. Identification number of equipment or vehicle into which the fuel was dispensed.
 - b. Equipment or vehicle identification number.
 2. Power take-off: A motor fuel consumption study under this Section shall be conducted at the Claimant's expense, and shall be approved by the Division prior to the initial application for refund, and shall include the following information:
 - a. A description of the methodology used to determine the percentage of exempt motor fuel consumed by the power-take-off;
 - b. A list of all equipment using motor fuel;
 - c. All operations where motor fuel is consumed;
 - d. Testing and study components shall be a true representation of the operation of business as follows:
 - i. Vehicles shall be grouped into similar categories based on similar power-take-off units and similar gross vehicle weight.
 - ii. Vehicles selected shall be representative of the category as to age, make, model, and engine size.
 - iii. Each vehicle category shall be tested individually to determine the amount of motor fuel consumed by the power-take-off unit.
 - iv. If a vehicle category contains:
 - (1) Less than four vehicles, all vehicles must be included in the test study.
 - (2) Thirty or fewer vehicles, then at least three vehicles must be included in the test sample.
 - (3) More than 30 and fewer than 151 vehicles, then at least 10 percent of the vehicles must be included in the test sample.
 - (4) More than 151 vehicles, then at least 15 vehicles must be included in the test sample.
 - e. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
 - f. Results of a period of a study which shall include a period covering cyclical or seasonal impacts which includes low and high points of fuel usage for exempt or non-exempt purposes;

- g. Results from a test or study shall be a duration of at least two weeks; and
 - h. The approved power-take-off percentage may then be used for three years or shall be updated as requested by the Division.
3. Idle time under R17-8-605.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-605. Idle Time

- A.** Under the provisions of this Article, the Division shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a Claimant's vehicle while in idle status.
- B.** In addition to the application under R17-8-601, a Claimant shall provide the following documentation to the Division to verify the quantity of motor fuel consumed by a vehicle while in idle status:
 - 1. Documentation that proves the total quantity of motor fuel purchased by the Claimant in Arizona during refund period;
 - a. An invoice that contains the following information:
 - i. Date of purchase,
 - ii. Seller's name,
 - iii. Physical address where motor fuel was purchased,
 - iv. Number of gallons of motor fuel purchased,
 - v. Type of motor fuel purchased,
 - vi. Price per gallon of motor fuel.
 - b. A fuel log shall be maintained that contains the following information:
 - i. The date that the motor fuel was placed in the fuel tank of a motor vehicle;
 - ii. The vehicle make, model, year, and VIN in which the motor fuel was placed; and
 - iii. The number of gallons of motor fuel placed in a fuel tank.
 - c. In lieu of subsections (B)(1)(a) and (b), a licensee may submit a summary of the fuel purchases made by the Claimant for the vehicle during the refund period. The summary shall contain the same information required to be on a fuel invoice under subsection (B)(1)(a).
 - 2. Documentation that proves that the Claimant's vehicle was located in Arizona, off-highway, at the time it was in idle status, and the length of time the vehicle was in idle status, using one or more of the following methods:
 - a. Nonscheduled route:
 - i. A logbook, approved by the Division, maintained for each vehicle that identifies the date and time when the idle status started, the date and time when the idle status ended, and a physical description of the location of the vehicle during the idle status that establishes that the vehicle was in Arizona, but located off-highway.

- ii. The driver shall make an affirmative statement in the driver's daily log that the engine was operating during the idle status and shall prepare the logbook entries simultaneously with the idle status.
 - iii. The Claimant shall retain trip schedules or bills of lading to support the logbook entries.
 - b. Scheduled route:
 - i. Published schedule which includes arrival at and departure from fixed locations at prescribed times, or
 - ii. A record of average wait times recorded in a daily log consisting of arrival at and departure from fixed locations at prescribed times, approved by the Division.
 - iii. The Claimant shall document that the engine remained running during the scheduled stops.
 - c. Global Positioning System:
 - i. A report from a GPS, approved pursuant to subsection (C).
 - ii. The Claimant shall maintain trip schedules or bills of lading to support GPS reports.
- 3. Documentation that proves the quantity of motor fuel consumed by the Claimant's vehicle while in idle status;
 - a. The Claimant shall document the number of the gallons of motor fuel consumed per hour to maintain idle status by one or more of the following methods:
 - i. Engine manufacturer's standard specifications that establish the quantity of motor fuel consumed per hour while the vehicle is in idle status.
 - ii. Computerized system that computes the quantity of motor fuel consumed per hour while in idle status.
 - iii. A study or test that determines motor fuel consumption per hour while in idle status, prior to the period covered by the refund claim.
 - b. A study under this Section shall meet the following specifications:
 - i. The study shall be conducted at the Claimant's expense,
 - ii. The methodology shall be approved by the Division prior to conducting the study under subsection (C),
 - iii. The fuel consumption characteristics of the vehicles and their operation during the period of the refund shall not vary significantly from the conditions that existed during the study, and
 - iv. The results of the study shall be approved by the Division prior to the time period covered under the refund claim.
- C. The Division shall review and approve the method used and the data captured by a GPS or manual report prior to the initial claim for refund and the report shall include the following components:
 - 1. A description of the methodology used to determine the percentage of exempt use fuel consumption;
 - 2. A list of all equipment consuming use fuel;
 - 3. A description of all of the vehicle operations where use fuel is consumed;
 - 4. Whether vehicles are traveling scheduled routes, and whether seasonal or cyclical events affect use fuel;

5. Testing and study components shall be a true representation of operation of business as follows:
 - a. Vehicles shall be grouped into similar categories based on similar units and similar gross vehicle weight.
 - b. Each vehicle category must be tested individually to determine the idle time fuel consumption.
 - c. Vehicles selected for testing shall be representative of the category as to age, make, model, and engine size.
 6. Study components under R17-8-604(C)(2)(d)(iv);
 7. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
 8. Study results under this subsection shall include a period covering cyclical or seasonal impacts which includes low and high points of fuel usage for exempt or non-exempt purposes;
 9. Results from a test or study shall be of duration of at least two weeks;
 10. The approved idle time study may then be used for three years or shall be updated as requested by the Division.
- D.** A Claimant shall submit technical documentation that details the operating system of any system or manual study used including, but not limited to, the following:
1. Identification of the computer system, including the name of the manufacturer, name of the software, and software version number;
 2. Identification of vehicle engines on which the software will be used by the Claimant, including makes, models, years, and fuel types;
 3. Description of the methodology used by computer system to determine idle status;
 4. Description of the methodology used to determine fuel consumption while in idle status;
 5. Description of the methodology used to determine the location of the vehicle during idle status; and
 6. Operating policies and procedures for the systems that are used in the Claimant's business operations.
- E.** The Claimant shall provide additional supporting documentation if there is any update to the system study for which documentation was initially submitted and approved.
1. A Claimant shall submit to the Division an updated study under this Section three years from the date of Division approval or at the Division's request.
 2. A study under this Section shall be conducted at the Claimant's expense.
 3. The methodology used in support of a study under these rules shall be approved by the Division prior to conducting the study under subsection (C).
 4. If the Division rejects the results of a study, a Claimant may request a hearing under A.R.S. § 28-5924.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-606. Tribal Government

- A. The Division shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a vehicle owned or leased to a tribal government under this Article.
- B. An application for refund shall include all of the following supporting documentation for each vehicle:
 - 1. Detailed fuel receipt statement which includes the following purchase information:
 - a. Date of fuel purchase,
 - b. Gallonage,
 - c. Location,
 - d. Fuel type, and
 - e. Purchaser's name and address.
 - 2. Fuel purchase summary by vehicle which includes documentation under (B)(1); or
 - 3. Bulk motor fuel purchase invoice; which includes:
 - a. Gallonage,
 - b. Delivery location,
 - c. Fuel type, and
 - d. Tax rate paid.
 - 4. If vehicle is leased, a copy of the lease agreement.
- C. A vehicle and equipment listing shall be maintained by the tribal government to include year, make, model, gallon capacity, and VIN.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-607. Tribal Member

- A. Enrolled members of a tribe may make application to the Division for a refund of the Arizona motor fuel taxes on fuel purchased on the reservation of the tribe in which the member is enrolled, provided the motor fuel was not used off the reservation for a commercial purpose.
- B. An application for refund shall include the following supporting documentation:
 - 1. Copy of the vehicle registration,
 - 2. Copy of the Tribal member identification card,
 - 3. Receipt of motor fuel purchased on the reservation, and
 - 4. Signed statement certifying motor fuel was used for non-commercial purposes under A.R.S. § 28-5610(A).

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-608. Transport of Forest Products; Healthy Forest Initiative

- A. A claim for refund, pursuant to A.R.S. § 28-5614(B), of the tax on motor fuel used to transport forest products on Arizona highways shall comply with the requirements of R17-8-601.

- B.** An application shall include the following supporting documentation obtained from the Arizona Department of Commerce:
1. A completed Healthy Forest Enterprise Use Fuel Vehicle Schedule,
 2. Certification issued by the Arizona Department of Commerce pursuant to A.R.S. § 41-1516 for the same period of time as the refund claim,
 3. Memorandum of Understanding between the Arizona Department of Commerce and the Claimant pursuant to A.R.S. § 41-1516,
 4. Individual Vehicle Mileage and Fuel Report Summaries for each vehicle, and
 5. Changes to the Arizona Department of Commerce Certification.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-609. Motor Vehicle Fuel Used in Aircraft

- A.** A claim for the refund of the tax, pursuant to A.R.S. § 28-5611(A)(2) or non-agricultural purposes under A.R.S. § 28-5611(B), on motor vehicle fuel used to power aircraft shall comply with the requirements of R17-8-601 and subsections (B) and (C) of this Section.
- B.** An application shall include the following supporting documentation:
1. Motor fuel log summary by aircraft which includes:
 - a. Purchase date,
 - b. Name and location of vendor of fuel to show that Arizona motor fuel tax was included in the purchase price,
 - c. Gallons dispensed,
 - d. Fuel type, and
 - e. Manner consumed.
 2. List of aircraft to include, year, make model, and N-number assigned by the Federal Aviation Administration, and
 3. Purchase invoice indicating items under (B)(1) and amount of tax paid amount.
- C.** Motor vehicle fuel used to power aircraft for agricultural purposes shall, in addition to subsection (B), include a flight log detailing the purpose of use.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-610. Motor Fuel Losses Caused by Fire, Theft, Accident, or Contamination

- A.** A Claimant may apply to the Division for a refund of the tax on motor fuel lost due to fire, theft, accident, or contamination.
- B.** A request for refund pursuant to A.R.S. §§ 28-5610 or 28-5611 of the tax on motor fuel that is lost due to fire, theft, accident, or contamination shall comply with the requirements of R17-8-601.

- C. An application shall include the following supporting documentation:
1. Signed statements from persons with personal knowledge regarding the facts and circumstances of the loss, including:
 - a. Date of loss or contamination,
 - b. Location where the loss or contamination occurred,
 - c. Detailed explanation regarding the nature of the loss or contamination,
 - d. Name and contact information of persons who witnessed loss or contamination,
 - e. Quantity of fuel lost or contaminated, and
 - f. Disposition of the contaminated motor fuel.
 2. Copies of records that substantiate the date of acquisition and quantity acquired of the fuel lost as well as the fact the Arizona motor fuel tax was paid by the Claimant when the fuel was acquired.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

R17-8-611. Bulk Purchase of Motor Fuel

- A. A request for refund of taxes paid on the bulk purchase of motor fuel dispensed into a light class, or exempt use class vehicle, shall be submitted to the Division under R17-8-601(B), on an application provided by the Division.
- B. Bulk motor fuel shall be purchased and consumed in Arizona to qualify for refund.
- C. An application for refund shall include the following supporting documentation:
1. Invoice that contains the following information:
 - a. Name and address of vendor,
 - b. Tax rate,
 - c. Product type,
 - d. Delivery date,
 - e. Quantity of fuel,
 - f. Invoiced amount, and
 - g. A statement from the seller of the motor fuel that the motor fuel is non-dyed use fuel.
 2. Fuel usage log which includes the following information:
 - a. Date fuel dispensed,
 - b. VIN of vehicle into which fuel was dispensed,
 - c. Gallons dispensed, and
 - d. Fuel type.
 3. Annual vehicle listing to include make, model, year, and VIN.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1).

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 8, Article 6

Statutory Authority

Arizona Department of Transportation
Five-year Review Report
17 A.A.C. Chapter 8, Article 6

Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Authority for Rulemaking

A.R.S. § 28-373. Refunds; limitations

- A.** If the director determines that any tax, penalty, fee or interest has been overpaid or collected that was not lawfully due, the director shall state this fact in the director's records. The director shall either credit the overpayment on an amount due from the person or make a refund to the person or the person's successors, administrators, executors or assignees from receipts that are in the possession of the director and that are collected under the same statute.
- B.** Except as provided in this section and except as otherwise provided in this title, application fees, public record fees, permit fees, license fees and fees and taxes paid for vehicle registration are not refundable once paid.
- C.** Notwithstanding subsection B, the director may refund the fees prescribed in subsection B if both of the following conditions exist:
 1. The service has not been rendered or the permit has not been used.
 2. It has been determined that the director erred in accepting payment or that the director contributed to a misunderstanding on the part of the person making payment by providing inaccurate, misleading or incorrect information.
- D.** Except as otherwise provided by statute, a person shall make a request for a refund to the director within one year of the date of payment on which a claim for refund is made.

A.R.S. § 28-401. Intergovernmental agreements

- A.** The department may contract under title 11, chapter 7, article 3 with a state public agency in this state or any other state if the general welfare of this state will be promoted and protected and if not in conflict with any other law.

- B.** The director shall enter into agreements on behalf of this state with political subdivisions or Indian tribes for the improvement or maintenance of state routes or for the joint improvement or maintenance of state routes.
- C.** The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with a county with a population of more than two million persons for the construction, design, acquisition and attendant acquisition costs of a county highway bridge to provide direct access to commercial, residential and recreational facilities. The agreement shall:
 - 1. Contain the commitment of the county to pay other monies for the purpose of financing the bridge.
 - 2. State the responsibilities of each party with regard to planning, designing, constructing, owning and maintaining the bridge.
 - 3. Provide that payment for the costs of the bridge shall be made from contributions from the parties to the agreement and other contributors before the use of state transaction privilege tax distributions.
- D.** The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with a county with a population of more than two million persons for the design, reconstruction and improvement costs of a county highway approaching and traversing a bridge constructed pursuant to subsection C of this section. The agreement shall:
 - 1. Contain the commitment of the county to pay other monies for the purpose of financing the highway improvements.
 - 2. State the responsibilities of each party with regard to planning, designing, constructing, owning and maintaining the highway.
 - 3. Provide that payment for the costs shall be made from contributions from the parties to the agreement and other contributors before the use of state transaction privilege tax distributions.
 - 4. Provide for reimbursement to the state general fund of the amount of highway improvement revenues paid to the highway improvement interest fund or redemption fund under section 28-7656, subsection B on the voluntary conveyance of a majority ownership interest in a sports entertainment facility as prescribed by section 42-5032, subsection B.
 - 5. Contain the representation of the county that it has the legally binding assurance of the owner of a sports entertainment facility as defined in section 42-5032, subsection E, that the owner will reimburse the county for any and all expense the county may incur under subsection D, paragraph 4 of this section and section 42-5032, subsection B.
 - 6. Be submitted to the joint legislative budget committee for its review before the execution of the agreement.
- E.** The department may enter into agreements with Indian tribes to provide a method or formula to refund taxes paid on exempt motor fuel purchases or use pursuant to this title. For the purposes of this subsection, “motor fuel” has the same meaning prescribed in section 28-5601.
- F.** The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 that obligates the department to indemnify and defend a city, town, county, flood control district, irrigation district or agricultural improvement district or any other political subdivision or governmental agency against claims of liability for injuries, losses or damages incurred in any way as a result of the acts or omissions of the department, including acts, errors, omissions or mistakes of any person for which the department may be liable,

and arising out of the construction, operation or maintenance of department projects or facilities or use of department projects or facilities. A city, town, county, flood control district, irrigation district or agricultural improvement district or any other political subdivision or governmental agency may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 that obligates such an entity to indemnify and defend the department against claims of liability for injuries, losses or damages incurred in any way as a result of the acts or omissions of such entity, including acts, errors, omissions or mistakes of any person for which the entity may be liable, and arising out of the construction, operation or maintenance of projects or facilities or use of projects or facilities. Any indemnification pursuant to an intergovernmental agreement must be approved by state risk management in the department of administration.

A.R.S. § 28-5602. Enforcement

The following persons have authority to enforce this article:

1. The director of the department of transportation and the director's duly appointed agents.
2. The associate director of the weights and measures services division of the Arizona department of agriculture and the associate director's duly appointed agents.
3. The department of public safety and its officers.

A.R.S. § 28-5605. Use fuel tax collection; fuel dispenser labels; civil penalty

- A.** A vendor shall not collect more than the use fuel tax imposed pursuant to section 28-5606, subsection B, paragraph 1 from a person who purchases use fuel for use in the propulsion of a light class motor vehicle on a highway in this state or for use in the propulsion of a use class motor vehicle that is exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 on a highway in this state.
- B.** Subject to the following, vendors shall label use fuel dispensers pursuant to standards established by the weights and measures services division of the Arizona department of agriculture:
 1. Labels on use fuel dispensers shall notify the purchaser of the state use fuel tax rate. The department of transportation shall provide the use fuel dispenser labels to vendors.
 2. If the vendor only sells use fuel to light class motor vehicles or use class motor vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433, or both, the vendor shall post that limitation and include the tax rate prescribed in section 28-5606, subsection B, paragraph 1.
 3. If light class motor vehicles and use class motor vehicles are allowed to fuel at the same use fuel dispenser, the vendor shall include the tax rate prescribed in section 28-5606, subsection B, paragraph 2 and post a notice that the tax rate for light class motor vehicles and use class motor vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 is the tax rate prescribed in section 28-5606, subsection B, paragraph 1.
 4. If the vendor prohibits light class motor vehicles or use class motor vehicles from dispensing fuel from a specific fuel dispenser, the vendor shall post that prohibition.
 5. In addition to posting a sign on a use fuel dispenser that indicates that the price of the use fuel dispensed from that dispenser includes the applicable federal and state taxes, a vendor that dispenses use fuel from a

cardlock facility shall require the purchaser of use fuel for light class motor vehicles or use class motor vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433, or both, to complete a declaration of status in a form and a manner approved by the director. For the purposes of this paragraph, “cardlock facility” means a use fuel vendor that satisfies all of the following:

- (a) Is licensed in this state.
- (b) Sells only to preapproved purchasers of use fuel who have been issued cards, keys or other controlled access to identify the exclusive withdrawal of that particular purchaser.
- (c) Does not have a representative on the premises to observe the withdrawal of use fuel from the vendor’s storage.
- (d) Measures volumes of fuel dispensed by pump meters or other accurate recording devices.

C. A vendor who violates subsection B of this section is subject to a civil penalty of one hundred dollars for each day the violation continues.

A.R.S. § 28-5606. Imposition of motor fuel taxes

A. In addition to all other taxes provided by law, a tax of eighteen cents per gallon is imposed on motor vehicle fuel possessed, used or consumed in this state.

B. To partially compensate this state for the use of its highways:

- 1. A use fuel tax is imposed on use fuel used in the propulsion of a light class motor vehicle on a highway in this state at the same rate per gallon as the motor vehicle fuel tax prescribed in subsection A of this section, except that there is no use fuel tax on alternative fuels.
- 2. A use fuel tax is imposed on use fuel used in the propulsion of a use class motor vehicle on a highway in this state at the rate of twenty-six cents for each gallon, except that there is no use fuel tax on alternative fuels and use class vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 are subject to the use fuel tax imposed by paragraph 1 of this subsection.
- 3. Through December 31, 2024, a use fuel tax is imposed on use fuel used in the propulsion of a motor vehicle transporting forest products in compliance with the requirements of section 41-1516 on a highway in this state at the rate of nine cents for each gallon, except that there is no use fuel tax on alternative fuels.

C. The motor vehicle fuel and use fuel taxes imposed pursuant to this section and the aviation fuel taxes imposed pursuant to section 28-8344 are conclusively presumed to be direct taxes on the consumer or user but shall be collected and remitted to the department by suppliers for the purpose of convenience and facility only. Motor vehicle fuel, use fuel and aviation fuel taxes that are collected and paid to the department by a supplier are considered to be advance payments, shall be added to the price of motor vehicle fuel, use fuel or aviation fuel and shall be recovered from the consumer or user.

D. Motor vehicle fuel and use fuel taxes imposed pursuant to this section on the use of motor vehicle fuel and use fuel and the aviation fuel taxes imposed pursuant to section 28-8344 on the use of aviation fuel, other than by bulk transfer, arise at the time the motor vehicle, use or aviation fuel either:

- 1. Is imported into this state and is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state.

2. Is removed, as measured by invoiced gallons, from the bulk transfer terminal system or from a qualified terminal in this state.
 3. Is removed, as measured by invoiced gallons, from the bulk transfer terminal system or from a qualified terminal or refinery outside this state for delivery to a destination in this state as represented on the shipping papers if a supplier imports the motor vehicle, use or aviation fuel for the account of the supplier or the supplier has made a tax precollection election pursuant to section 28-5636.
- E.** If motor fuel is removed from the bulk transfer terminal system or from a qualified terminal or is imported into this state, the original removal, transfer or importation of the motor fuel is subject to the collection of the tax. If this motor fuel is transported to another qualified terminal or reenters the bulk transfer terminal system, the subsequent sale of the motor fuel on which tax has been collected is not subject to collection of an additional tax if proper documentation is retained to support the transaction.

A.R.S. § 28-5610. Exemptions

- A.** The following are exempt from motor vehicle fuel and use fuel taxes imposed by section 28-5606 and aviation fuel taxes imposed by section 28-8344:
1. Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper or bill of lading and that is either:
 - (a) Exported by a supplier who is licensed in the destination state.
 - (b) Sold by a supplier to a distributor for immediate export.
 2. Motor fuel that was acquired by a distributor, as to which the tax imposed by this article or section 28-8344 has previously been paid or accrued and that was subsequently exported by transport truck by or on behalf of the distributor in a diversion across state boundaries properly reported to the department. If diverted by a distributor, the distributor shall perfect the exemption by filing a refund application with the department within six months after the diversion.
 3. Motor vehicle fuel or use fuel that is sold within an Indian reservation to an enrolled member of the Indian tribe who is living on the Indian reservation established for the benefit of that Indian tribe and that is used by the enrolled member for the enrolled member's own benefit. This exemption does not apply to sales within an Indian reservation by an Indian or Indian tribe to non-Indian consumers or to Indian consumers who are not members of the Indian tribe for which the Indian reservation was established or to use fuel used to operate motor vehicles for a commercial purpose outside of the reservation on highways in this state. For the purposes of this paragraph, "Indian" means an individual who is registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was created.
 4. Motor vehicle fuel or use fuel used solely and exclusively as fuel to operate a motor vehicle on highways in this state if the motor vehicle is leased to or owned by and is being operated for the sole benefit of an Indian tribe for governmental purposes only.
 5. Motor fuel that is moving in interstate or foreign commerce and that is not destined or diverted to a point in this state.

6. Motor vehicle or aviation fuel that is sold to the United States or an instrumentality or agency of the United States.
 7. Taxable use fuel that has been accidentally contaminated so as to be unsalable as highway fuel as proved by proper documentation.
 8. Dyed diesel fuel, including fuel used by either of the following:
 - (a) A farm tractor or implement of husbandry designed primarily for or used in agricultural operations and only incidentally operated or moved on a highway.
 - (b) A road roller or vehicle that is all of the following:
 - (i) Designed and used primarily for grading, paving, earthmoving or other construction work on a highway.
 - (ii) Not designed or used primarily for transportation of persons or property.
 - (iii) Incidentally operated or moved over the highway.
- B.** A use class vehicle shall pay the use fuel tax for light class motor vehicles prescribed by section 28-5606, subsection B, paragraph 1 if the vehicle is a truck and satisfies all of the following:
1. Is at least twenty-five years old.
 2. Has been issued a historic vehicle license plate pursuant to section 28-2484.
 3. Is not used as a commercial vehicle.
- C.** Notwithstanding subsection A, paragraph 8 of this section, the following are not exempt from use fuel taxes imposed by section 28-5606:
1. A vehicle that was originally designed for the transportation of persons or property and to which machinery is attached or on which machinery or other property may be transported.
 2. A dump truck.
 3. A truck mounted transit mixer.
 4. A truck or trailer mounted crane.
 5. A truck or trailer mounted shovel.
- D.** Except as provided in subsection E of this section, a person who claims an exemption pursuant to this section shall perfect the exemption by claiming a refund pursuant to section 28-5612.
- E.** Subject to sections 28-5645 through 28-5649, dyed diesel fuel is exempt from use fuel taxes at the time of sale.

A.R.S. § 28-5611. Refunds; motor vehicle fuel

- A.** Except as provided in subsection B of this section, on application to the director pursuant to this article and if section 28-5612 is complied with, a person who buys and uses motor vehicle fuel shall receive a refund in the amount of the tax if the person pays the tax on the fuel and either:
1. Uses the fuel other than in any of the following:
 - (a) A motor vehicle on a highway in this state.
 - (b) Watercraft on the waterways of this state.
 - (c) A motor vehicle operating on a transportation facility or toll road pursuant to chapter 22 of this title.
 2. Buys aviation fuel for use in aircraft applying seeds, fertilizer or pesticides.

3. Loses the fuel by fire, theft or other accident.
- B.** If a claim for refund is based on the use of motor vehicle fuel in aircraft, five cents of the tax collected on each gallon of motor vehicle fuel claimed shall remain in the state aviation fund, and the department shall refund the remainder of the tax pursuant to section 28-5612.

A.R.S. § 28-5612. Refund procedure; violation

- A.** A person who is seeking a refund and who is not licensed as a supplier, interstate user, restricted distributor or use fuel vendor shall:
1. File an application with the director within six months after the date of sale.
 2. Submit proof satisfactory to the director of the following:
 - (a) The purpose for which the fuel was used.
 - (b) The tax paid purchase.
 3. Make an application in a form prescribed by the department that requests the following information:
 - (a) Name and address of the claimant.
 - (b) Period covered by the claim showing dates.
 - (c) Location of equipment, if applicable.
 - (d) Gallons on which a refund is claimed.
 - (e) Amount of the refund claimed.
 - (f) Other information required by the director.
- B.** The claim shall not be under oath but shall contain or be accompanied by a written declaration that it is made under penalties of perjury and, if it is for motor vehicle fuel, that it complies in all respects with section 28-5611 relating to refunds.
- C.** The original invoice or a duplicate that is satisfactory to the director and that includes the following information shall accompany the application:
1. The date of purchase.
 2. The seller's name and address.
 3. The number of gallons purchased.
 4. The type of fuel purchased.
 5. The price per gallon of the fuel.
 6. Other information required by the director.
- D.** If a person files a claim for a refund pursuant to this section for motor fuel exported, the person shall make satisfactory proof of export to the director and file the claim within three months after the date of export in the form and containing the information required by the director. The original invoice or an acceptable duplicate shall accompany the claim.
- E.** The director shall accept only one application for refund of motor fuel taxes for any one person within a six month period if the aggregate total of all motor fuel taxes paid and for which a refund is claimed does not equal at least ten dollars.

- F. If a person who is exempt from use fuel taxes pursuant to section 28-5610 submits a claim for a refund pursuant to this section for use fuel taxes, the department shall not pay the refund until the department determines the difference between the amount of the refund and the amount of the use tax that is imposed under title 42, chapter 5, article 4 on the fuel exempt from use fuel taxes if owed by the person. If the department determines that the amount of the refund is greater than the amount owed for the use tax, the department shall deposit the amount owed for the use tax pursuant to subsection M of this section and refund the amount of the difference to the person. If the department determines that the amount of the refund is less than the amount owed for the use tax, the department shall forward any balance due information to the department of revenue for collection.
- G. Except as provided in subsection F of this section, if the director does not issue a refund within sixty days after a complete application for refund is filed as prescribed in this article, the director shall pay interest at the rate of eleven per cent per year from the date the complete application for refund is filed until the date on which the refund is made.
- H. If the director denies a refund, the director shall notify the claimant that the refund is denied. The director's denial is final unless the applicant makes a written request for a hearing as prescribed in section 28-5924.
- I. It is unlawful for a person to knowingly operate a motor vehicle on the highways or a watercraft on the waterways using motor vehicle fuel or use fuel that has been sold to a person making a claim pursuant to this section.
- J. In addition to other penalties prescribed by law, the director shall not give a person who violates this section a refund on motor fuel purchased during the six months succeeding the date the director advises the person by mail of the director's discovery of the violation.
- K. A person whose right to a refund is suspended may bring an action in superior court in Maricopa County to set aside the suspension.
- L. The director may recover excess refunds from the person to whom the refund was made. The director shall assess the claimant the amount of the excess refund and interest. The director shall compute interest at one per cent per month of the amount of excess refund due beginning on the date of refund and until the date the assessment is paid.
- M. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, use tax revenues collected pursuant to subsection F of this section in the state general fund by the end of each month and notify the department of revenue of the amount of use tax collected each month.

A.R.S. § 28-5613. Licensee refunds; definition

- A. A licensee who is seeking a refund shall apply pursuant to section 28-5612, except that a licensee shall file an application for refund within three years after the date of purchase or invoice of the motor fuel for which a refund is claimed.
- B. For the purposes of this section, "licensee" includes a supplier, an interstate user, a restricted distributor or a licensed use fuel vendor.

A.R.S. § 28-5614. Refunds; use fuel

- A. If a vendor pays the use fuel tax rate for use class motor vehicles on use fuel that is actually used in the propulsion of a light class motor vehicle on a highway in this state or that is actually used in the propulsion of a use class motor vehicle that is exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 on a highway in this state and for the purpose of convenience and facility only, the vendor may apply to the department for a refund of the difference between the amount of the use class motor vehicle use fuel tax paid and the amount of the light class motor vehicle use fuel tax on the same number of gallons purchased.
- B. If a person who transports forest products on a highway in this state in compliance with the requirements of section 41-1516 pays the use fuel tax rate prescribed in section 28-5606, subsection B, paragraph 2 for a use class motor vehicle that is eligible for the use fuel tax rate prescribed in section 28-5606, subsection B, paragraph 3, the person may apply to the department for a refund of the difference between the amount of the use fuel tax paid and the use fuel tax rate prescribed for a motor vehicle transporting forest products.
- C. The director may prescribe any forms the director deems necessary to implement this section.
- D. A vendor may file an application for a refund pursuant to this section either:
 - 1. On a monthly basis subject to the limitations prescribed in section 28-5612.
 - 2. If the amount of the requested refund is at least seven hundred fifty dollars, except that a vendor shall not file an application for a refund pursuant to this paragraph more frequently than once each week.
- E. The director shall:
 - 1. Pay the refund from current use fuel tax receipts.
 - 2. Deduct the refund from the monthly use fuel tax receipts before the deposit pursuant to section 28-5730 is made.

A.R.S. § 28-5615. Presumption of use

- A. For the proper administration of this article and to prevent evasion of the use fuel tax, it is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that all use fuel received into any receptacle on a motor vehicle from which fuel is supplied to propel the vehicle is consumed in propelling the vehicle on the highways in this state.
- B. If a vendor's dealings in use fuel primarily involve delivery of use fuel into the fuel tanks of motor vehicles it is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that the vendor's total use fuel acquisitions have been delivered into the fuel tanks of motor vehicles for the propulsion of the vehicles on the public highways.

A.R.S. § 28-5616. Light class motor vehicles

With respect to light class motor vehicles, the director shall not:

- 1. Issue a refund for use fuel purchased in this state and consumed on the highways of another state.
- 2. Tax use fuel acquired in another state and consumed on the highways in this state.

A.R.S. § 28-5617. Vendors; receipt

- A.** A vendor of use fuel, the use of which is taxable under this article, who sells and delivers the use fuel into a fuel tank shall give the user a receipt for the use fuel. The receipt shall include the following:
1. The date of purchase.
 2. The seller's name and address.
 3. The number of gallons purchased.
 4. The type of fuel purchased.
 5. The price per gallon of the fuel.
 6. The rate of tax paid.
 7. Other information required by the director.
- B.** A person who is the owner of use fuel that is contained in bulk storage and who permits the fuel to be delivered into the fuel tank of a motor vehicle for which the person is not the owner or lessee:
1. Is presumed to be a vendor of use fuel.
 2. Shall comply with the requirements in this article for vendors of use fuel.

A.R.S. § 28-5618. Report requirements

- A.** On or before the twenty-seventh day of each month, a supplier shall file with the director a true and verified statement in a form prescribed by the director showing:
1. The total number of gallons of motor vehicle fuel or aviation fuel, blended, imported, exported or acquired during the preceding calendar month.
 2. The number of gallons of motor vehicle fuel or aviation fuel sold or otherwise disposed of by the supplier for use in each of the several counties of this state.
 3. The total number of gallons of motor vehicle fuel that is included in this subsection and that is intended for use in aircraft.
 4. Other information the director requires.
- B.** In addition to making the statement required in subsection A and if the supplier received an interstate shipment of motor vehicle fuel during the preceding month, the supplier shall report on or before the twenty-seventh day of each month to the director in a form prescribed by the director:
1. The quantity and particular description of the fuel received by interstate shipment and delivered intercounty.
 2. The name of the consignor and consignee.
 3. The date shipped.
 4. The date received.
 5. How it was shipped.
 6. Other information the director requires.
- C.** A supplier may amend a report filed pursuant to this section within three years after the date the original tax report was filed unless the report for the period is final due to an audit.

- D. If an amended report results in a reduction in taxes paid, the department shall credit the licensee's account unless the licensee files a written request for a refund.

A.R.S. § 28-5619. Records required; violation; classification

- A. Suppliers and restricted distributors shall maintain and keep records of motor vehicle fuel or aviation fuel received, acquired, used, sold and delivered in this state by the supplier or restricted distributor, the amount of tax paid as part of the purchase price, invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article at least until the later of the following:
 - 1. Three years after a report is required to be filed pursuant to this article.
 - 2. Three years after a report is filed.
- B. Any person, other than a restricted distributor, purchasing motor vehicle fuel taxable under this article or aviation fuel taxable under section 28-8344 from a supplier for the purpose of resale shall maintain and keep for one year a record of motor vehicle fuel or aviation fuel received, the amount of tax paid to the supplier as part of the purchase price, delivery tickets, invoices, bills of lading and other records the director requires.
- C. Each distributor and vendor shall maintain and keep for three years the following:
 - 1. Records of use fuel received, sold or delivered in this state by the distributor or vendor.
 - 2. Invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article.
- D. The director may require distributors to file information as to sales or deliveries to vendors or users of use fuel at the times and in the form as the director requires.
- E. A person who violates this section is guilty of a class 1 misdemeanor.

A.R.S. § 28-5620. Records and equipment inspections; hearings; use restrictions; violation; costs

- A. The director or a deputy, employee or agent authorized by the director may examine during usual business hours records, books, papers, storage tanks and any other equipment of a person pertaining to motor fuel imported, received, sold, shipped, delivered or used to either:
 - 1. Verify the truth and accuracy of a statement, report, return or claim.
 - 2. Ascertain whether the tax imposed by this article or section 28-8344 has been paid.
 - 3. Determine the financial responsibility of the supplier for the payment of the taxes imposed by this article or section 28-8344.
 - 4. Determine the validity of a refund.
- B. In the enforcement of this article, the director may hold hearings, take testimony of persons, issue subpoenas for the purpose of taking testimony, compel attendance of witnesses and conduct investigations the director deems necessary.
- C. The director may prescribe forms for required reports or claims for refund or forms of record to be used by suppliers, distributors, restricted distributors, vendors or refund claimants.
- D. Records required by this article may be maintained in this state. If the records are maintained outside this state and on request of the director, the records shall be made available at a location in this state designated by the

director. If the records are maintained outside this state and will not be made available at the location designated by the director, the director may require the person to whom a records request has been made to pay in advance costs reimbursable for subsistence and travel expenses for the director or an agent of the director to conduct the examination of the records.

A.R.S. § 28-5621. Failure to report or pay tax; penalties; interest; transmittal date

- A.** Except as otherwise provided in this subsection, if a supplier fails to submit the monthly report to the director on or before the twenty-seventh day of the month, fails to submit the data or information required under this article in the monthly report or fails to pay the amount of taxes due when payable, the supplier shall pay interest on the unpaid tax at the rate of one per cent per month or portion of a month from the due date until paid and a penalty of five per cent shall be added to any tax not paid on or before the day prescribed for the payment of the tax. A supplier is not subject to the five per cent penalty on transactions reported within ninety days after the due date if the supplier has paid at least ninety-nine and one-half per cent of the actual tax liability for the month by the due date.
- B.** In addition to the penalty provided by subsection A, a person who fails to file a report required by this section when due shall pay an additional penalty of twenty-five dollars.
- C.** If a report or remittance required by this article is transmitted through the United States mail and is not received by the director until after the date on which the report is required to be filed or the payment was required to be made and if the envelope in which the report or remittance is enclosed has a post office cancellation mark dated on or before that date, on receipt of the envelope, the director shall treat the report or remittance as if it had been received on the required date.

A.R.S. § 28-5622. Tax estimate

If a person neglects or refuses to make and file a report as required by this article, or files an incorrect or fraudulent report, the director shall determine from information obtainable in the director's office or elsewhere the number of gallons of motor fuel with respect to which the person has incurred liability under this article or section 28-8344.

A.R.S. § 28-5623. Civil penalty; use fuel purchaser; vendor refund; financial penalty prohibited; subsequent violations

- A.** Notwithstanding any other law, if a person intentionally purchases use fuel for use in a use class motor vehicle that is not exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 and the person pays the use fuel tax rate for a light class motor vehicle, all of the following apply:
 - 1. Except as provided in subsection B of this section, the person is subject to a civil penalty of one thousand dollars or ten dollars for each gallon of use fuel dispensed, whichever is greater, and shall pay to the department the difference between the amount of light class motor vehicle use fuel tax paid and the amount of the use class motor vehicle use fuel tax on the same number of gallons purchased.
 - 2. The department may not deny a refund requested by a vendor pursuant to section 28-5614 for that purchase.

3. The department shall not impose any penalty, including a financial penalty of any kind, on a vendor for that purchase if the purchase was determined as a result of any inquiry, including any audit process.
- B.** For a second or subsequent violation, the civil penalty shall be determined by multiplying the amount prescribed in subsection A of this section by the number of prior violations.
- C.** A vendor shall not be liable for the civil penalty imposed by this section provided the vendor is not the owner or operator of the vehicle into which the fuel was dispensed or conspired with the purchaser to evade the proper tax rate.

A.R.S. § 28-5625. Restricted distributor licenses; reports; violation; classification

- A.** A person shall obtain a license and report pursuant to subsection D of this section as a restricted distributor of motor vehicle fuel from the director if all of the following apply:
1. The person transports for sale motor vehicle fuel to another county from the county that was originally reported by the supplier.
 2. The person purchases or otherwise acquires motor vehicle fuel in tank car or cargo lots.
 3. The person sells the motor vehicle fuel for delivery in this state or export from this state.
 4. The person is not required by this article to be licensed as a supplier.
- B.** To obtain a restricted distributor license, a person shall file with the director an application that contains the following:
1. The name under which the person is transacting business in this state.
 2. The address of the person's principal office or place of business in this state.
 3. The name and address of the owner, the names and addresses of the partners if the restricted distributor is a partnership or the names and addresses of the principal officer if the restricted distributor is a corporation or association.
 4. Other information the director requires.
- C.** If the application is in proper form and is accepted for filing, the director shall issue to the applicant a license to transact business as a restricted distributor in this state subject to cancellation as provided by law.
- D.** A restricted distributor shall report on or before the twenty-seventh day of each month to the director in a form prescribed by the director:
1. The quantity of motor vehicle fuel acquired during the preceding calendar month.
 2. The disposition of the motor vehicle fuel for use in each of the several counties.
 3. The name of the consignor and consignee.
 4. The date shipped.
 5. The date received.
 6. How it was shipped.
 7. Other information the director requires.
- E.** A restricted distributor may amend a report filed pursuant to this section within three years after the date the original tax report was filed unless the report for the period is final due to an audit.

- F. If a restricted distributor files a false report or fails, refuses or neglects to file a report pursuant to subsection D of this section, the director may cancel the restricted distributor's license and notify the restricted distributor of the cancellation by regular mail at the last known address of the restricted distributor appearing in the department's records.
- G. If a restricted distributor ceases to engage in business as a restricted distributor in this state by reason of discontinuance, sale or transfer of the business, the restricted distributor shall notify the director in writing at least ten days before the discontinuance, sale or transfer takes effect. If the restricted distributor sells or transfers the business, the restricted distributor shall include the name and address of the purchaser or transferee in the notice to the director.
- H. A person who is required to be licensed as a restricted distributor of motor vehicle fuel pursuant to this section and who fails to obtain a license is guilty of a class 1 misdemeanor.

A.R.S. § 28-5626. Suppliers; vendors; licenses required

- A. Except as provided in section 28-5607, a person who acts as a distributor and who possesses motor fuel on which fuel taxes have not been accrued or collected by a supplier shall be licensed as a supplier.
- B. It is unlawful for a person to engage in business in this state as a supplier, unless the person has a license issued by the director to engage in that business.
- C. A person who sells use fuel for delivery directly into a vehicle fuel tank shall also be licensed as a vendor and shall maintain separate business records.

A.R.S. § 28-5924. Hearing; rehearing

- A. A person aggrieved by an assessment, decision or order of the director under this chapter may make a written request for a hearing in the office of the director within thirty days after service of the notice to show cause why the assessment, decision or order is in error or to present any other facts or testimony that is relevant. A written request for a hearing shall include the reasons why the assessment, decision or order of the director is in error. Only the reasons set forth in the request for hearing may be raised at the hearing. The hearing may be continued from time to time.
- B. If the person does not request a hearing within thirty days, the assessment, decision or order is final.
- C. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the person of the director's finding and order. Within ten days after service of the notice of the finding and order of the hearing, the person may request in writing a rehearing on the matter. The director may grant a request for a rehearing based on rules adopted by the director relating to conditions for rehearings.
- D. If the person does not request a rehearing or if the director denies the request for a rehearing, the assessment, decision or order is final ten days after the notice is served.

A.R.S. § 28-5925. Payment; distribution

- A. The supplier, as shown in the records of the terminal operator, who removes the taxable gallons shall precollect and remit on behalf of consumers and users to the department the taxes that are imposed by sections 28-5606

and 28-8344 and that are measured by the invoiced gallons of motor fuel removed by a licensed supplier from a terminal or refinery in this state other than a bulk transfer.

- B.** The supplier and each reseller shall list the amount of tax as a separate line item on all invoices or billings or as a separate billing.
- C.** The motor fuel tax that is accrued in any calendar month shall be paid on or before the twenty-seventh day of the next succeeding calendar month to the director.
- D.** A supplier shall remit any late taxes remitted to the supplier by an eligible purchaser and shall notify the department in a timely manner of any late remittances if that supplier has previously given notice to the department of an uncollectible tax amount pursuant to section 28-5639, subsection B.
- E.** On payment, the director shall promptly:
 - 1. Deposit motor fuel tax monies as prescribed in sections 28-5926 and 28-5927.
 - 2. Deposit, pursuant to sections 35-146 and 35-147, all remaining motor fuel tax monies in the Arizona highway user revenue fund or the state aviation fund as determined from the reports filed pursuant to section 28-5618.
- F.** The director shall deduct all exemptions and refunds before depositing the monies.

POWER AUTHORITY (F-18-0408)

Title 12, Chapter 14, All Articles



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: April 3, 2018

AGENDA ITEM: E-7

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

FROM: Council Staff

DATE : March 20, 2018

SUBJECT: POWER AUTHORITY (F-18-0408)
Title 12, Chapter 14, All Articles

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Power Authority (Authority) is to bargain for, take and receive electrical or other forms of energy and make these forms of energy available for the benefit of the state." Laws 2006, Ch. 59, § 3. This purpose is "effectuated by and through the Arizona power authority commission (Commission) and other necessary personnel." A.R.S. § 30-105(A).

This five-year review report covers 43 rules in A.A.C. Title 18, Chapter 15, related to the administration of the Authority. Article 1 provides definitions. Article 2 relates to availability of long-term power, applications for electric service, and power purchase certificates. Article 3 relates to service to purchasers. Article 4 relates to the administration of power. Article 5 relates to purchasers' records. Article 6 relates to conferences and appeals of agency actions.

The Authority proposed no action on the rules in its 2013 five-year review report. In February 2015, the Authority established a set of 30 procedural rules in Article 6 to govern hearings requested for appealable agency actions when the Authority, through the Commission, decides to handle the appeal. The Authority proposes no changes to any of its rules at this time.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Authority cites to both general and specific authority for the rules. Under A.R.S. § 30-103(A), the Authority is required to "determine its...methods of procedure in accordance with the provisions of this chapter...and may adopt, amend or rescind the routine and general rules, regulations and forms and prescribe a system of accounts."

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

The rules establish parameters for the Authority to allocate and manage power supplies which become available to the Authority. Recent rule changes made in 2015 were merely clarifications to the administration of appealable agency actions. It was estimated that no economic, small business, or consumer impact would result from these revisions. The key stakeholders affected by these rules include the Authority, Program Contractors, and the Authority’s customers.

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

The Authority has determined that the benefits of the rules outweigh the costs and that the rules impose the least burden and costs to those who are regulated.

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

Yes. The Authority indicates that a petitioner who contested the Authority’s denial of an allocation of hydropower raised claims in a motion that criticized the Authority’s new Article 6 rules.¹ The Authority states that a hearing was held on December 15, 2015 at the request of the petitioner, during which the petitioner alleged that the Authority did not timely post the new rules on its website and challenged the ability of the Commission to sit as the Administrative Law Judge based on alleged conflicts of interest. The Authority determined that no rule changes were necessary.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Authority indicates that the rules are clear, concise, and understandable, are consistent with other rules and statutes, and are effective in achieving their objectives.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Authority indicates that the rules are enforced as written.

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

No. The Authority indicates that the rules are not more stringent than corresponding federal law. The Authority’s rules implement and/or comply with the requirements contained in its 2016 federal power contract as well as federal regulatory requirements applicable to the sale of Hoover hydropower.

¹ A copy of this motion has been included as an attachment to the report.

8. 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?

No. The Authority states that it has not adopted any rules after July 29, 2010 that require a regulatory permit, license, or authorization.

9. Conclusion

The Authority proposes no changes to any of its rules at this time. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.

COMMISSION

Dalton Cole
Chairman

Russell L. Jones
Vice Chairman

Stephen M. Brophy
Lawrence V. Robertson Jr.
John F. Sullivan



Arizona Power Authority
1810 W. Adams St. Phoenix, AZ 85007
Tel (602) 368-4265 Fax (602) 253-7970

STAFF

Ed Gerak
Executive Director

Heather J. Cole
Executive Secretary

State of Arizona
Governor's Regulatory Review Council
Five-Year Regulatory Review
Arizona Power Authority
March 14, 2018

Pursuant to A.R.S. §41-1056 the Arizona Power Authority (“APA” or “Authority”) submits the following five-year report. A.R.S. § 41-1056 requires that “[a]t least once every five years, each agency shall review all of its rules to determine whether any rule should be amended or repealed. The agency shall prepare... a written report summarizing its findings, its supporting reasons, and any proposed course of action”. *Id.*

The Authority has published a single short set of rules which appear in the Arizona Administrative Code at R12-14-101 et seq. (APA Rules). The APA Rules establish parameters for the Authority to allocate and manage power supplies which become available to the Authority. The Authority’s primary source of power supply per A.R.S. §30-101 et seq., is federal hydropower from the Hoover Dam on the Colorado River.

1. General and Specific Statutes Authorizing Rules. The general enabling statute for the APA Rules appears at A.R.S. §30-101, et seq. The Authority enjoys some additional powers related to the State Water and Power Plan which appear at A.R.S. §45-1701, et seq.

A.R.S. §30-103(A) states that “[t]he authority shall determine its organizational structure and methods of procedure in accordance with the provisions of this chapter, and may adopt, amend or rescind the routine and general rules, regulations, and forms, and prescribe a system of accounts.”

Next, A.R.S. §30-124(D) states in part that “[t]he authority may fix and prescribe the terms and conditions of its electric sales contracts and services and adopt such rules and regulations it finds necessary or convenient respecting electric services and disposition of electric power.”

A.R.S. §45- 1708 (B) gives the Authority similar power over the output of power projects included in the Title 45 State Water and Power Plan.

2. Objective of the APA Rules. The purpose of the APA Rules, R12-14-101 et seq., is to allocate, contract for, and oversee the administration of primarily long-term

federal hydropower supplies which have been contracted by the federal government to the Authority as agent on behalf of the State of Arizona. The objective of each rule is set forth below.

- Article 1. General
 - R12-14-101 – Definitions
 - *Definitions are important to aid in understanding the business nomenclature used by the Authority in the established rules and existing power contracts for Hoover power.*
- Article 2. Availability of Long-Term Power; Application for Electric Service, Power Purchase Certificates
 - R12-14-201 – Availability of Long-term Power; Contract Negotiations
 - *This rule outlines the process for the Authority to notice, allocate and negotiate for Power Sales Contracts.*
 - R12-12-202 – Application for Purchase of Electric Service
 - *This section outlines the specific requirements that should be included when applying for a power allocation.*
 - R12-12-203 Power Purchase Certificates, Application
 - *This section outlines the requirements for a Purchase Power Certificate, which is required for those who were allocated Hoover A power pursuant to A.R.S. §30-151, et. seq.*
- Article 3. Service to Purchasers
 - R12-14-301 – Authority’s Service to Purchasers
 - *This section establish a process to ensure that allottees are able to receive the power through transmission wires, the role the Authority may play in that process and how the Authority will monitor the existing power market(s).*
 - R12-14-302 – Systems and Operation Plans
 - *This section allows the Authority to understand and monitor embedded allottees inside larger systems (e.g. municipalities inside Salt River Project of Arizona Public Service).*
- Article 4. Administration of Power
 - R12-14-401 – Sale, Use, Transfer, and Administration of Long-term Power
 - *Due to the long-term nature of these power contracts, this section deals with ongoing administration of these contracts in the event of pooling (sharing), relinquishment, lay-off, recapture, transfer or assignment and the Authority’s role in this administration.*
 - R12-14-402 – Changing Points of Delivery; Switching of Electric Service among Points of Delivery
 - *Due to the nature of hydropower, and the Authority’s role in managing it, the Authority must know the end point for the power allocated to ensure it is being used under the terms of the contract(s).*

- R12-14-403 – Wheeling and Operating Agreements
 - *Due to the nature of hydropower, and the Authority’s role in managing it, the Authority must know the end point for the power allocated, any pooling or sharing agreements and the transmission path to ensure it is being transmitted or wheeled properly.*
- R12-14-404 – Disposition of Short-term Power
 - *This section allows the Authority to obtain short-term power for the benefit of its customers in addition to the long-term Hoover power.*
- R12-14-405 – Petition for Information, Advice or Assistance
 - *This section outlines the Authority’s requirements for compliance with A.R.S. §30-129 and Title 45, Chapter 10, which permit petitions to the Authority requesting assistance in matters within its jurisdiction.*
- Article 5. Records
 - R12-14-501 – Purchaser’s Records
 - *This section defines the process for the Authority to obtain purchaser’s contracts and records for market research to aid in monitoring and administering Hoover power.*
- Article 6. Conferences; Appeal of Agency Action
 - R12-14-601 – Conferences.
 - *This section establishes the process for conducting conferences to receive information on subjects within the Authority’s jurisdiction, including the timing of the notice and public comment period.*
 - R12-14-603 – General
 - *This section outlines the actions that are appealable, provides that the Commission shall act as the Administrative Law Judge pursuant to A.R.S. § 41-1092.01 and discusses relevant state statutes and rules applicable to the hearing.*
 - R12-14-604 – Definitions
 - *This section defines important terms relevant to R12-14 Article 6 including “Appealable Agency Action.”*
 - R12-14-605 – Applicability; Authority
 - *This section establishes the applicability of these rules to Appealable Agency Actions, and addresses scheduling and location of administrative hearings. This section allows the Commission to waive any of these rules with consent from parties to the appeal or if the waiver does not conflict with law or cause undue prejudice. This section permits the Commission to look to the Arizona Rules of Civil Procedures for guidance, if a procedure is not provided by statute or these rules.*
 - R12-14-606 – Notice of Appealable Agency Action
 - *This section establishes the notice provision requirements and posting requirements for an Appealable Agency Action.*

- R12-14-607 – Request for Hearing; Setting the Hearing
 - *This section establishes the process for initiating an appeal, the requirements of such an appeal, and the Commission’s requirements for scheduling a hearing.*
- R12-14-608 – Summary Dismissal
 - *This section establishes the conditions that allow for a summary dismissal of the appeal by the Commission.*
- R12-14-609 – Waiver Rights
 - *This section establishes the waiver of rights provision.*
- R12-14-610 – Intervention; Amicus Curiae
 - *This section establishes the process, timing and basis for intervening in the appeal and/or filing a brief as amicus curiae. It outlines the decisions available to the Commission in responding to a request to intervene or file an amicus brief, and clarifies that intervenors will be considered parties to the appeal while amicus curiae will not.*
- R12-14-611 – Informal Settlement Conference.
 - *This section establishes the process for an informal settlement conference, including providing for participation of a Commission representative and its effect in the final administrative decision.*
- R12-14-612 – Ex Parte Communications
 - *This section restricts communications with the Commission or individual commissioners during a pending appeal, except as outlined in the rule.*
- R12-14-613 – Motions
 - *This section outlines the type, form, timing, response and process for ruling on motions.*
- R12-14-614 – Computing Times
 - *This section establishes the process for calculating time periods with regards to these rules.*
- R12-14-615 – Filing and Service of Documents
 - *This section establishes procedures for the handling of documents, including opening a docket, the required form, signature requirements, distribution of documents, as well as the timing and method for the service of documents.*
- R12-14-616 – Consolidation of Severance of Appeals
 - *This section establishes the ability of the Commission to consolidate or sever appeals.*
- R12-14-617 – Continuing of Expediting a Hearing; Reconvening a Hearing
 - *This section establishes the ability of the Commission to continue, expedite and/or reconvene a hearing.*
- R12-14-618 – Vacating a Hearing
 - *This section establishes the process for vacating a hearing.*

- R12-14-619 – Prehearing Conference
 - *This section outlines the procedure and reason(s) for holding a prehearing conference.*
- R12-14-620 – Subpoenas
 - *This section outlines the ability of parties to request a subpoena from the Commission, sets out requirements for the form and service of subpoenas, and provides procedures to object, quash and/or modify a subpoena.*
- R12-14-621 – Telephonic Testimony
 - *This section establishes the ability to testify telephonically.*
- R12-14-622 – Rights and Responsibilities of Parties
 - *This section outlines the rights and responsibilities of parties pertaining to testimony and documentary exhibits.*
- R12-14-623 – Hearings; Depositions
 - *This section establishes the process for holding hearings. This includes establishment of a quorum, right to legal counsel, right to issue subpoenas, presentation of evidence and recording the hearing(s). This section allows the Commission to consider deposition testimony of witnesses unable to appear at hearing. It also includes requirements for the final administrative decision.*
- R12-14-624 – Conduct of Hearing
 - *This section establishes the conduct of the hearings. This includes provisions for public access, opening statements, stipulations, order of presentation, witness examination, closing arguments, and for concluding the hearing.*
- R12-14-625 – Failure of Party to Appear for Hearing
 - *This section establishes the ability of the Commission to proceed, vacate or dismiss the appeal if the appealing party fails to appear for the hearing.*
- R12-14-626 – Witnesses; Exclusions from Hearing
 - *This section establishes the ability to the Commission to exclude witnesses who are not parties from the hearing room.*
- R12-14-627 – Proof
 - *This section establishes the standard and burden of proof.*
- R12-14-628 – Disruptions
 - *This section prohibits interference with the hearing, and allows the Commission to remove disrupters.*
- R12-14-629 – Hearing Record
 - *This section outlines the handling of the hearing record.*
- R12-14-630 – Final Administrative Decisions; Review
 - *This section provides that the Commission’s decision is the final administrative decision and allows for judicial appeal, except as specified.*

- R12-14-631 - Rehearing or Review
 - *This section establishes the process and requirements for requesting rehearing or review.*
- R12-14-632 – Notice of Judicial Appeal; Transmitting the Transcript
 - *This section outlines the notice requirements of a judicial appeal and procedures for requesting and receiving a transcript of the hearing.*

3. Effectiveness of APA Rules in Achieving Objectives. As noted above the purpose of the APA Rules, R12-14-101 et seq., is to allocate, contract for, and oversee the administration of primarily long-term federal hydropower supplies allocated by the federal government to Arizona.

The Authority presently has a 50-year Electric Service Contract dated September, 2016 with the U.S. Department of Energy, Western Area Power Administration (Western) whereby the Authority receives Arizona's allocation of power and energy from Hoover Dam. The Authority marketed and scheduled this entitlement in 2016 to 63 power customers in the State of Arizona. Those customers consist of cities and towns, irrigation and electrical districts, and also water conservation districts as required by federal and state law.

The Authority has worked effectively since 1954 with both publicly-owned and privately-owned utilities in making Hoover Power Plant hydropower and other power supplies available to all major load centers throughout Arizona at the lowest possible cost. It has also provided leadership in meeting the many challenges brought about by the constant changes in the electric utility industry.

A copy of the annual Audit Report for the Arizona Power Authority is attached. The report reflects the fact that the APA Rules have worked effectively in assisting the Authority in providing ongoing service at low costs to the customers under long-term power and energy contracts.

The effectiveness of each article is outlined below.

- Article 1. General (R12-14-101)
 - *This rule consists of definitions that clarify industry terms, which allows the Authority to operate more efficiently and effectively.*
- Article 2. Availability of Long-Term Power; Application for Electric Service, Power Purchase Certificates (R12-14-201 – R12-14-203)
 - *The rules in this article outline the process for the allocation of power and are effective in achieving the objectives for which they were designed. They ensure potential allottees understand the timing and process for applying for an allocation of power, including requirements for obtaining a Purchase Power Certificate (PPC) where applicable. These rules were very helpful during the re-*

allocation process in 2015, and allowed the Authority to fulfill its statutory duty to allocate hydroelectric power.

- Article 3. Service to Purchasers (R12-14-301 – R12-14-302)
 - *R12-14-301 and R12-14-302 effectively ensure that allottees can receive the power they have applied for and that the Authority can assist in obtaining transmission service for allottees. By allowing the Authority to request system and operation plans, the rules ensure that the allottee is able to fully utilize this state resource.*
- Article 4. Administration of Power (R12-14-401 - R12-14-405)
 - *These rules effectively guide the Authority and its customers on the contract terms and use of the power. They provide safeguards against mishandling of the power and help ensure proper utilization of the power. R12-14-404 provides for short-term disposition of power by allottees. Since demand changes seasonally, this allows for full utilization and benefits of the allottees. R12-14-405, which allows the filing of Petitions for Information, Advice or Assistance, supports the Authority's objective of providing good customer service interwoven with public meetings and transparency. We are cultivating a customer service culture, but this rule is helpful to allow for customers to request consideration of issues in spite of responsiveness to customers.*
- Article 5. Records (R12-14-501)
 - *This rule helps in ensuring proper utilization of the power.*
- Article 6. Conferences; Appeal of Agency Action (R12-14-601 – R12-14-632)
 - *These rules effectively meet their intended objective of establishing an administrative hearing process for potential power allocation disputes. The Authority has only had one hearing since the rules were established in 2015, and no issues were observed requiring modification of the rules. They accomplished the desired result.*
 - *We have only had one conference since the rule was established in 2015, and no one intervened in this motion. No issues requiring modification of this rule are anticipated*

4. Consistency of Rules with Other Rules and Statutes. First the Authority only has a single set of rules, the APA Rules as noted above. Therefore, the Authority has no intra-agency consistency types of issues with its regulations.

The APA Rules are written primarily with the general enabling statute in mind. A.R.S. §30-101 *et seq.* The Authority also considered relevant terms of the State Water and Power Plan which appear at A.R.S. §45-1701, *et seq.*

In 2016, the Western Area Power Administration let the federal hydropower contract to the Authority pursuant to the Boulder Canyon Project Act of 1928, 43 USC §617 *et seq.*, and the Hoover Power Plant Act of 1984. 43 U.S.C. §619 *et*

seq., as amended by the Hoover Power Allocation Act of 2011. The APA Rules are properly consistent with all of the above relevant statutory authorities. Article 6 of the rules, primarily concerning the Authority's administrative appeals process, is consistent with the Uniform Administrative Hearing Procedures Act, A.R.S. §41-1092, *et seq.* In summation, the rules are consistent with other rules and statutes and are internally consistent.

5. Agency Enforcement Policy. The Authority enforces the rules as written.
6. The Clarity, Conciseness, and Understandability of the APA Rules. The APA Rules are concise and to the point in terms of use in leasing available power and then administering the subsequent power contracts. The APA Rules employ topical headings, logical organization, and also define key technical terms. Collectively that helps the reader understand relevant contract terms as well as the regulatory concepts contained in the regulations. Both the APA and its stakeholders are able to understand and follow the rules.
7. Summary of Written Criticisms of the APA Rules Received During the Previous Five Years. The Authority instituted new rules in early 2015(R12-14-602 to R12-14-632) allowing the Authority to conduct its own administrative hearings and instituting the procedural rules governing these hearings.

In the course of a hearing held pursuant to the new rules, a petitioner who contested the Authority's denial of an allocation of hydropower raised numerous claims, including some arguably criticizing the administrative rules. The Authority held a Hearing on December 15, 2015 at the request of John Kai, representing a yet to be formed Red Rock Irrigation and Drainage District. In a motion filed during the hearing, the petitioner alleged that the APA did not timely post the new rules on its website and challenged the ability of the Commission to sit as the Administrative Law Judge based on alleged conflicts of interest. However, the petitioner did not criticize any substantive provisions of the rules and the Authority determined no rules revisions were necessary.

While these claims may not rise to the level of "written criticisms," the Authority discloses them here in an abundance of caution. This was the only possible written criticism that the Authority has received regarding any rules over the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rules as Compared to the Economic, Small Business, and Consumer Impact Statement Prepared on the Last Making of the Rules. The Authority last made some revisions to the APA Rules which were finalized in early 2015. These rules pertained to administration of appealable agency actions. It was estimated no

economic, small business, or consumer impact would result from these revisions to the APA Rules.

The rest of APA's rules deal primarily with the process for the allocation of power to customers. That allocation occurred in 2016, and the customer contracts based thereon will remain in effect through September 30, 2067. For that reason, the Authority anticipates no economic, small business, or consumer impact due to the rules for the next five-year review period or through March 2023.

9. Any Analysis Submitted to the Agency by Another Person That Compares the Rule's Impact on This State's Business Competitiveness to the Impact on Businesses in Other States. No such analysis has been submitted by any party to the Authority.
10. If Applicable, Whether the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report. As noted in its last Five-Year Regulatory review, the Authority intended to "stay the course" for the five years following the March 2013 Review and manage and deliver Hoover power to its customers under its current regulatory structure. The Authority has achieved that goal, and indeed will continue on the same course of action to the benefit of the Authority's customers.

In addition to the 2013 Review, the Authority amended their rules in 2015 to establish an administrative appeals process. The Authority chose to pursue these rules prior to the re-allocation process for the new 50-year contracts. The administrative appeals process was utilized once after their establishment.

11. A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective. The Authority is selling Hoover power in Year 2018 at an average of 1.85 cents/kilowatt hour, without transmission. This is a significant savings compared to what our customers could receive on a retail basis. Although fracking and renewables are driving the cost of electricity downward recently, Hoover power is projected to be the cheapest available power into the future, assuming no drastic drought impacts to lake elevations.

With the new power contracts taking effect in 2017, the customers requested, and the Authority granted, the ability for customers to coordinate their own Dynamic Signal and transmission. This is believed to be a financial benefit, but reduces our overall budget, making our Administrative & General percentage higher than the last review.

- Approximately 91.7% of the total costs of obtaining and delivering Hoover power to our customers represents the cost of paying the federal government for the power and debt services themselves. Despite the fact that the A&G percentage seems larger in 2018, than 2013, in fact the total cost for A&G in 2018 is 10% less than it was in 2013. This suggests that the Authority's regulations represent a light footprint upon the Authority's efforts to obtain and deliver federal hydropower to its Arizona customer base.
12. A Determination That the Rule is Not More Stringent than a Corresponding Federal Law Unless There is Statutory Authority to Exceed the Requirements of That Federal Law. The Authority's rules implement and/or comply with the requirements contained in its 2016 federal power contract as well as federal regulatory requirements applicable to the sale of Hoover hydropower. For that reason, the Authority's regulations are consistent with, and not more stringent than, federal laws and regulations applicable to the sale of Hoover hydropower.
 13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits). The Authority has not adopted any rules after July 29, 2010 that require a regulatory permit, license of Authority authorization.
 14. Course of Action Regarding APA Rules. The Authority intends to maintain its current set of rules at least through March 2023. No new rules are perceived to be necessary now or in the near future.

The contact person for additional information on this topic is Ed Gerak, Executive Director who can be reached at: Arizona Power Authority, 1810 W. Adams, Phoenix, AZ. 85007-2697; (602) 368-4265.

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NOV 25 2015

Arizona Power Authority

Red Rock Issues

Mr. John Kai
PO Box 2305
Cortaro, AZ 85652
Telephone: (520) 990-8888
Facsimile: (520) 888-0642
Email: johnkaijr@yahoo.com

Representing Red Rock Irrigation and Drainage District/Self as Individual

BEFORE THE ARIZONA POWER AUTHORITY

IN THE MATTER OF THE FINAL)	Docket No. AA2015-000002
HOOVER MARKETING PLAN POST-2017)	MOTION FOR ORDERS ON
)	DISCOVERY REQUESTS AND
APPEAL OF:)	REQUESTS FOR VARIOUS
)	FORMS OF RELIEF
Red Rock Irrigation and Drainage)	
District/John Kai)	

Plaintiff John Kai represents Red Rock Irrigation and Drainage District and also appears on his own behalf ("Kai"). Kai files this motion for clarification and orders on Kai's discovery requests and for relief upon various points as raised in this memorandum. Kai also either files exhibits with this motion, and/or references additional exhibits already either in the Arizona Power Authority's possession or posted on publicly-available internet websites

- (1) Motion for Red Rock Irrigation District/John Kai Appeal
 - A. Power and Duties of Authority Appeals Board
 - B. Power of Duties of Authority Legal Counsel
 - C. Disclosure of Conflicts of Interest
 - D. Individual APA Commissioner Conflicts
 - E. APA Board-wide Conflicts
 - F. Request for Relief

- (2) Open Meeting Law

A. Open Meeting Law Violation

(3) Discovery

- A. Discovery Requirements**
- B. Kai will require Subpoenas to be Issued.**
 - 1. Arizona Public Service**
 - 2. Salt River Project**
- C. Discovery Needs from APA**
 - 1. Copy of 1985 Red Book**
 - 2. Power Purchase Certificates**
- D. Costs and Attorneys' Fees**
- E. Schedule for Hearing**

I.

Motion for Red Rock Irrigation District/John Kai Appeal

Plaintiff John Kai represents Red Rock Irrigation District and also appears individually on his own behalf ("Kai"). Kai hereby moves the Arizona Power Authority Appeals Board ("Appeals Board") for various forms of relief and also to issue various orders related to discovery in this matter, as detailed below.

A. Power and Duties of Authority Appeals Board. First Kai notes that it filed its appeal of issues in the Hoover Post-2017 marketing process pursuant to the Authority's recently-enacted administrative appeals regulations.¹ See R12-14-602 etc. As such the appeal must be handled pursuant to those regulations. The Commission itself lacks the Authority to intervene itself and to decide whether an appeal is moot or whether an appeal is effective, ineffective, or invalid. Only the Appeals Board may make such a determination.

B. Power and Duties of Authority Legal Counsel. By letter dated November 12, 2015, the Office of the Attorney General ("AG") restricted the ability of Authority

¹ To the extent that there is an ambiguity in how to file an appeal before the Appeals Board or an issue of compliance with APA's administrative appeals regulations, APA created those issues itself. APA only posted its final appeals regulations to its APA website on November 4, 2015, long after after the appeals filings were due to be submitted. In addition, APA also failed in its July 17, 2015 Final Marketing Plan to indicate how an aggrieved party might perfect an appeal against issues in the Plan. This is a mandatory regulatory section which must appear for due process reasons in all Arizona regulatory publications and was lacking in the APA's Final Marketing Plan.

legal counsel to render legal advice on any state law issues See Attachment A. Specifically the AG's November 12th letter to the Authority in stated:

"Other than federal regulatory matters and legal services necessary to perform APA's duties relating to the State Water and Power Plan under Title 45, the APA should consult [with] the [AG's] Office for general day-to-day legal advice". *Id.* This appeal has nothing to do with the Title 45 State Water and Power Plan. It involves purely Title 30 and Title 41 state law issues.

Per the Authority's own Notice of Final Rulemaking for its administrative appeals regulations, the authorizing and implementing statutes for its administrative appeals regulations are the Arizona Administrative Procedure Act, A.R.S. §§41-1001 et seq., and the Authority's general Title 30 powers. A.R.S. §§30-11 et seq. See Section two to the Preamble to Arizona Power Authority Notice of Final Rulemaking, Volume 21, Issue 9, dated February 27, 2015, as posted on the APA's main website.

The APA did not specify the Title 45 State Water and Power Plan as a basis under which the Authority issued its administrative appeals regulations. Therefore Kai moves the Appeals Board to rule that all state law issues per the November 12, 2015 Office of Attorney General letter, must be vetted and resolved by the AG's Office and not the APA's Somach law firm or Mike McVey. See AG's November 12, 2015 Letter.

C. Disclosure of Conflicts of Interest. First Kai moves the Commissioners and employees of the Arizona Power Authority immediately to disclose their potential conflicts of interest in the current matter.

D. Individual APA Commissioner Conflicts. Kai requests that each Appeals Board member and Authority employee involved or to be involved in participating in, working on, advising, researching, drafting, and/or deciding this case to declare on the record whether: (1) he/she participated in the Hoover Post-2017 Allocation Process; (2) and whether he/she has/had any conflicts participating in this process under either A.R.S. §38-500 and /or A.R.S. §30-105(B); and (3) declare in detail what those conflicts are,

Red Rock Issues

In particular Kai encourages Commissioner Brophy to disclose his interest in the Northern Arizona Irrigation District Power Pool ("Power Pool"). See three Power Pool and Aztec documents attachments.

Kai believes that Commissioner Brophy failed to disclose his interest in one entity which received an allocation of Schedule D-1 Power from Western in August 2014. Commissioner Brophy's entity is the Northern Arizona Irrigation District Power Pool. The Power Pool consists of two Arizona irrigation districts: (1) Silver Creek Irrigation District and (2) the Little Colorado Water Conservation District.

Now as to the Little Colorado Water Conservation District, that district was organized via petition to the Board of Supervisors of Navajo County, Arizona, on July 26, 2011.

See Internet link:

http://www.wmicentral.com/public_notices/local_legal/petition-for-the-board-of-supervisors-of-navajo-county-arizona/article_c0892242-b6fe-11e0-9b2a-001cc4c03286.html

The organizational papers (which are on the above-cited Internet page) four landowners combined to create the LCWCD, to wit Aztec Cattle Land & Cattle Company Ltd, Aztec Land Company LLC, Aztec east Jeffers LLC, and Reidhead Custom Farming Inc.

The president and signatory of all three of the Aztec entities is Steven Brophy, Commissioner/Chairman of the APA. Total acreage contributed by the four parties was 97, 688 acres. Reidhead Farming contributed only one section or 640 acres. The Aztec/Brophy entities contributed the remaining 97,040 acres or 99.6% of the total acreage in the LCWCD.

The organizational papers for the Northern Arizona Irrigation District Power Pool, indicate that the Power Pool is managed by Ian Fraser, Mr. Fraser also serves on the Board of the Aztec Land and Cattle Company per organizational filings. So Aztec personnel control both LCWCD and the Power Pool.

This raises the question as to whether the Power Pool was only meant to obtain federal hydropower for Mr. Brophy's Aztec-managed acreage. The Power Pool

received an allocation of Schedule D-1 Post-2017 Hoover Power from western in August 2014. Hence through almost the entire APA 2014-2015 allocation process Commissioner Brophy already had an active and real interest in the Hoover Post-2017 power. This is a major conflict of interest under the terms both ARS 38-500 et seq.², and 30-105(B)³.

Now turning to Silver Creek Irrigation District ("Silver Creek"), Silver Creek failed to disclose its Schedule D-1 allocation which it received through the Power Pool on its APA Post-2017 application. See Post-2017 application of Silver Creek posted on APA 2017 website. Both Silver Creek's and LCWCD's behavior strongly suggest that these two districts sought to conceal their joint Hoover Schedule D-1 Post-2017 allocation from the APA Commission in the Arizona state-level Post-2017 allocation process. This is relevant as to whether Silver Creek should be able to keep its Hoover A allocation received from the APA. It is also relevant as to whether Commissioner Brophy has a major conflict of interest in participating in the APA's Post-2017 allocation process, and also as to whether Commissioner Brophy may have violated additional state laws.

Kai finds it disappointing that the Chairman of the Authority itself would hold an undisclosed and active interest in the Hoover Post-2017 process yet participate in that same process. Kai hereby moves that Commissioner Brophy recuse himself for any further participation on the Appeals Board due to his undisclosed interest in the Northern Arizona Irrigation District Power Pool.

Finally per the Somach Law Firm website, the Somach firm represents CAWCD. Yet CAWCD is also the largest recipient of Hoover Power in the July 2017 Hoover allocation decision. The Somach Firm cannot simultaneously give legal advice to the APA and CAWCD on the Hoover Post-2017 process and be paid by both entities. That is a major conflict of interest and also denies due process to the other 74 applicants which participated in the Post-2017 allocation process. The

² See A.R.S. § 38-503 in particular.

³ "No member shall hold any other salaried public office or be associated with any public service corporation engaged in generating, distributing, or selling power to the public generally in this state for profit, nor shall any member have any interest in any business that may be adversely affected by the operation of the authority in the discharge of its duties". *Id.*

Inside relationship for Somach should at a minimum have been disclosed to the other 74 applicants before the allocation process began.

Kai also moves that the APA halt any more activities on the Post-2017 Hoover allocation and undertake a thorough investigation of the data contained in the 75 applications received in the Post-2017 process. APA should also confirm whether load data submitted/claimed by districts which received Schedule A power properly aligns with each district's power purchase certificate. For obvious reasons, the reviewers should not be anyone connected to the Authority, but neutral third parties who review the applications' contents and data.

E. APA Board-wide Conflicts. Arizona state case law prohibits any individual who participated in making an agency's administrative decision from thereafter participating on any appeals board and sitting in judgment upon or deciding whether that original agency decision was valid. *R.L. Augustine Construction v. Peoria School District*, 183 Ariz. 393, 904 P. 2d 462 (1995).

Per multitudes of data and documents posted on both of the APA websites, all five of the Commissioners of the Arizona Power Authority fully participated in developing and approving the July 17, 2105 Final Hoover Post-2017 Marketing Plan. All five of the Authority Commissioners voted on July 17, 2015 to approve Scenario Number 5 as the Final Hoover Post-2017 Marketing Plan as the final allocation decision.

Both Arizona state law and Arizona constitutional considerations of due process require any hearing on the Hoover Post-2017 Final Marketing Plan... "be held before an impartial tribunal. *United States v. Superior Court*, 144 Ariz. 265, 280, 697 P.2d 658, 673 (1985); see also *Schweiker v. McClure*, 456 U.S. 188, 195, 102 S.Ct. 1665, 1670, 72 L.Ed.2d 1 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). Accordingly, no person may be a judge in his or her own case, or have an interest in the outcome, without there being a violation of due process. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955)...see also *Schweiker v. McClure*, 456 U.S. 188, 195, 102 S.Ct. 1665, 1670, 72 L.Ed.2d 1 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities." Petitioner Kai is entitled to a neutral and detached judge in the first instance,

F. Request for Relief. For that reason all five of the Commissioners of the Authority- Albo, Brophy, Cole, Jones, and Walden under the *Augustine* case have conflicts of interest which prevent them from serving in any fashion as an Appeals Board Judge ("AJ"). In addition it would deny Kai its right to due process if any of the Commissioners continued as judges/ participants in this proceeding in any fashion.

As such Kai moves that each and all of the Commissioners immediately recuse themselves now from serving on the Appeals Board. If the Appeals Board needs additional time to consider this request, and to obtain a neutral, detached AJ in this matter, then Kai agrees to adjourn this hearing for two-four weeks to review the request and to allow the Authority to consider and act upon this request and hire a neutral AJ.

If the Appeals Board chooses to ignore the Kai motion and continue forward with this proceeding, then it continues under Kai's formal protest with all rights reserved on all of the conflicts of interest, due process and denial of 42 U.S.C. §1983 civil rights issues.

II.

Open Meeting Law

A. Open Meeting Law Violation. Red Rock believes that the Commission approved Scenario 5 on July 17, 2015 without posting Scenario 5 for public review for at least 24 hours before the July 17th meeting, as required by the Open Meeting Law. See Commission website for meeting notice.

The APA is a "Public Body" covered by the Open Meeting Law. ARS 38-431(6). The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-431.02(H). Scenario 5 was not listed in Agenda for the July 17, 2015 meeting.

As such the July 17th vote on the final allocation plan is null and void per Open Meeting Law and moves that the Appeals Board to issue an order recognizing such. A.R.S. § 38-431.05(A).

Red Rock Issues

Kai notes that under the Open Meeting Law, each of the Commissioners for the APA will be personally liable for any damages which arise from conflicts of interest violations which occurred during the Hoover Post-2017 allocation process.

III Discovery

A. **Discovery Requirements.** Kai will need a modest amount of time for discovery and request the Appeals Board to defer the December 14th hearing Date and leave 30 days to conduct that discovery. Red Rock intends to submit in writing to the Appeals Board for up to three subpoenas per R12-14-620, and will also need some materials from the Arizona Power Authority.

B. Kai will require Subpoenas to be issued to:

1. **Arizona Public Service- APS as Billing Agent for Electrical District No. 7 and Electrical District No. 8.** Kai believes that McMicken Irrigation District is hidden within ED7 and Paloma Irrigation District is hidden within ED8. Kai believes that in the case of ED7 McMicken Irrigation District was counted within its load in the application which ED7 submitted to the APA, while Paloma was counted within ED8's load in ED8's application to the APA.

Kai believes that both McMicken and Paloma received an allocation of Hoover power through ED7's and ED8's applications respectively without ever filing an application with the APA of the Post-2107 allocation process. The granting of allocations to hidden districts which did not even file an application in the Post-2017 process is relevant to Kai's denial, and who should, and should not, get Schedule A power under applicable law. Kai wants to explore these factual issues and other irregularities in ED7's and ED8's applications and load data via subpoena to APS as these two districts billing agent.

2. **Salt River Project- Ocotillo Water Conservation District.** Per Ocotillo's Integrated Resource Plan filed in 2006 with Western, Kai believes that Ocotillo stated in writing to Western that there is no more agricultural load with its district. Yet Ocotillo nonetheless received a Hoover A power allocation- for its

Red Rock Issues

non-existent agricultural load. Kai believes that Ocotillo has no commercial agriculture and is not eligible to receive Hoover Schedule A power. This is relevant as to the Authority's denial of a power allocation to Kai- a real agricultural entity.

Kai notes that the re-allocation of one MW of Ocotillo's Schedule A power to Kai might resolve this dispute.

C. Discovery Needs from APA. Kai also requires various documentation from the APA in order to prosecute its claim.

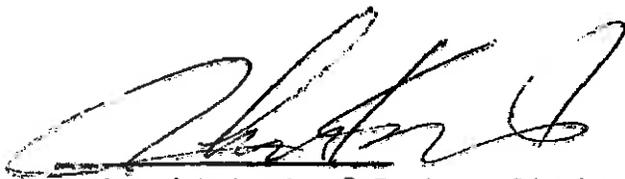
1. Copy of the 1985 Red Book.

2. Power Purchase Certificates for Electrical District No. 7, Electrical District No. 8, Silver Creek Irrigation District, and Grovers Irrigation District.

D. Costs and Attorneys' Fees. Kai seeks an award of costs, excluding court fees, if any, pursuant to A.R.S. section 12-341, and attorneys' fees, if any, pursuant to A.R.S. section 12-341.01.

E. Schedule for Hearing. Kai moves the Appeals Board to adjourn this hearing until a later date until the above preliminary and discovery issues including the legal sufficiency of the make-up of Appeals Board are addressed, as Kai needs resolution of these issues, as well as access to these discovery materials in order to present its case.

Thank You. I thank your Honors for your time and Kai looks forward to speedy resolution of the issues we have raised in this proceeding.



**Red Rock Irrigation & Drainage District
By John Kai**



Mr. John Kai as an individual

FORM D

UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

1440034

OMB APPROVAL OMB Number: 3235-0076 Expires: Estimated average burden hours per response.....16.00

PROCESSED

FORM D

JUL 16 2008

NOTICE OF SALE OF SECURITIES PURSUANT TO REGULATION D, SECTION 4(6), AND/OR UNIFORM LIMITED OFFERING EXEMPTION

THOMSON REUTERS

SEC USE ONLY Prefile: Date: DATE RECEIVED

Name of Offering (check if this is an amendment and name has changed, and indicate change.) Units consisting of Shares of Common Stock of Aztec Land and Cattle Company, Limited and Membership Interests in Aztec Land Company, LLC Filing Under (Check box(es) that apply): Rule 504 Rule 505 Rule 506 Section 4(6) ULOE Type of Filing: New Filing Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer (check if this is an amendment and name has changed, and indicate change.)

Aztec Land and Cattle Company, Limited

Address of Executive Offices (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Te. 623/772-6222

Address of Principal Business Operations (if different from Executive Offices) (Number and Street, City, State, Zip Code)

Same

Telephone Number (including Area Code)

Brief Description of Business

Purchase of real property

SEC Mail Processing Section

Type of Business Organization

- corporation limited partnership, already formed other (please specify) business trust limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization: Month Year Actual Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State: CN for Canada; FN for other foreign jurisdiction)

111 142008 Washington, DC 111

GENERAL INSTRUCTIONS

Federal:

Who Must File: All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When To File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where To File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies Required: Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Brophy, Stephen M.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Connely, William P.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Moeks, Gloria

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Bartow, Holly E.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Brewer, Michael J.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Devenport, David C.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Fraser, Hugh C.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

(Use blank sheet, or copy and use additional copies of this sheet, as necessary)

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Fraser, Ian H.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Robbins, Hanson C.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Walsh, Nathaniel C. T.

Business or Residence Address (Number and Street, City, State, Zip Code)

10265 West Camelback Road, Suite 104, Phoenix, Arizona 85037

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: Promoter Beneficial Owner Executive Officer Director General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary)

B. INFORMATION ABOUT OFFERING

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering? Yes No
 Answer also in Appendix, Column 2, if filing under ULDE.

2. What is the minimum investment that will be accepted from any individual? \$ 100.00

3. Does the offering permit joint ownership of a single unit? Yes No

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

N/A

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NI	NM	NY	NC	ND	OH	OK	OR	PA
RJ	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NI	NM	NY	NC	ND	OH	OK	OR	PA
RJ	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NI	NM	NY	NC	ND	OH	OK	OR	PA
RJ	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if the answer is "none" or "zero." If the transaction is an exchange offering, check this box and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt	\$ 0.00	\$ 0.00
Equity	\$ 0.00	\$ 0.00
	<input type="checkbox"/> Common <input type="checkbox"/> Preferred	
Convertible Securities (including warrants)	\$ _____	\$ _____
Partnership Interests	\$ _____	\$ _____
Other (Specify <u>Common Stock</u>)	\$ 3,136,000.00	\$ 0.00
Total	\$ 3,136,000.00	\$ 0.00

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

	Number Investors	Aggregate Dollar Amount of Purchases
Accredited Investors	0	\$ 0.00
Non-accredited Investors	0	\$ 0.00
Total (for filings under Rule 504 only)		\$ _____

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C — Question 1.

Type of Offering	Type of Security	Dollar Amount Sold
Rule 505	_____	\$ _____
Regulation A	_____	\$ _____
Rule 504	_____	\$ _____
Total		\$ 0.00

4 a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the insurer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees	<input type="checkbox"/>	\$ _____
Printing and Engraving Costs	<input type="checkbox"/>	\$ _____
Legal Fees	<input checked="" type="checkbox"/>	\$ 15,000.00
Accounting Fees	<input type="checkbox"/>	\$ _____
Engineering Fees	<input type="checkbox"/>	\$ _____
Sales Commissions (specify finders' fees separately)	<input type="checkbox"/>	\$ _____
Other Expenses (identify)	<input type="checkbox"/>	\$ _____
Total	<input checked="" type="checkbox"/>	\$ 15,000.00

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

b. Enter the difference between the aggregate offering price given in response to Part C—Question 1 and total expenses furnished in response to Part C—Question 4.a. This difference is the "adjusted gross proceeds to the issuer."

\$ 3,121,000.00

5. Indicate below the amount of the adjusted gross proceed to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C—Question 4.b above.

	Payments to Officers, Directors, & Affiliates	Payments to Others
Salaries and fees	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Purchase of real estate	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Purchase, rental or leasing and installation of machinery and equipment	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Construction or leasing of plant buildings and facilities	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger)	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Repayment of indebtedness	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Working capital	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Other (specify): <u>Identification and development of real property</u>	<input type="checkbox"/> \$ _____	<input checked="" type="checkbox"/> \$ <u>3,121,000.00</u>
.....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Column Totals	<input type="checkbox"/> \$ <u>0.00</u>	<input type="checkbox"/> \$ <u>3,121,000.00</u>
Total Payments Listed (column totals added)	<input type="checkbox"/> \$ <u>3,121,000.00</u>	

D. FEDERAL SIGNATURE

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

Issuer (Print or Type) Aztec Land and Cattle Company, Limited	Signature 	Date 7/3/66
Name of Signer (Print or Type) Stephen M. Brophy	Title of Signer (Print or Type) President	

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

E. STATE SIGNATURE

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule? Yes No

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed a notice on Form D (17 CFR 239.500) at such times as required by state law.
3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to officers.
4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type) Aztec Land and Cattle Company, Limited	Signature 	Date 7/3/08
Name (Print or Type) Stephen M. Brophy	Title (Print or Type) President	

Instruction:
Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)			Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (If yes, attach explanation of waiver granted) (Part E-Item 1)
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
AL		X							X
AK		X							X
AZ		X							X
AR		X							X
CA		X							X
CO		X							X
CT		X							X
DE		X							X
DC		X							X
FL		X							X
GA		X							X
HJ		X							X
ID		X							X
IL		X							X
IN		X							X
IA		X							X
KS		X							X
KY		X							X
LA		X							X
ME		X							X
MD		X							X
MA		X							X
MI		X							X
MN		X							X
MS		X							X

APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)			Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part B-Item 1)
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
MO		X							X
MT		X							X
NE		X							X
NV		X							X
NH		X							X
NJ		X							X
NM		X							X
NY		X							X
NC		X							X
ND		X							X
OH		X							X
OK		X							X
OR		X							X
PA		X							X
RJ		X							X
SC		X							X
SD		X							X
TN		X							X
TX		X							X
UT		X							X
VT		X							X
VA		X							X
WA		X							X
WV		X							X
WJ		X							X

APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)			Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1)
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
WY	<input type="checkbox"/>	<input checked="" type="checkbox"/>						<input type="checkbox"/>	<input checked="" type="checkbox"/>
PR	<input type="checkbox"/>	<input checked="" type="checkbox"/>						<input type="checkbox"/>	<input checked="" type="checkbox"/>

END

FAX COVER SHEET

TO	Mike Simonon
COMPANY	Public Utilities Specialist
FAX NUMBER	18028052490
FROM	LegalTech Deborah L. Berkema
DATE	2014-08-21 17:57:07 GMT
RE	Application for Boulder Canyon Project Resource Allocation Northern Arizona Irrigation District Power Pool

COVER MESSAGE

The attached application is being sent on behalf of attorney David A. Brown, who represents the district members of the Northern Arizona Irrigation District Power Pool.

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyon Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

1. Applicant Information. Please provide the following:

a. Applicant's (entity/organization requesting an allocation) name and address:

Applicant's Name:	Northern Arizona Irrigation District Power Pool
Address:	Post Office Box 1890 128 East Commercial Street
City:	St. Johns
State:	Arizona
Zip:	85936

b. Person(s) representing applicant:

Contact Person (Name & Title):	David Brown, Attorney c/o Brown & Brown Law Offices, P.C.
Address:	Post Office Box 1890 128 East Commercial Street
City:	St. Johns
State:	Arizona
Zip:	85936
Telephone:	928-337-4225
Fax:	928-337-4547
Email Address:	David@b-b-law.com

c. Type of entity/organization:

- Federal Agency
 Irrigation/Water District
 Municipality
 Native American Tribe
 Public Utility District
 Rural Electric Cooperative
 State Agency
 Other, please specify

d. Parent entity/organization of applicant, if any:

Northern Arizona Irrigation District Power Pool ("NAID Power Pool")

e. Name of the applicant's member organizations, if any:

(Separated by commas)

Little Colorado Water Conservation District and Silver Creek Irrigation District

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyons Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

f. Applicable law under which the applicant was established:

The Little Colorado Water Conservation District is an irrigation and water conservation district formed pursuant to Title 48, Chapter 19 of the Arizona Revised Statutes.

Silver Creek Irrigation District is an irrigation and water conservation district formed pursuant to Title 48, Chapter 19 of the Arizona Revised Statutes. SCID was initially organized as the "Snowflake-Taylor Irrigation Company" in 1882 under the Territorial Laws of the State of Arizona. In 1934, it was reorganized as the "Show Low-Silver Creek Water Conservation and Power District." In January 1981, the District voted to change its name to the "Silver Creek Irrigation District."

Northern Arizona Irrigation District Power Pool (NAID Power Pool) submits this application for Boulder Canyon Project resource allocation as an aggregated entity comprised of the Little Colorado Water Conservation District and the Silver Creek Irrigation District. The NAID Power Pool members are located in a rural, agricultural area of Arizona where cooperative efforts to sustain water infrastructure are essential to sustain the agri-business community of this region. The NAID Power Pool member District Boards will formalize their pooling arrangements after an allocation of Hoover has been offered by Western.

g. Applicant's geographic service area (if available, please submit a map of the service area and indicate the date prepared):

Little Colorado Water Conservation District encompasses about 97,689 acres of land located near Snowflake, Navajo County, Arizona

Silver Creek Irrigation District encompasses about 3,000 acres of land in Navajo County, Arizona, which includes the communities of Shuzway, Taylor and Snowflake.

Both member organizations' geographic service areas are wholly within the Boulder Canyon marketing area. Maps depicting the service areas are attached as Exhibit 1.

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyon Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

h. Describe the entity/organization that will interact with Western on contract and billing matters.

David Brown
Post Office Box 1890
128 East Commercial Street
St. Johns, Arizona 85936
David@b-b-law.com

Kenneth R. Saline
K. R. Saline & Associates, PLC.
160 N. Pasadena, Suite 101
Mesa, Arizona 85201-6764
Email: krs@krsaline.com

i. Provide the amount of power the applicant is requesting to be provided by Western.
4 MW and associated energy.

2. Applicant's Loads:

a. Utility and non-utility applicants:

(i) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural):

Customer Type	Number of Customers
Number of customers	10
If not applicable, explain why:	

(ii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in one of the last three calendar years including calendar years 2011, 2012, or 2013:

	January	February	March	April	May	June
Demand (kilowatts)	4,487	3,942	4,034	3,636	3,967	3,906
Energy (kilowatt-hours)	1,992,078	1,889,473	2,077,533	1,905,947	2,178,540	2,335,603
	July	August	September	October	November	December
Demand (kilowatts)	4,182	4,219	4,066	3,893	3,871	3,905
Energy (kilowatt-hours)	2,529,171	2,310,108	2,533,037	1,980,373	2,288,943	2,564,797

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyon Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

(iii) Describe any factors or conditions which may significantly change peak demands or load duration or profile curves in the next five (5) years.

Groundwater pumping is the primary activity driving the demand load of the member organizations. Future electrical usage will be determined by year-to-year changes in customer water supply needs, individual pump efficiencies and surface water availability.

b. Native American Tribe applicants only:

(i) Indicate the utility or utilities currently serving your loads:

(ii) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agriculture):

	Residential	Commercial	Industrial	Military	Other
Number of customers					
If not applicable, explain why:					

(iii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in one of the last three calendar years including calendar years 2011, 2012, or 2013. If the actual demand and energy data are not available or are difficult to obtain provide the estimated monthly demand:

	January	February	March	April	May	June
Demand (kilowatts)						
Energy (kilowatt-hours)						
	July	August	September	October	November	December
Demand (kilowatts)						
Energy (kilowatt-hours)						

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyon Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

(iv) If the demand and energy data in 2.b.(iii) above is estimated, provide a description of the method and basis for this estimation in the space provided below:

[Empty rectangular box for response to 2.b.(iv)]

(v) Identify any factors or conditions in the next 5 years which may significantly change peak demands, load duration, or profile curves:

[Empty rectangular box for response to 2.b.(v)]

3. Applicant's Resources. Please provide the following information:

a. A list of current power supplies if applicable, including the applicant's own generation as well as purchases from others. For each supply, provide the resource name, capacity supplied, and the resource's location.

Power supplies (resource name, capacity & location):

The member organizations have no federally marketed power contracts and no generation. The member organizations are currently full-requirements customers of Arizona Public Service Company.

b. For each power supplier, provide a description and status of the power supply contract (including the termination date):

The member organizations receive their power supply from Arizona Public Service under the applicable retail tariffs as approved by the Arizona Corporation Commission. There is no termination date associated with this power supply service.

c. For each power supplier, provide the types of power:

- Power supply is on a firm basis.
- Power supply is not on a firm basis. Please explain.

[Empty rectangular box for explanation of non-firm basis]

4. Transmission:

a. Points of delivery: Provide the requested point(s) of delivery on Western's transmission system (or a third party's transmission system) the voltage of service required, and the capacity desired, if applicable.

Mead 230 kV

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyon Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

- b. **Transmission arrangements:** Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Include a brief description of the applicant's transmission and distribution system (including major inter-connections). Provide a single-line drawing of applicant's system, if one is available.

The NAID Power Pool will take its Hoover power at Mead Substation and will request network wheeling service from Arizona Public Service Company under its Open Access Transmission Tariff to the loads of the NAID Power Pool. APS currently provides OATT wheeling to numerous Arizona Districts to deliver Hoover Power to District end-use loads using APS' Transmission and Distribution system. Therefore, NAID Power Pool will be similarly situated to other Arizona Irrigation and Electrical Districts in its future Hoover Delivery arrangements.

The NAID Power Pool will pursue delivery arrangements with APS once it has received an allocation of Hoover Power within the Western designated October 1, 2016 timing requirement.

- c. **Provide a brief explanation of the applicant's ability to receive and use, or receive and distribute Federal power as of October 1, 2017.**

The member organizations are eligible HPAA Section 5 non-profit entities. The member organizations have load sufficient to fully utilize its requested Hoover Allocation and intend to be fully ready willing and able to deliver its Hoover allocation to load by October 1, 2016.

5. Other Information:

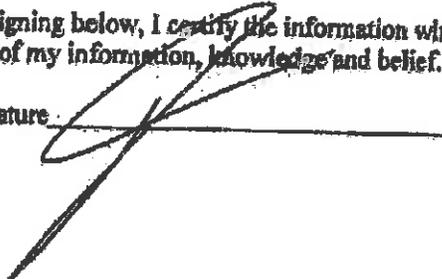
The applicant may provide any other information pertinent to receiving an allocation.

6. Signature:

Western requires the signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for an allocation.

By signing below, I certify the information which I have provided is true and correct to the best of my information, knowledge and belief.

Signature



Title

Attorney

**Western Area Power Administration, Desert Southwest Region
Application for Boulder Canyon Project Resource Allocation from the 2017 Resource Pool
Applicant Profile Data**

Applications may be submitted by U.S. mail to the address below or electronically to POST2017BCP@wapa.gov with an electronic signature. If submitting this application electronically and an electronic signature is not available, please fax this page with signature to (602) 605-2490, or mail to Mr. Mike Simonson, Public Utilities Specialist, Desert Southwest Region, Western Area Power Administration, 615 S. 43rd Avenue, Phoenix, Arizona 85009.

RECORD KEEPING REQUIREMENTS: If Western accepts your application and you receive an allocation of Federal power you must keep all your records associated with your APD for a period of 3 years after you sign your contract for Federal power. If you do not receive an allocation of Federal power, there is no recordkeeping requirement.

Western has obtained an OMB Clearance Number 1910-5136 for the collection of the above information.

The data are being collected to enable Western to properly perform its function of marketing limited amounts of Federal hydropower. The data you supply will be used by Western to evaluate who will receive an allocation of Federal power.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Ronald J. Klinefelter, Paperwork Reduction Act Comments, Western Area Power Administration, P.O. Box 281213, 12155 W. Alameda Parkway, Lakewood, CO 80228; and to the Office of Management and Budget (OMB), OIRA, Washington, DC 20503.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Submission of this data is voluntary, however if an entity seeks an allocation of Federal power, the applicant must submit an APD.

Exhibit 1 - Service Territory Map (1 of 2)

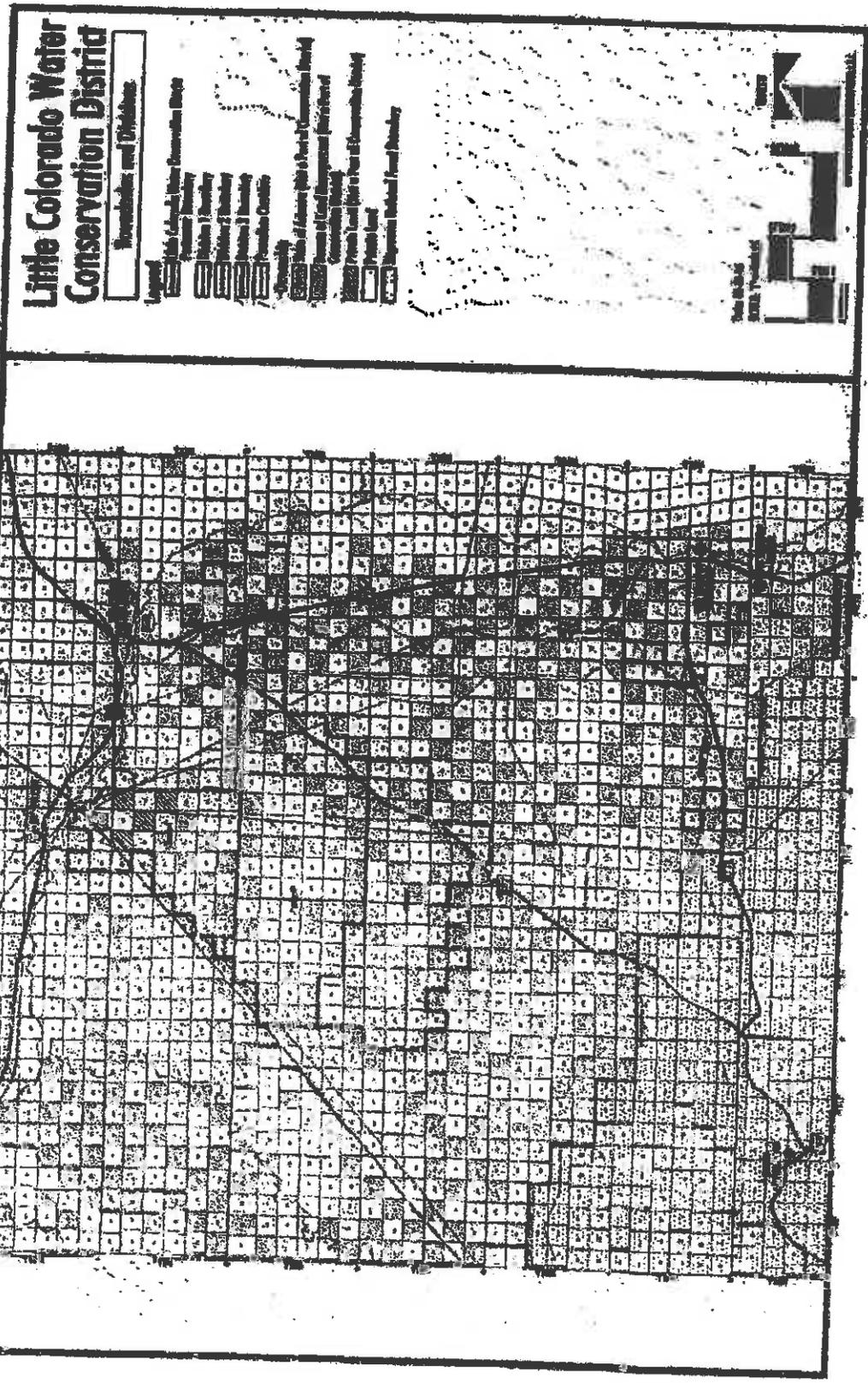
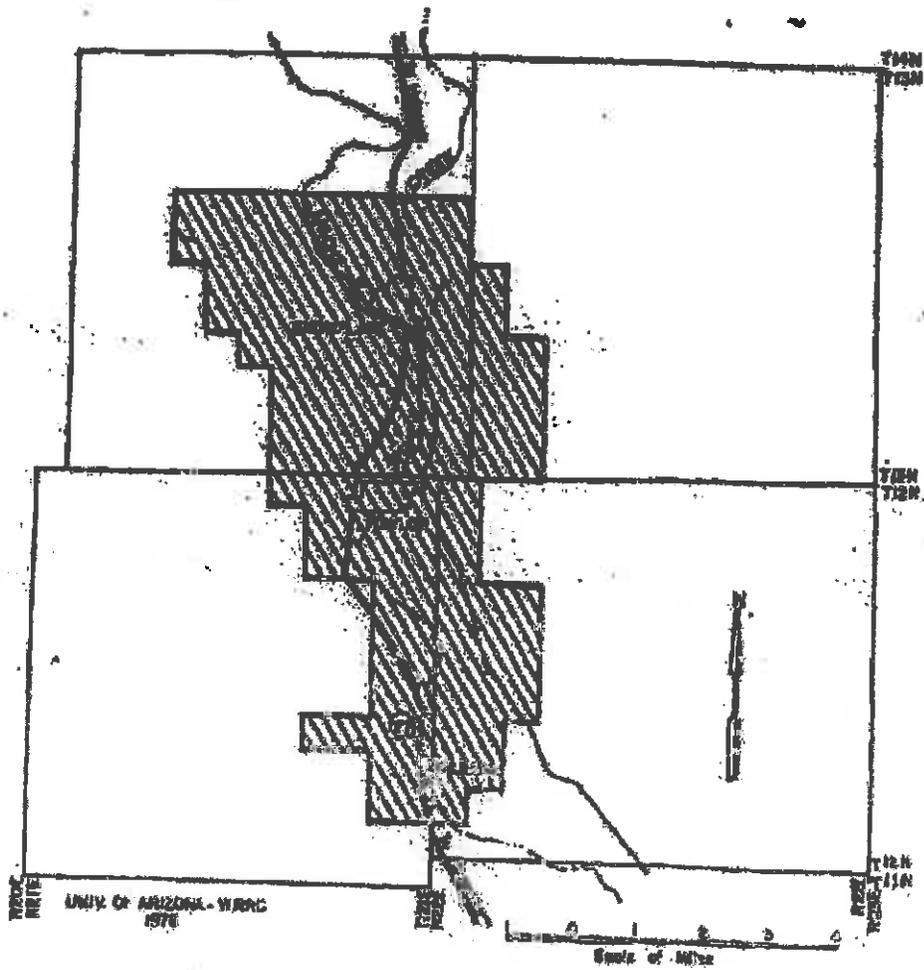


Exhibit 1 - Service Territory Map (2 of 2)

**SILVER CREEK IRRIGATION DISTRICT
NAVAJO COUNTY**



FAX COVER SHEET

TO	Mike Simonton
COMPANY	Public Utilities Specialist
FAX NUMBER	18028052480
FROM	LegalTech Deborah L. Beakema
DATE	2014-09-26 23:40:34 GMT
RE	Pooling Agreement & Memorandum of Understanding - Northern Arizona Irr. Districts

COVER MESSAGE

Dear Mr. Simonton,

On behalf of attorney David Brown, as well as the Little Colorado Water Conservation District and Silver Creek Irrigation District, attached is a pooling agreement/MOU that concerns the Hoover power application (Boulder Canyon Project Resource Allocation) submitted by the Northern Arizona Irrigation District Power Pool last week.

K. R. Selne & Associates recommended that we send this to you. I contract with David Brown. His office fax is not working correctly and he asked that I send this to you.

Thanks,

Deborah - LegalTech

POOLING AGREEMENT & MEMORANDUM OF UNDERSTANDING

WHEREAS, the Little Colorado Water Conservation District ("LCWCD") is an irrigation district formed pursuant to Title 48, Chapter 19, of the Arizona Revised Statutes, and pursuant to HPPA and the 2012 Confirmed Criteria, is an eligible entity to apply for a Boulder Canyon Project Resource Allocation from the 2017 Resource Pool administered by the Western Area Power Administration, Desert Southwest Region;

WHEREAS, the Silver Creek Irrigation District ("SCID") is an irrigation district formed pursuant to Title 48, Chapter 19, of the Arizona Revised Statutes, and pursuant to HPPA and the 2012 Confirmed Criteria, is an eligible entity to apply for a Boulder Canyon Project Resource Allocation from the 2017 Resource Pool administered by the Western Area Power Administration, Desert Southwest Region;

WHEREAS, LCWCD and SCID are both located in a rural, agricultural environment in Navajo County, Arizona and are both represented by the same legal counsel, David A. Brown of Brown & Brown Law Offices, P.C.;

WHEREAS, LCWCD and SCID desire to pool their application for a Boulder Canyon Project resource allocation as an aggregated entity;

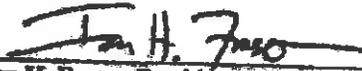
NOW, THEREFORE, for and in consideration of the premises and this memorandum, LCWCD and SCID agree that:

1. LCWCD and SCID shall jointly submit their application for a Boulder Canyon Project resource allocation as an aggregated entity referred to as the "Northern Arizona Irrigation District Power Pool."
2. LCWCD and SCID, as members of the Northern Arizona Irrigation District Power Pool, will formalize their pooling arrangements after an allocation of Hoover power has been offered by the Western Area Power Administration.
3. In applying together as members of the Northern Arizona Irrigation District Power Pool, it is the intention of LCWCD and SCID to work together to form an aggregation of interests for the purpose of applying, contracting and taking delivery of Hoover power per the HPPA and working with respective utilities, the APA, and the Western Area Power Authority to deliver an allocation of Hoover Power to their respective members.
4. LCWCD and SCID have each reviewed the Application for Boulder Canyon Project Resource Allocation and attest to the validity of the application. Furthermore, they authorize their attorney, David A. Brown of Brown & Brown Law Offices, to execute and submit the request for an allocation on their behalf and in so doing, they attest that Brown's signature confirms that the information that they have submitted is true and correct to the best of their information, knowledge and belief.

- 5. This memorandum of understanding may be signed in multiple counterparts, each of which will be deemed to be an original, but all of which together will constitute but one and the same instrument.

DATED as of the 21st day of March, 2014.

**LITTLE COLORADO WATER
CONSERVATION DISTRICT**



Ian H. Prosser, President

10265 W Camelback Road # 104
Phoenix, AZ 85037

SILVER CREEK IRRIGATION DISTRICT



Dee Johnson, President

381 West Naval Lane
Snowflake, Arizona 85936

Arizona Power Authority
TITLE 12. NATURAL RESOURCES
CHAPTER 14. ARIZONA POWER AUTHORITY

(Authority: A.R.S. § 30-101 et seq.)

ARTICLE 1. GENERAL

Article 1, consisting of Section R12-14-101, adopted effective November 1, 1993 (Supp. 93-4).

Article 1, consisting of Sections R12-14-101 and R12-14-102, repealed effective November 1, 1993 (Supp. 93-4).

Section
R12-14-101. Definitions
R12-14-102. Repealed

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

Article 2, consisting of Sections R12-14-201 through R12-14-203, adopted effective November 1, 1993 (Supp. 93-4).

Article 2, consisting of Sections R12-14-201 and R12-14-202, repealed effective November 1, 1993 (Supp. 93-4).

Section
R12-14-201. Availability of Long-term Power; Contract Negotiations
R12-14-202. Application for Purchase of Electric Service
R12-14-203. Power Purchase Certificates; Application

ARTICLE 3. SERVICE TO PURCHASERS

Article 3, consisting of Sections R12-14-301 and R12-14-302, adopted effective November 1, 1993 (Supp. 93-4).

Article 3, consisting of Sections R12-14-301 thru R12-14-303, repealed effective November 1, 1993 (Supp. 93-4).

Section
R12-14-301. Authority's Service to Purchasers
R12-14-302. Systems and Operation Plans
R12-14-303. Repealed

ARTICLE 4. ADMINISTRATION OF POWER

Article 4, consisting of Sections R12-14-401 through R12-14-405, adopted effective November 1, 1993 (Supp. 93-4).

Article 4, consisting of Sections R12-14-401 thru R12-14-403, repealed effective November 1, 1993 (Supp. 93-4).

Section
R12-14-401. Sale, Use, Transfer, and Administration of Long-term Power
R12-14-402. Changing Points of Delivery; Switching of Electric Service among Points of Delivery
R12-14-403. Wheeling and Operating Agreements
R12-14-404. Disposition of Short-term Power
R12-14-405. Petition for Information, Advice, or Assistance

ARTICLE 5. RECORDS

Article 5, consisting of Section R12-14-501, adopted effective November 1, 1993 (Supp. 93-4).

Article 5, consisting of Sections R12-14-501 and R12-14-502, repealed effective November 1, 1993 (Supp. 93-4).

Section
R12-14-501. Purchaser's Records
R12-14-502. Repealed

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION

Article 6, consisting of Sections R12-14-601 through R12-14-607, adopted effective November 1, 1993 (Supp. 93-4).

Article 6, consisting of Sections R12-14-601 thru R12-14-613, repealed effective November 1, 1993 (Supp. 93-4).

Section
R12-14-601. Conferences
R12-14-602. Repeal
R12-14-603. General
R12-14-604. Definitions
R12-14-605. Applicability; Authority
R12-14-606. Notice of Appealable Agency Action
R12-14-607. Request for Hearing; Setting the Hearing
R12-14-608. Summary Dismissal

Arizona Power Authority

- R12-14-609. Waiver Rights
- R12-14-610. Intervention; Amicus Curiae
- R12-14-611. Informal Settlement Conference
- R12-14-612. Ex Parte Communications
- R12-14-613. Motions
- R12-14-614. Computing Time
- R12-14-615. Filing and Service of Documents
- R12-14-616. Consolidation or Severance of Appeals
- R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing
- R12-14-618. Vacating a Hearing
- R12-14-619. Prehearing Conference
- R12-14-620. Subpoenas
- R12-14-621. Telephonic Testimony
- R12-14-622. Rights and Responsibilities of Parties
- R12-14-623. Hearings; Depositions
- R12-14-624. Conduct of Hearing
- R12-14-625. Failure of Party to Appear for Hearing
- R12-14-626. Witnesses; Exclusion from Hearing
- R12-14-627. Proof
- R12-14-628. Disruptions
- R12-14-629. Hearing Record
- R12-14-630. Final Administrative Decisions; Review
- R12-14-631. Rehearing or Review
- R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript

ARTICLE 1. GENERAL

R12-14-101. Definitions

In this Chapter, the definitions in A.R.S. Title 30, Chapter 1 and in A.R.S. Title 45, Chapter 10 apply and, unless the context otherwise requires, the following definitions also apply:

1. "Banked energy" means the electric energy held under an agreement for later delivery.
2. "Banking" means an agreement under which an Entity agrees to retain a portion of the Purchaser's electric energy for later delivery.
3. "Capacity" means the electric capability of an Electric Power System.
4. "Conference" means an informal proceeding before the Commission at which formal action will not be taken by the Commission.
5. "District" means any Power or water organization governed by A.R.S. Title 30, Chapter 1 or A.R.S. Title 48.
6. "Electric Power System" means the electric facilities and equipment by which:
 - a. Power is made available to a Purchaser; and
 - b. Power is delivered to a Purchaser's customer.
7. "Energy" means electric energy made available to a Purchaser.
8. "Entity" means any District, governmental agency, Operating Unit, or Person.
9. "Exchange" means a transfer of electric Power by a Purchaser to another Purchaser that is obligated to return a similar amount of Power upon terms and conditions and at the time or times approved by the Authority under R12-14-401(K).
10. "Load" means the electric Power required to meet a Purchaser's demand for electric service.
11. "Long-term Power" means any supply of Power that is available to the Authority for a period more than 366 consecutive days and that is subject to the jurisdiction of, and disposition by, the Authority, including any Power recaptured by the Authority and any Power tendered or relinquished by a Purchaser.
12. "Point of Delivery" means the point or points on a transmission system where the Authority makes Power available for delivery to a Purchaser.
13. "Power pooling" means an agreement for aggregating or commingling the Long-term Power supplies of two or more Purchasers.
14. "Power Purchase Certificate" means the certificate required before a Purchaser enters into a Power Sales Contract under A.R.S. § 30-151 et seq.
15. "Power Sales Contract" means a contract under which the Authority sells Long-term Power to a Purchaser.
16. "Preference" means the priority of entitlement to Power according to A.R.S. § 30-125 or A.R.S. § 45-1708.
17. "Purchaser" means any Qualified Entity that contracts to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or under A.R.S. Title 45, Chapter 10.
18. "Qualified Entity" means any Entity that is eligible to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or A.R.S. Title 45, Chapter 10.
19. "Recapture" means the recovery or retaking by the Authority from a Purchaser of Long-term Power that exceeds the Purchaser's needs, for reallocation among other Qualified Entities.
20. "Relinquish" means a Purchaser's return of unneeded Power to the Authority.
21. "Secretary" means the person designated by the Commission to act as the official Secretary or as the Assistant Secretary of the Authority.

Arizona Power Authority

22. "Service Territory" means the geographic area in which Power is sold or used by a Purchaser and is described in a Power Purchase Certificate or an amendment to a Power Purchase Certificate.
23. "Short-term Power" means any supply of Power made available by or through the Authority for a period of no more than 366 consecutive days.
24. "Tender" means a Purchaser's offer to return unneeded Power to the Authority.
25. "Wheeling" means delivery of Power over the transmission system of another Entity.

Historical Note

Former Rule Article I. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-01 renumbered as Section R12-14-101 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-102. Repealed

Historical Note

Former Rule Article II. Former Section R12-14-02 renumbered as Section R12-14-102 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

R12-14-201. Availability of Long-term Power; Contract Negotiations

- A. Except as provided in R12-14-401(B), if the Authority decides that a supply of Long-term Power is available, the Authority shall give public notice that it will receive applications for electric service from prospective Purchasers. The public notice shall include the date, time, and place for the public information Conference at which the Authority shall provide a preliminary proposal for the allocation and marketing of available Long-term Power.
- B. The Authority shall give public notice of the date, time, and place for a public comment Conference to be held not more than 60 days after the date of the public information Conference held under subsection (A). An interested party may appear at the public comment Conference and present oral and written comments on the Authority's Long-term Power proposal provided at the public information Conference held under subsection (A).
- C. Public notice required by subsections (A) and (B) shall be mailed to:
 1. Existing Purchasers;
 2. Prospective Purchasers that notify the Authority of their interest in applying for Long-term Power; and
 3. Other Qualified Entities on the Authority's mailing list.
- D. Public notice required by subsections (A) and (B) shall be published in a newspaper of statewide circulation once each week for two consecutive weeks.
- E. A Qualified Entity wanting to enter into a Power Sales Contract shall file an application for electric service under R12-14-202. The application shall be filed on or before the due date specified in the Authority's notice of intent to receive applications for electric service.
- F. Not later than 60 days after the due date for filing an application for electric service, the Authority shall notify all interested parties of the names and addresses of the prospective Purchasers that are eligible to enter into a Power Sales Contract. The Authority shall include in the notice a proposed allocation of Long-term Power to the eligible prospective Purchasers.
- G. Not later than 90 days after notification of eligibility and of the proposed allocation, the Authority shall present a draft form of contract to each eligible prospective Purchaser and begin contract negotiations.
- H. After contract negotiations are completed, the Authority shall prepare Power Sales Contracts and fix a date for contract signing.
- I. In allocating Long-term Power, the Authority shall consider:
 1. The financial interest and obligation of the Authority; and
 2. The needs and interests of the Purchaser, customers of the Purchaser, and prospective Purchasers.
- J. Within each class of preference priorities established by A.R.S. § 30-125(A), the Authority shall allocate Long-term Power equitably among Qualified Entities in the same preference class based upon the needs of the Entities and the type of use of Long-term Power.
- K. In deciding whether to allocate or reallocate Long-term Power, the Authority shall consider other sources of Power available to the prospective Purchaser from the federal government.

Historical Note

Former Rule Article III. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-11 renumbered as Section R12-14-201 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-202. Application for Purchase of Electric Service

- A. A Qualified Entity that desires to purchase Long-term Power shall file a written application for electric service with the Authority. The application shall include the following:
 1. The Entity's proposed use of Long-term Power;
 2. The Point or Points of Delivery where the Entity will receive electric service;
 3. The annual energy requirement stated in kilowatt-hours, for each Point of Delivery;

Arizona Power Authority

4. The maximum capacity requirement stated in kilowatts, for each Point of Delivery during a continuous 12-month period; and
 5. A statement of the Entity's kilowatt and kilowatt-hour sales or usage during each of the 24 months immediately preceding the date of the application, divided into reference classifications, such as residential, commercial, irrigation pumping, industrial, public use, or other classification used by the Entity or recognized in the electric utility industry.
- B.** An application form for electric service is available at the Authority's business office.
- C.** If the Authority determines that an applicant is eligible to enter into a Power Sales Contract for Long-term Power offered under A.R.S. Title 30, Chapter 1, the applicant, within 30 days after receipt of notice of eligibility, shall file an application for a Power Purchase Certificate under R12-14-203.
- D.** The holder of an existing Power Purchase Certificate is required to re-apply for a Power Purchase Certificate only if the holder wants to use the Long-term Power acquired under A.R.S. Title 30, Chapter 1, in a Service Territory that differs from the Service Territory described in the holder's existing Power Purchase Certificate.

Historical Note

Former Rule Article IV. Not in original publication, correction, Paragraph (6) (Supp. 75-1). Former Section R12-14-12 renumbered as Section R12-14-202 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-203. Power Purchase Certificates; Application

- A.** An application for a Power Purchase Certificate, or an application to amend an existing Power Purchase Certificate, shall be dated, signed, and verified by the applicant or the applicant's authorized representative. An original and five copies of the application and any documents, maps, or other written material to which reference is made in the application shall be filed with the Authority.
- B.** An application form for a Power Purchase Certificate is available at the Authority's business office.
- C.** The application shall include the information required by A.R.S. § 30-152 and the following:
1. A statement of the nature of the applicant's business, and applicant's legal status (for example, a corporation, a partnership, or other business type);
 2. The applicant's mailing address;
 3. A detailed description of the proposed Service Territory;
 4. The name and mailing address of the principal executive officer or secretary of each Entity engaged in the distribution of Power within the proposed Service Territory or contiguous to the Proposed Service Territory;
 5. The estimated amount of Long-term Power for each use proposed by the applicant;
 6. Whether the applicant intends to sell Long-term Power on a profit or a non-profit basis;
 7. Whether the applicant intends to use Long-term Power for its own use, resell Long-term Power, or use and resell the Long-term Power;
 8. A detailed description of the applicant's Electric Power System for the use of Long-term Power;
 9. A copy of any agreement under which the applicant intends to use an Electric Power System owned by another Entity;
 10. The details of any plan under which the applicant proposes to construct, purchase, lease, or obtain the use of an Electric Power System for sale or distribution of Long-term Power; and
 11. An explanation of any arrangements with other Entities for the use of electrical equipment or facilities that the applicant needs in order to use Long-term Power. If any other Entity claims ownership of, or transmission rights on, any electric facilities to be used or if the applicant will duplicate another Entity's electric facilities, the applicant shall disclose that information. If the applicant's arrangements appear to conflict with the rights of another Entity, the applicant may file an affidavit signed by an authorized officer of the affected Entity, describing the affected Entity's agreement to the arrangements for the applicant's use.
- D.** When the application is filed, the Authority shall immediately set a date for a hearing under A.R.S. § 30-152.
- E.** A Power Purchase Certificate is in effect only during the time the holder of the Power Purchase Certificate has an existing Power Sales Contract with the Authority.
- F.** The holder of a Power Sales Contract shall use Power acquired under A.R.S. Title 30, Chapter 1 only in the Service Territory established by the legal description in the Power Purchase Certificate.
- G.** The holder of a Power Purchase Certificate shall not assign the Power Purchase Certificate without the prior written approval of the Authority.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

ARTICLE 3. SERVICE TO PURCHASERS

R12-14-301. Authority's Service to Purchasers

- A.** The Authority shall contract with a Purchaser to deliver Long-term Power only if transmission capability is available to ensure delivery of Long-term Power to the Purchaser at the Point or Points of Delivery to be designated in the Power Sales Contract. The Authority may also contract with a Purchaser to provide opportunities for connection between the Purchaser's Electric Power System and the Electric Power System of other Entities.

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- B. Before Long-term Power is made available to a Purchaser, the Purchaser shall provide evidence to the Authority that a transmission system is available to enable the Purchaser to take and receive Long-term Power at the locations and voltages designated by the Authority.
- C. Unless the Authority agrees to provide facilities or enter into agreements for the transmission of electric Power, the facilities or agreements must be provided by the Purchaser.
- D. The Authority may obtain an alternative or an additional source of transmission service to serve the needs of a Purchaser.
- E. The Purchaser shall pay any costs or expenses necessary to provide transmission service to the Purchaser.
- F. By agreement with one or more Purchasers, the Authority may construct electric lines and related facilities of the voltage and capacity needed to serve the Purchaser. The agreement must assure full payment by the users of the operating costs, depreciation and interest, and any other costs or expenses associated with the project, during a 40-year amortization period or other period established by law or contract. If the Authority constructs the facilities, the Authority shall determine the incremental costs to be paid by the Purchaser or other user benefitting from the facilities constructed by the Authority.
- G. With the aid of Purchasers, the Authority shall work to maintain a system of load scheduling and records so that the Authority may reasonably predict:
 - 1. A Purchaser's current and future Power needs;
 - 2. Whether a Purchaser should be allowed or required to relinquish Long-term Power that is surplus to the Purchaser's needs; and
 - 3. Whether a Purchaser will have Long-term Power that is temporarily or permanently surplus to the Purchaser's needs.
- H. The Authority shall periodically perform surveys to:
 - 1. Identify sources of Power or transmission service that may be temporarily or permanently available to the Authority;
 - 2. Identify possible markets for available Power resources; and
 - 3. Identify possible markets for recaptured, relinquished, tendered, or temporarily available surplus Long-term Power.

Historical Note

Former Rule Article V. Former Section R12-14-21 renumbered as Section R12-14-301 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-302. Systems and Operation Plans

For the Authority's information and assistance in the administration of its Power Sales Contracts, a Purchaser that does not manage and operate its own Electric Power System shall, at the Authority's request, submit a plan for the use and administration of Long-term Power. The Purchaser shall attach to the plan, maps, specifications, and agreements necessary to disclose the nature and extent of the plan.

Historical Note

Former Rule Article VI. Not in original publication, correction, subsections (C) and (D) (Supp. 75-1). Former Section R12-14-22 renumbered as Section R12-14-302 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-303. Repealed

Historical Note

Former Rule Article VII. Former Section R12-14-23 renumbered as Section R12-14-303 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 4. ADMINISTRATION OF POWER

R12-14-401. Sale, Use, Transfer, and Administration of Long-term Power

- A. A Purchaser shall not enter into an agreement for power pooling affecting Power under the Authority's jurisdiction without the prior written approval of the Authority. The Authority shall not unreasonably withhold approval.
- B. Subject to the terms of a Purchaser's Power Sales Contract, a Purchaser may tender or relinquish surplus Long-term Power to the Authority for resale by the Authority.
- C. The Authority shall use its best efforts to sell a Purchaser's tendered or relinquished Long-term Power and shall apply the net proceeds from the sale toward the Purchaser's payment obligations under the Purchaser's Power Sales Contract.
- D. Long-term Power tendered or relinquished to the Authority shall be returned to the Purchaser not more than 60 days after the Authority's receipt of the Purchaser's written notice that the Purchaser requires a return of the tendered or relinquished Long-term Power to meet the Purchaser's loads.
- E. The tender or relinquishment of Long-term Power shall not relieve the Purchaser of its obligations under its Power Sales Contract. The tender or relinquishment of Long-term Power shall not be deemed to be a recapture by the Authority unless:
 - 1. The tender or relinquishment is for the unexpired term of the Purchaser's Power Sales Contract; and
 - 2. The Authority has contracted to sell the tendered or relinquished Long-term Power to another Qualified Entity under the same terms and conditions as those contained in the Purchaser's Power Sales Contract.
- F. Subject to the terms of a Purchaser's Power Sales Contract, if the Long-term Power purchased from the Authority exceeds the Purchaser's electric load for three consecutive contract years, the Authority may recapture the excess Long-term Power as follows:
 - 1. The Authority shall give the Purchaser at least 30 days' written notice of a conference concerning the Authority's consideration of the possible recapture of Long-term Power;

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2. The Authority shall determine whether any portion of the Purchaser's Long-term Power allocation can reasonably be expected to exceed the Purchaser's future needs, and the Authority may recapture the excess portion;
 3. Subject to Article 6 of this Chapter, any recapture of Long-term Power is effective 60 days after the Purchaser receives a Notice of Recapture from the Authority, or at a later date specified in the Notice of Recapture; and
 4. Any recapture of Long-term Power reduces the Purchaser's allocation of Long-term Power by the amount of Long-term Power recaptured by the Authority.
- G.** A Purchaser shall not transfer or assign a Power Sales Contract or any interest in a Power Sales Contract without prior written approval by the Authority. The transfer or assignment of a Power Sales Contract or any interest in a Power Sales Contract does not relieve the Purchaser from any obligation under the Purchaser's Power Sales Contract.
- H.** The Authority shall not approve an assignment of a Power Sales Contract, or any interest in a Power Sales Contract that:
1. Conflicts with any provision of law;
 2. Conflicts with the Authority's regulations;
 3. Conflicts with any provision of a Purchaser's Power Sales Contract;
 4. Disrupts established Power practices, an Electric Power System, or electric facilities;
 5. Results in an increased cost of service to other Purchasers; or
 6. Confers a preference upon an Entity not entitled to preference.
- I.** The Authority shall not approve an assignment of a Power Sales Contract or an interest in a Power Sales Contract if the Authority determines that the assignment is discriminatory or that the Long-term Power or rights to Long-term Power should be recaptured by the Authority for reallocation, sale, or other disposition to other Qualified Entities.
- J.** A Power Sales Contract may restrict or prohibit the wholesale sale or resale of Long-term Power by the Purchaser.
- K.** The holder of a Power Purchase Certificate shall use Long-term Power only for the purposes and uses for which it is allocated and sold. Long-term Power allocated and sold under A.R.S. Title 30, Chapter 1 shall be used only within the Service Territory established in the Purchaser's Power Purchase Certificate, unless otherwise authorized in writing by the Authority. The Authority may authorize banking of electric energy and exchange of banked energy between Purchasers under terms and conditions approved by the Authority.

Historical Note

Former Rule Article VIII. Not in original publication, correction, subsection (G) (Supp. 75-1). Former Section R12-14-31 renumbered as Section R12-14-401 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-402. Changing Points of Delivery; Switching of Electric Service Among Points of Delivery

The Authority may allow a Purchaser to change its electric service from a Point of Delivery to another Point or Points of Delivery. Each Point of Delivery shall be a separate Point of Delivery for the Authority's billing purposes unless a new Point of Delivery replaces an existing Point of Delivery. A Purchaser cannot change or switch its electric service between the Purchaser's Points of Delivery and the Points of Delivery of other Purchasers without the prior written approval of the Authority.

Historical Note

Former Rule Article IX. Former Section R12-14-32 renumbered as Section R12-14-402 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-403. Wheeling and Operating Agreements

- A.** A Purchaser who wants to enter into an agreement for power pooling or an agreement with another Entity with regard to power operations, transmission, or wheeling involving Long-term Power shall:
1. Petition the Authority for permission to enter into an agreement;
 2. State in the petition all relevant facts and the reasons for the proposed agreement; and
 3. Give the Authority a copy of any proposed agreement and other information, data, and documents requested by the Authority.
- B.** A Purchaser shall not enter into an agreement for the transmission or wheeling of Long-term Power over the facilities of another Entity without the prior written approval of the Authority.
- C.** An operating agreement, transmission agreement, power pooling agreement, or wheeling agreement shall not be approved by the Authority if the agreement:
1. Conflicts with the provisions of any Power Sales Contract;
 2. Results in disruption of established electric service, operations, practices, systems, or facilities; or
 3. Endangers electric service to other Purchasers, to third parties, or to the general public.

Historical Note

Former Rule Article X. Former Section R12-14-33 renumbered as Section R12-14-403 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-404. Disposition of Short-term Power

The Authority may negotiate and enter into contracts with Qualified Entities for the sale, purchase, exchange, or other disposition of Short-term Power.

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Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-405. Petition For Information, Advice, or Assistance

- A. Under A.R.S. § 30-129 and A.R.S. Title 45, Chapter 10, any Entity may petition the Authority for information, advice, or assistance regarding any matter within the jurisdiction of the Authority. The petition shall be in writing and shall include:
1. The names of all interested or affected Entities;
 2. The basis for the requested information, advice, or assistance;
 3. The location of any Project involved;
 4. The action requested of the Commission; and
 5. Other information or relevant matter that may assist the Commission in acting upon the petition.
- B. The Commission may direct the Authority staff or an Authority consultant to conduct preliminary studies, surveys, or investigations with respect to any requested action.
- C. If appropriate, the Commission shall schedule a Conference. The Authority shall notify all interested Entities that they may make an oral or written presentation and file documents, reports, or other material relevant to the requested action.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

ARTICLE 5. RECORDS

R12-14-501. Purchaser's Records

At the request of the Authority, a Purchaser shall file copies of agreements for the purchase, sale, exchange, transmission, banking, power pooling, or wheeling of Long-term Power between the Purchaser and any Entity other than the Authority, together with all current rate schedules and amendments.

Historical Note

Former Rule Article XI. Former Section R12-14-41 renumbered as Section R12-14-501 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-502. Repealed

Historical Note

Former Rule Article XII. Not in original publication, correction subsections (A) and (B) (Supp. 75-1). Former Section R12-14-42 renumbered as Section R12-14-502 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION

R12-14-601. Conferences

- A. After first giving not less than 10 days' public notice and an opportunity to comment, the Commission may hold a Conference concerning any subject matter within the jurisdiction of the Authority. The Commission shall determine the Conference agenda. A Conference is intended to provide information and receive comments regarding any pending or proposed course of action by the Commission. A formal or binding action shall not be taken by the Commission at a Conference.
- B. Except as otherwise provided in these rules, the Commission shall establish the date, time, and place of any Conference and may continue, adjourn, or reschedule any Conference.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article I, adopted effective November 14, 1952, renumbered as Section R12-14-601 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Former Section R12-14-601 repealed; new Section R12-14-601 renumbered from R12-14-607 and amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-602. Repealed

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article II, adopted effective November 14, 1952, renumbered as Section R12-14-602 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). Section repealed by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-603. General

- A. This article applies to any Appealable Agency Action arising from a decision or action of the Commission.

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- B. The Commission shall conduct any administrative hearing, pursuant to the requirements of this article, acting as the Administrative Law Judge pursuant to A.R.S. § 41-1092.01.
- C. Because state statutes provide many of the procedural requirements for the conduct of administrative hearings, these rules will cross reference such statutes where appropriate. Copies of the statutes and these rules may be obtained from the Arizona Power Authority at its office at 1810 W. Adams Street, Phoenix, Arizona, during normal business hours.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article III, adopted effective November 14, 1952, renumbered as Section R12-14-603 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-604. Definitions

For purposes of this article, the following definitions apply unless otherwise stated:

- 1. As used in this article, the terms “Commission” and “Administrative Law Judge” have the same meaning as in the relevant statutes and are used interchangeably.
- 2. “Appealable Agency Action” means any decision or action by the Commission determining matters related to the allocation of and contracting for power resources and associated services marketed by the Commission.
- 3. “Arizona Power Authority” or “Authority” means the agency established pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
- 4. “Commission” means the Arizona Power Authority Commission as established and organized pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
- 5. “Party” has the meaning described in A.R.S. § 41-1001(14).
- 6. “Person” has the meaning described in A.R.S. § 41-1001(15).

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article IV, adopted effective November 14, 1952, renumbered as Section R12-14-604 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-605. Applicability; Authority

- A. These rules apply to any Appealable Agency Action heard by the Commission. Unless otherwise required by law or waived pursuant to subsection (B), all hearings shall be scheduled at the convenience of the Commission and shall be held at the Arizona Power Authority's business office in Phoenix, Arizona. The rules in this article were drafted, proposed, and adopted pursuant to A.R.S. § 41-1003 and A.R.S. § 41-1092.01(F).
- B. The Commission may waive the application of any of these rules to further administrative convenience, expedition, and economy:
 - 1. With the consent of the parties to the appeal, or
 - 2. If the waiver does not conflict with law, and does not cause undue prejudice to any party.
- C. If a procedure is not provided by statute or these rules, the Commission may issue an order using the Arizona Rules of Civil Procedure or related local court rules for guidance.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article V, adopted effective November 14, 1952, renumbered as Section R12-14-605 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-606. Notice of Appealable Agency Action

- A. The Authority shall serve notice of an Appealable Agency Action pursuant to A.R.S. § 41-1092.04. Pursuant to A.R.S. § 41-1092.03, the notice shall:
 - 1. Identify the statute or rule on which the action is based.
 - 2. Include a description of any party's right to file a notice of appeal or to request a hearing on the Appealable Agency Action.
 - 3. Include a description of any party's right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06.
- B. Each Appealable Agency Action shall be posted to the Arizona Power Authority website within 48 hours after the action is taken. The posting shall constitute official notice of the action. The Authority additionally may elect to provide any party, and such other interested persons as have officially requested to be included, electronic notice of the posting which may be accompanied by the referenced document. Otherwise, each person or entity which has participated in the process leading to the Appealable Agency Action shall be provided with written notice thereof, with notice at the Person's last address of record within five days of the notice being published on the Arizona Power Authority website.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VI, adopted effective November 14, 1952, renumbered as Section R12-14-606 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4).

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93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-607. Request for Hearing; Setting the Hearing

- A. A party may initiate an appeal by filing a notice of appeal or request for a hearing with the Arizona Power Authority within 30 days after receiving the notice prescribed in R12-14-606(A). The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the Appealable Agency Action. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the Appealable Agency Action and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, and the action being appealed and shall contain a concise statement of the reasons for the appeal or request for a hearing. If requested, the Authority shall schedule an appeal hearing pursuant to this section.
- B. If good cause is shown, the Commission may accept an appeal or request for a hearing that is not filed in a timely manner.
- C. A party filing a notice of appeal or requesting the Commission schedule an administrative hearing shall provide the following information:
 - 1. Caption of the Appealable Agency Action, including the name and address of each party;
 - 2. The date the party appealed the agency action;
 - 3. A concise statement of the reasons for the appeal;
 - 4. Any request to expedite or consolidate the appeal; and
 - 5. If a hearing is requested:
 - a. the estimated time for the hearing;
 - b. the proposed hearing dates; and
 - c. any agreement of the Parties to waive applicable time limits to set the hearing.
- D. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause, pursuant to A.R.S. § 41-1092.05.
- E. Within 10 days of the Commission's receipt of a request for hearing, the Commission shall provide notice of the date, time, and location of the hearing in the same manner as provided in R12-14-606(B).

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VII, adopted effective November 14, 1952, renumbered as Section R12-14-607 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section renumbered to R12-14-601 at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-608. Summary Dismissal

An appeal to the Commission may be subject to summary dismissal by the Commission for any of the following causes:

- 1. If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;
- 2. If the notice of appeal or request for hearing is not filed within the time required.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VIII, adopted effective November 14, 1952, renumbered as Section R12-14-608 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-609. Waiver of Rights

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

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article IX, adopted effective November 14, 1952, renumbered as Section R12-14-609 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-610. Intervention; Amicus Curiae

- A. A person who wishes to intervene in an appeal must file a motion to intervene. Except for good cause shown, a person must file the motion within 10 days after the Commission issues its notice pursuant to R12-14-607(E).
- B. A motion to intervene must set forth the basis for the proposed intervention, including whether the person had a right to appeal the Appealable Agency Action or claims an interest in the subject of the action and the person is so situated that disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the Person's interest is adequately represented by existing parties.
- C. The Commission may:
 - 1. Grant the motion to intervene;
 - 2. Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or
 - 3. Grant the motion to intervene but limit the person's participation in the appeal.

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- D. A person may file a motion to file a brief as amicus curiae.
 - 1. The motion must state the person's interest in the appeal and how its brief will be relevant to the Appealable Agency Action.
 - 2. The motion must contain a certification that the movant or movant's counsel has read any relevant filed briefs of the parties and that the movant's arguments are not duplicative of those presented by the parties.
 - 3. The Commission may grant or deny the motion in its discretion. The Commission may also allow a Person to file a brief as amicus curiae if it denies the Person's motion to intervene.
- E. A person granted full or limited intervener status is a party to the appeal, while an amicus curiae is not. A person granted amicus curiae status shall serve its brief on the parties to the appeal.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article X, adopted effective November 14, 1952, renumbered as Section R12-14-610 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-611. Informal Settlement Conference

- A. If requested by any party to an appeal of an Appealable Agency Action, the Commission shall hold an informal settlement conference within 15 days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the Commission no later than twenty days before the hearing. If an informal settlement conference is requested, the party shall notify the Commission of the request and the outcome of the conference. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to A.R.S. § 41-1092.05.
- B. If an informal settlement conference is held, a person designated by the Commission shall represent the Commission at the conference. The Commission representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. By participating in the settlement conference, the party or parties waive their right to object to the participation of the Commission representative in the final administrative decision.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XI, adopted effective November 14, 1952, renumbered as Section R12-14-611 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-612. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the Commission or individual Commissioners about any substantive issue in a pending appeal unless:

- 1. All parties are present;
- 2. It is during a scheduled proceeding, provided that a party that fails to appear after proper notice waives its right to object to the subjects discussed or any rebuttal of these subjects or
- 3. It is in writing, including facsimile or other electronic means, with copies to all Parties.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XII, adopted effective November 14, 1952, renumbered as Section R12-14-612 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-613. Motions

- A. Purpose. A party requesting a ruling from the Commission shall file a motion. Motions may be made for rulings such as:
 - 1. Consolidation or severance of issues pursuant to R12-14-616;
 - 2. Continuing or expediting a hearing pursuant to R12-14-617;
 - 3. Vacating a hearing pursuant to R12-14-618;
 - 4. Prehearing conference pursuant to R12-14-619;
 - 5. Quashing a subpoena pursuant to R12-14-620;
 - 6. Telephonic testimony pursuant to R12-14-621; and
 - 7. Reconsideration of a previous order pursuant to R12-14-630 and R12-14-631.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to R12-14-615. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Commission at least 10 days before any scheduled hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
 - 1. A ruling on the motion will further administrative convenience, expedition or economy; or
 - 2. A ruling on the motion will avoid undue prejudice to any party.
- D. Response to Motion. A party may file a written response stating any objection to the motion within 5 days of service, or as directed by the Commission.

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- E. Oral Argument. A party may request oral argument when filing a motion or response. The Commission may grant oral argument if it is necessary to develop a complete record.
- F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XIII, adopted effective November 14, 1952, renumbered as Section R12-14-613 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-614. Computing Time

In computing any time period, the Commission shall exclude the day from which the designated time period begins to run. The Commission shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Commission shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-615. Filing and Service of Documents

- A. Docket. The Authority shall open a docket for each Appealable Agency Action upon receipt of a notice of appeal or request for hearing. All documents filed in an Appealable Agency Action with the Authority other than by electronic means shall be date stamped on the day received by the Authority and entered in the docket.
- B. Definition. "Documents" include papers such as notices of appeal, requests for hearing, motions, responses, notices, and briefs.
- C. Form. A party shall state on the document the name and address of each party served and how service was made pursuant to subsection (E). A document shall contain the Authority's caption and docket number.
- D. Signature. A document filed with the Authority shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document and has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment. Signatures can be either hand-written or electronic.
- E. Filing and service. A copy of a document filed with the Authority shall be served on all parties. Filing with the Authority and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile or other electronic means.
- F. Date of filing and service. A document is filed with the Authority on the date it is received by the Authority, as established by the Authority's date stamp on the face of the document, the facsimile date or the electronic receipt date. A copy of a document is served on a party as follows:
 - 1. On the date it is personally served;
 - 2. Five days after it is mailed by express or 1st class mail;
 - 3. On the date of the return receipt if it is mailed by certified mail; or
 - 4. On the date indicated on the facsimile transmission or the electronic receipt date.
- G. Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the Commission and every other party to the action to the party's last address of record with the Authority. Each party shall inform the Authority of any change of address within five days of the change. Such service may include delivering the document by electronic means, such as email or facsimile, unless a party has specifically requested not to receive notice or service through electronic means, such as email or facsimile.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-616. Consolidation or Severance of Appeals

- A. Standards for consolidation. The Commission may order consolidation of pending appeals, if:
 - 1. There are substantially similar factual or legal issues, or
 - 2. All parties are the same, or
 - 3. If there are different parties, all parties consent to the consolidation.
- B. Order. The Commission shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The Commission shall designate the controlling docket number and caption to be used on all future documents.
- C. Severance. The Commission may sever consolidated Appealable Agency Actions to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the Commission's own review, or a party's motion.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing

- A. Continuing or expediting a hearing. When ruling on a motion to continue or expedite, the Commission shall consider such factors as:
 - 1. The time remaining between the filing of the motion and the hearing date;
 - 2. The position of other parties;

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3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
 4. Whether testimony of an unavailable witness is authorized by law, and, if so, whether it can be taken telephonically or by deposition; and
 5. The status of settlement negotiations.
- B.** Reconvening a hearing. The Commission may recess a hearing and reconvene at a future date by a verbal ruling during the initially noticed hearing or thereafter during any continuation of the hearing.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-618. Vacating a Hearing

The Commission may vacate a calendared hearing if:

1. The parties agree to vacate the hearing;
2. The Commission dismisses the matter;
3. The party withdraws the appeal;
4. The party fails to comply with any order of the Commission; or
5. Facts demonstrate to the Commission that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-619. Prehearing Conference

- A.** Procedure. The Commission may hold a prehearing conference. The conference may be held telephonically. The Commission may issue a prehearing order outlining the issues to be discussed. As outlined by A.R.S. § 41-1092.05, prehearing conferences may be held for any of the following reasons:
1. Clarify or limit procedural, legal or factual issues;
 2. Consider amendments to any pleadings;
 3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
 4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;
 5. Schedule deadlines, hearing dates and locations if not previously set;
 6. Allow the Parties opportunity to discuss settlement; or
 7. Any other similar reason determined by the Commission to further administrative convenience, expedition, and economy, or to avoid undue prejudice.
- B.** Record. The Commission may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-620. Subpoenas

- A.** Form. As provided by A.R.S. § 41-1092.07 and A.R.S. § 41-1092.10, any party may request a subpoena in writing from the Commission and shall include in the request:
1. The caption of the Appealable Agency Action;
 2. A list or description of any documents sought;
 3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
 4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
 5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B.** The Commission may require a brief statement of the relevance of testimony or documents.
- C.** Service of subpoena. Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the Arizona Power Authority a certified statement of the date and manner of service and the name of the person served.
- D.** Objection to subpoena. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the Commission. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E.** Quashing, modifying subpoenas. The Commission shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
 2. The desired testimony or evidence may be obtained by an alternative method, or
 3. The existing administrative record contains the information and evidence that would otherwise be proffered pursuant to the subpoena.

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Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-621. Telephonic Testimony

The Commission may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-622. Rights and Responsibilities of Parties

- A. Generally. A party may present testimony and documentary evidence and argue with respect to the issues and may examine and cross-examine witnesses.
- B. Preparation. A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. Exhibits. A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the Commission, unless it was previously provided through discovery.
- D. Responding to Orders. A party shall comply with an order issued by the Commission concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the Commission to reconsider the order.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-623. Hearings; Depositions

- A. Pursuant to A.R.S. § 30-107, all members of the Commission shall attend all hearings, unless excused from attendance for a justifiable excuse which shall be made part of the record. Three members shall constitute a quorum for conducting a hearing.
- B. The Parties to an Appealable Agency Action have the right to be represented by counsel, or to proceed without counsel, to submit evidence and to cross-examine witnesses.
- C. The Commission may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served pursuant to R12-14-620(C) and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil proceedings. The Commission may administer oaths and affirmations to witnesses.
- D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the Commission may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The Commission shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.
- E. All hearings shall be recorded. The Commission shall secure either a court reporter or an electronic means of producing or preserving a clear and accurate record of the proceeding at the Authority's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.
- F. Unless otherwise provided by law, the following apply:
 1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
 2. Copies of documentary evidence may be received in the discretion of the Commission. On request, Parties shall be given an opportunity to compare the copy with the original.
 3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
 4. On application of a party and for use as evidence, the Commission may permit a deposition to be taken, in the manner and on the terms designated by the Commission, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the Commission if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or Arizona Power Authority rule. Notwithstanding A.R.S. § 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this subsection or subsection (C).
 5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
 6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

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7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-624. Conduct of Hearing

- A. Public access. Unless otherwise provided by law, all hearings are open to the public.
- B. Opening. The Commission shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations. The Commission shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D. Opening statements. The party initiating the appeal may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the Commission.
- E. Order of presentation. After opening statements, the party initiating the appeal shall begin the presentation of evidence, unless the parties agree otherwise or the Commission determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the Commission to expedite and ensure a fair hearing. The Commission shall make rulings necessary to prevent argumentative, repetitive, or irrelevant presentation of evidence, including testimony, and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the Commission. The Commission may permit or require closing oral argument to be supplemented by written memoranda. The Commission may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Commission may prescribe.
- H. Conclusion of hearing. Unless otherwise provided by the Commission, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-625. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the Commission may proceed with the presentation of the evidence of the appearing party, vacate the hearing and return the matter to the Authority for any further action, or dismiss the appeal and conclude that there is a final action on the existing administrative record.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-626. Witnesses: Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the Commission, the Commission may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-627. Proof

- A. Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of proof. Unless otherwise provided by law:
 1. The party asserting a claim, right, or entitlement has the burden of proof;
 2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 3. The proponent of a motion shall establish the grounds to support the motion.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-628. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Commission may order the disruptive person to leave or be removed.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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R12-14-629. Hearing Record

- A. Maintenance. The Commission shall maintain the official record of appeal and hearing.
- B. Transfer of record. Before the Commission makes a final administrative decision, the party may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Commission and shall pay the reasonable costs of duplication.
- C. Release of exhibits. Exhibits shall be released:
 - 1. Upon the order of a court of competent jurisdiction; or
 - 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-630. Final Administrative Decisions; Review

- A. For purposes of this article, the decision of the Commission on appeal is the final administrative decision.
- B. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except that if a party has not requested a hearing upon receipt of a notice of Appealable Agency Action pursuant to section 41-1092.03, the Appealable Agency Action is not subject to judicial review.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-631. Rehearing or Review

- A. A party may file a motion for rehearing within 30 days after service of the final administrative decision pursuant to A.R.S. § 41-1092.09.
- B. Any other party may file a response to the motion for rehearing within 15 days after the date the motion for rehearing is filed.
- C. After a hearing has been held and a final administrative decision has been entered pursuant to A.R.S. § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- D. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.
- E. Except as provided in this subsection, the Commission shall rule on the motion within 15 days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript

- A. Notification to the Arizona Power Authority. Within 10 days of filing a notice of appeal for judicial review of a final administrative decision, the party shall file a copy of the notice of appeal with the Arizona Power Authority. The Authority shall then transmit the record to the Superior Court.
- B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Authority shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Authority, together with one unbound copy.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

30-103. Administrative powers of authority; compensation of assistants

A. The authority shall determine its organizational structure and methods of procedure in accordance with the provisions of this chapter, and may adopt, amend or rescind the routine and general rules, regulations and forms and prescribe a system of accounts.

B. The authority shall provide necessary records, including order, resolution and minute books. It may act, effectuate, manifest and record its actions by motion, resolution, order or other appropriate method. Minute, order and resolution records shall be orderly arranged and conveniently indexed. Records of the authority shall be public and open for inspection during business hours.

C. Subject to title 41, chapter 4, article 4, the authority may employ engineering, accounting, skilled and other assistants, define their duties and provide the conditions of employment. All positions shall be filled by persons selected and appointed on a nonpartisan, fitness and qualification basis.

D. Assistants, employed under the provisions of this section, shall receive compensation as determined pursuant to section 38-611.