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DEPARTMENT OF ADMINISTRATION (R19-0801)

Title 2, Chapter 11, Articles 3-5, Department of Administration - Public Buildings Maintenance



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 9, 2019

SUBJECT: DEPARTMENT OF ADMINISTRATION (R19-0801)
Title 2, Chapter 11, Articles 3-5, Department of Administration - Public Building Maintenance

Amend: Article 3, R2-11-301, R2-11-302, R2-11-303, R2-11-304, R2-11-305, R2-11-306, R2-11-307, R2-11-309, R2-11-310, R2-11-311

New Section: R2-11-312

Repeal: Article 4, R2-11-401, R2-11-402, R2-11-403, R2-11-404, R2-11-405, R2-11-406, R2-11-407, R2-11-408, R2-11-409, Article 5, R2-11-501

Renumber: Article 5, R2-11-501

This rulemaking from the Arizona Department of Administration (ADOA) seeks to amend rules in Title 2, Chapter 11, Articles 3-5 relating to public building maintenance. Currently, Article 3 addresses solicitations on state property and Article 4 addresses special events on state property. ADOA seeks to consolidate Articles 3 and 4 because the procedures for conducting solicitations or special events on state property are the same. Consolidating these articles into one would reduce a regulatory burden and eliminate duplicative and unnecessary rules. Due to this proposed consolidation, ADOA seeks to renumber the current Article 5

(Severability) and the one rule it contains as Article 4 and R2-11-401.

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

Yes. ADOA cites to general and specific authority for these rules.

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

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

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

In this rulemaking, the Department is consolidating Articles 3 and 4 because they are very similar. Article 3 establishes rules for solicitation on state property and Article 4 establishes rules for events on state property. The procedures for businesses seeking to use state property for either solicitation or events are the same. Consolidating these rules will reduce regulatory burdens on businesses.

In Fiscal Year (FY) 2019, the Department received 65 applications for events and issued 60 permits for events. In the same fiscal year, the Department did not receive any applications for solicitation.

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 this rulemaking improves the quality of the rules for all stakeholders. No additional costs are anticipated as a result of this rulemaking. The benefits outweigh the costs.

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

Key stakeholders are the Department, businesses that use state property for solicitation or events, protestors, and the general public.

The Department indicates that these rules impose only minimal compliance costs on the Department. The Department does not anticipate that improving these rules will increase costs for the Department.

Businesses that use state property for solicitation or events will receive modest benefits from this rulemaking. Consolidating the requirements in Articles 3 and 4 will reduce confusion among these businesses and increase the clarity of the rules.

Protestors will benefit from this rulemaking in the same manner as businesses listed above.

The general public will benefit from this rulemaking in the same manner as businesses listed above.

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

ADOA did not receive any comments 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. The final rules are not a substantial change, considered as a whole, from the proposed rules.

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

Not applicable. There is no corresponding federal law.

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

Yes. These rules require a permit. ADOA issues a general permit for these rules and thus complies with A.R.S. § 41-1037.

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?**

ADOA did not review or rely on any study in conducting this rulemaking.

11. **Conclusion**

Council staff finds that this rulemaking will reduce a regulatory burden on businesses in this state and streamline process for conducting solicitations and special events on state property. ADOA accepts the usual 60-day delayed effective date for the amended rules. Council staff recommends approval of this rulemaking.

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

DIRECTORS OFFICE
100 NORTH 15TH AVENUE • SUITE 403
PHOENIX, ARIZONA 85007

June 4, 2019

VIA EMAIL : grrc@azdoa.gov
Nicole Sornsinsin , Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADOA, Citation to Title 2, Chapter 11, Article 3 -5, Regular Rulemaking

Dear Nicole Sornsinsin:

1. The close of record date: 6/3/2019
2. Does the rulemaking activity relate to a Five Year Review Report: Yes
 - a. If yes, the date the Council approved the Five Year Review Report: January 8, 2019
3. Does the rule establish a new fee: No
4. Does the rule contain a fee increase: No
5. Is an immediate effective date requested pursuant to A.R.S. 41-1032: No

ADOA certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. ADOA certifies that the preamble states that it did not rely on it in the ADOA's evaluation of or justification for the rule. ADOA certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable : The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable : Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable : Material incorporated by reference;

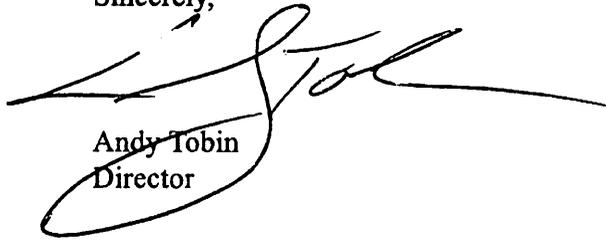
Nicole Sornsin, Chair

June 4, 2019

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6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable : If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,



Andy Tobin
Director

AGENCY RECEIPT

1. Agency name: Arizona Department of Administration

2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:

Article, Part, or Section Affected (as applicable) Rulemaking Action

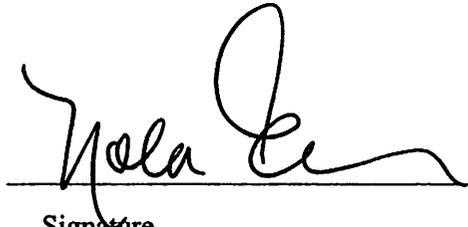
R2-11-301	Amend
R2-11-302	Amend
R2-11-303	Amend
R2-11-304	Amend
R2-11-305	Amend
R2-11-306	Amend
R2-11-307	Amend
R2-11-309	Amend
R2-11-310	Amend
R2-11-311	Amend
<u>R2-11-312</u>	New Section
R2-11-401	Repeal
R2-11-402	Repeal
R2-11-403	Repeal
R2-11-404	Repeal
R2-11-405	Repeal
R2-11-406	Repeal
R2-11-407	Repeal
R2-11-408	Repeal
R2-11-409	Repeal
R2-11-501	Repeal
R2-11-501	Renumber

AGENCY CERTIFICATE
NOTICE OF FINAL RULEMAKING

1. **Agency name:** Arizona Department of Administration
2. **Chapter heading:** Department of Administration Public Buildings Maintenance
3. **Code citation for the Chapter:** 2 A.A.C. 11
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:**

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R2-11-301	Amend
R2-11-302	Amend
R2-11-303	Amend
R2-11-304	Amend
R2-11-305	Amend
R2-11-306	Amend
R2-11-309	Amend
R2-11-310	Amend
R2-11-311	Amend
<u>R2-11-312</u>	<u>New Section</u>
R2-11-401	Repeal
R2-11-402	Repeal
R2-11-403	Repeal
R2-11-404	Repeal
R2-11-405	Repeal
R2-11-406	Repeal
R2-11-407	Repeal
R2-11-408	Repeal
R2-11-409	Repeal
R2-11-501	Renumber

5. The rules contained in this package are true and correct as proposed.

A handwritten signature in black ink, appearing to read "Nola Barnes", written over a horizontal line.

Signature

Nola Barnes

Typed name of signer

A handwritten date "May 9, 2019" written in black ink over a horizontal line.

Date signed

Assistant Director

Title of signer

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):

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

Notice of Rulemaking Docket Opening: (volume #24, Issue47) A.A.R. (page#3287)

Notice of Proposed Rulemaking: (volume #24, Issue 47) A.A.R. (page #3269)

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

Name: Jobalena Yates

Address: 1110 W Washington, suite 155

Telephone: (602) 542-0692

Fax: Not applicable

Web site: www.gsd.az.gov

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

The Department wishes to review and amend Article 3 and repeal Article 4 to consolidate both articles into one to improve clarification and understanding for the public.

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

Not applicable

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

Not applicable

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

Articles 3 and 4 can impact small businesses looking to conduct a solicitation or special event on state property. Impacts can occur regarding the rules in cases where events or solicitations are canceled due to increased costs for insurance coverage required by the Director. However, the rules on Special Events and Solicitations can have a favorable impact on small businesses as well, specifically insurance agents who provide coverage for such events.

The administrative costs for compliance of these rules are minimal to the Department. There are no viable methods of compliance that would apply to small businesses.

The department did not see any impacts as a result of the 2003 economic impact statement and its estimations as noted nor received comments on the EIS.

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

None

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

None

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:

(Editor's Note: All agencies answer first part of question here.)

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:

Yes, a general permit is used. This is required to ensure that state property is protected and to minimize the state's liability.

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

No corresponding federal law applies.

b. 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:

None submitted

(Editor's Note: If the answer is "yes" to Preamble item (12)(c), then the analysis should be filed with the rulemaking package)

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

None

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

Notice of Emergency Rulemaking: (Volume 9) A.A.R. (page 3046)

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18,

2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

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

(Editor's Note: Rule text begins per RI-1-502(B)(18).)

ARTICLE 3. SOLICITATION AND SPECIAL EVENT

R2-11-301. Definitions

The following definitions apply in this Article:

1. "Department" means the Arizona Department of Administration.
2. "Director" means the Director of the Arizona Department of Administration or the Director's designee.
- ~~1.~~ 3. "Solicitation" means any activity that can be interpreted as being for the promotion, sale, advocacy or transfer of product(s), service(s), membership(s), or cause(s). In addition, distribution or posting of advertising, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
- ~~2.~~ 4. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
- ~~3.~~ 5. "Solicitor" means a person conducting a solicitation activity.
6. "Event" or "Special event" means an assembly, gathering, ceremony, press conference, demonstration, display, festival, parade, or rally conducted by a person excluding a ceremony, gathering, or press conference that is conducted by a person authorized by the head of a state agency using the agency's own office space.
7. "Sponsor" means the person holding an event.
- ~~4.~~ 8. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency, including building lobby areas, cafeterias, break rooms, and areas outside of any main entrance. Cafeterias and break rooms are not work sites.

R2-11-302. Unauthorized Solicitation or Event Prohibited

A person shall not conduct a solicitation on state property or use state buildings or grounds for an event without express written permission from the Director.

R2-11-303. Application

- A. Any person who would like to conduct a solicitation or hold an event on state property may apply for a permit by filing, in person or by mail, a Department-approved ~~solicitation~~ application form with the ~~Director's~~ Office of Special Events.
- B. The completed application form shall be submitted at least 15 business days before the desired date of the solicitation or event. A completed application form is one that is legible and contains, at a minimum, all of the following information:
 1. The name, address, and telephone number of the solicitor or sponsor;
 2. The proposed date of the solicitation or event and the approximate starting and concluding times;
 3. The specific, proposed location for the solicitation or event;
 4. A general description of the ~~solicitation's purpose; and~~ solicitation or event, including equipment and facilities to be used;
 5. ~~Copies of solicitation materials to be used. Approximate number of persons expected to be in attendance.~~
 6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B) (1);
 7. Copies of all solicitation materials to be used; all materials must provide accurate information;
 8. The name, address, and telephone number of any chief monitor who will be designated to direct the solicitation or event;
 9. A Certificate of Insurance as required by the Department of Administration Risk Management; and
 10. Any use of devices that create amplified noise must be included in the permit request.
 11. ~~A copy of any contract for medical, sanitary, and security services.~~
- C. The Director may accept a completed application form submitted less than 15 days before a press conference if the Director determines that enforcing the 15-day requirement would nullify the need for the press conference. In this situation, R2-11-304 does not apply.

R2-11-305. Permit Issuance; Denial

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has complied with the application requirements in R2-11-303.
- C. The Director may deny a permit for one or more of the following reasons:
 1. The solicitation or event interferes with the work of an employee or daily business of an agency;

2. The solicitation or event conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
 3. The solicitation or event creates a risk of injury or illness to persons or risk of danger to property; or
 4. The applicant, solicitation, or event fails to comply with the requirements of this Article.
- D. A permit shall not be issued earlier than ~~60 days~~ one year before the solicitation.
- E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules,
 2. The applicant's right to seek a hearing to challenge the denial,
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06, and
 4. The time periods for appealing the denial.

R2-11-306. Bulletin Boards

- A. The Director shall designate at least one bulletin board for solicitation or event material in each state building.
- B. A person conducting a solicitation or event shall post solicitation or event material only on bulletin boards designated under subsection (A).
- C. All posted material must go through the application process and receive approval of the Office of Special Events prior to posting on bulletin boards.
- D. The Department has the authority to remove solicitation or event material that is outdated or improperly posted.

R2-11-309. Exemptions

- A. This Article does not apply to the following state programs:
 1. The State Deferred Compensation Program,
 2. The State Employees Charitable Campaign,
 3. The U.S. Savings Bond Drive,
 4. The United Blood Services Blood Drive,
 5. The Capitol Rideshare Commuter Club,
 6. The Capitol Rideshare Clean Air Campaign,
 7. Human Resources Professional Development programs,
 8. The Employee Wellness Program, ~~and~~
 9. The employee recognition programs of each agency subject to these rules, and
 10. Programs as determined by the Director related to professional development or training only when sponsored or requested by the agency head.
- ~~B. An employee association composed principally of employees of state government agencies may apply under this Article for a permit to conduct a solicitation at a work site~~

R2-11-310. Suspension or Revocation

- A. The Director may suspend or revoke a permit for failure to comply with this Article or other applicable laws.
- B. Before the Director suspends or revokes a permit, the Department shall send the solicitor or sponsor written notice, explaining:
 1. The reason for suspension or revocation, with citations to supporting statutes or rules,
 2. The ~~solicitor's~~ solicitor or sponsor's right to a hearing before suspension or revocation, and
 3. The time and place of the hearing concerning the suspension or revocation.
- C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend the permit pending proceedings for revocation or other action, based on circumstances of the emergency.

R2-11-311. Review of Denial or Summary Suspension

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant, ~~or~~ solicitor, or sponsor may obtain a hearing on a denial or summary suspension.
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-305(E).
- C. If the Director summarily suspends a permit under R2-11-310(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.
- D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

R2-11-312. Risk Management

- A. The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:**
1. Impose conditions on the conduct of the event in the permit;
 2. Require the applicant to post a deposit against damage and clean-up expense;
 3. Require the applicant to carry liability insurance and provide the certificate of insurance; and
 4. Require the applicant to provide medical, sanitary, and security services.
- B. The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:**
1. Previous experience with similar events;
 2. Deposits required for similar events in Arizona;
 3. Risk data;
 4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.
- C. The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.**
- D. If the Director requires insurance for a solicitation or event, the solicitor or sponsor shall list the state of Arizona and the Department of Administration as additional insured entities.**
- E. The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.**

ARTICLE 4. SPECIAL EVENTS REPEALED

R2-11-401. Definitions Repealed

~~The following definitions apply in this Article:~~

- ~~1. "Special event" or "event" means an assembly, demonstration, display, festival, parade, or rally conducted by a person other than a ceremony, gathering, or press conference conducted by a person authorized by the head of a state agency using the agency's own office space.~~
- ~~2. "Sponsor" means the person holding a special event.~~

R2-11-402. Unauthorized Special Event Prohibited Repealed

~~A person shall not use state buildings or grounds for a special event without express written permission from the Director.~~

R2-11-403. Application Repealed

- ~~**A. Any person who would like to hold a special event may apply for a permit by filing, either in person or by mail, a Department approved event application form with the Office of Special Events.**~~
- ~~**B. The completed application form shall be submitted at least two 15 days before the desired date of the special event. A completed application form is one that is legible and contains, at a minimum, all of the following information:**~~
- ~~1. The name, address, and telephone number of the sponsor;~~
 - ~~2. The proposed date of the event and the approximate starting and concluding times;~~
 - ~~3. The specific, proposed location for the event;~~
 - ~~4. A general description of the event, including equipment and facilities to be used;~~
 - ~~5. Approximate number of persons expected to be in attendance;~~
 - ~~6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B) (1);~~
 - ~~7. The name, address, and telephone number of any chief monitor who will be designated to direct the event;~~
 - ~~8. A description of the badge or article of clothing used to identify monitors;~~
 - ~~9. A copy of any insurance policy for the special event; and~~
 - ~~10. A copy of any contract for medical, sanitary, and security services.~~
- ~~**C. The Director may accept a completed application form submitted less than two days before a press conference if the Director determines that enforcing the two day requirement would nullify the need for the press conference. In this situation, R2-11-404 does not apply.**~~

R2-11-404. Processing Procedure Repealed

- ~~A. Within one day of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.~~
- ~~B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.~~
- ~~C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.~~
- ~~D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-403.~~
- ~~E. The Director shall render a permit decision no later than one day after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.~~
- ~~F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time frames:

 - ~~1. Administrative completeness review time frame: one day.~~
 - ~~2. Substantive review time frame: one day.~~
 - ~~3. Overall time frame: two days.~~~~

R2-11-405. Permit Issuance; Denial Repealed

- ~~A. Before issuing a permit, the Director shall review the application.~~
- ~~B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has:

 - ~~1. Complied with the application requirements in R2-11-403;~~
 - ~~2. Posted any deposit necessary under R2-11-407;~~
 - ~~3. Obtained any insurance necessary under R2-11-407; and~~
 - ~~4. Submitted evidence that the applicant will provide any medical, sanitary, and security services necessary under R2-11-407. Submission of a copy of the contract for these services will satisfy this requirement.~~~~
- ~~C. The Director may deny a permit for one or more of the following reasons:

 - ~~1. The event interferes with the work of an employee or daily business of an agency;~~
 - ~~2. The event conflicts with the time, place, manner, or duration of other events for which permits have been issued or are pending;~~
 - ~~3. The event creates a risk of injury or illness to persons or risk of danger to property; or~~
 - ~~4. The applicant or permit fails to comply with the requirements of this Article.~~~~
- ~~D. A permit shall not be issued earlier than 60 days before the special event.~~
- ~~E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:

 - ~~1. The reason for denial, with citations to supporting statutes or rules;~~
 - ~~2. The applicant's right to seek a hearing to challenge the denial;~~
 - ~~3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and~~
 - ~~4. The time periods for appealing the denial.~~~~

R2-11-406. Monitors Repealed

~~The sponsor shall designate one monitor for every 50 persons expected to be in attendance. The monitors shall wear a uniform, distinctive badge, or a distinctive article of clothing at all times during the event for identification purposes.~~

R2-11-407. Risk Management Repealed

- ~~A. The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:

 - ~~1. Impose conditions on the conduct of the event in the permit;~~
 - ~~2. Require the applicant to post a deposit against damage and clean-up expense;~~
 - ~~3. Require the applicant to carry liability insurance and provide the certificate of insurance; and~~
 - ~~4. Require the applicant to provide medical, sanitary, and security services.~~~~
- ~~B. The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:

 - ~~1. Previous experience with similar events;~~
 - ~~2. Deposits required for similar events in Arizona;~~
 - ~~3. Risk data;~~
 - ~~4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.~~~~
- ~~C. The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.~~

- ~~D. If the Director requires insurance for a special event, the sponsor shall list the state of Arizona and the Department of Administration as additional insured entities.~~
- ~~E. The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.~~

R2-11-408. Suspension or Revocation Repealed

- ~~A. The Director may suspend or revoke a permit for failure to comply with this Article, permit conditions, or other applicable laws.~~
- ~~B. Before the Director suspends or revokes a permit, the Department shall send the sponsor written notice, explaining:
 - 1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 - 2. The sponsor's right to a hearing before suspension or revocation.~~
- ~~C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend a permit pending proceedings for revocation or other action, based on the circumstances of the emergency.~~

R2-11-409. Review of Denial or Summary Suspension Repealed

- ~~A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or sponsor may obtain a hearing on a denial or summary suspension.~~
- ~~B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-405(E).~~
- ~~C. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.~~
- ~~D. If the Director summarily suspends a permit under R2-11-408(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.~~

ARTICLE 5. REPEALED ARTICLE 4. SEVERABILITY

~~R2-11-501. R2-11-401. Validity of Rules~~

~~If a rule or portion of a rule contained in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules.~~

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 2. ADMINISTRATION
CHAPTER 11. PUBLIC BUILDINGS MAINTENANCE**

1. Identification of the rulemaking:

A majority of the above cited rules are being amended in compliance with the Governor's Executive Order 2015-01 with ten rules being repealed.

- Amends R2-11-301 to incorporate definitions from Article 4.
- Amends R2-11-302 to incorporate language from Article 4.
- Amends R2-11-303 to incorporate language from Article 4.
- Amends R2-11-304 to reduce number of days for processing procedures.
- Amends R2-11-305 to incorporate language from Article 4.
- Amends R2-11-306 to incorporate language from Article 4.
- Amends R2-11-307 to add "event."
- Amends R2-11-309 to incorporate language from Article 4.
- Amends R2-11-310 to include "solicitor or sponsor's."
- Amends R2-11-311 to include "sponsor."
- Adds new section R2-11-312, Risk Management from Article 4.
- Repeals all of Article 4 and blends into Article 3.
- Article 5 is renumbered and amended.

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

The proposed rule amendments identified above updates the existing rules to:

- Comply with the Governor's Executive Order 2016-03, for any regulation that meets at least one of the following criteria: Overly Burdensome, Antiquated, Contradictory, Redundant, and Nonessential. Most of the proposed rule changes have minimal frequency of occurrence.
- b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not change:

The Department will continue to see confusion for the public in understanding the application process for either solicitation or special event on state property as both articles are currently identical.

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

Since both Articles 3 and 4 are nearly identical, consolidating both articles into one should improve clarification and understanding for the public. The Department anticipates less confusion for the public in understanding the application process for either a solicitation or special event on state property.

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

The proposed rule will have no adverse impact on small business as it does not impose any new requirements nor does it amend any existing requirements impacting small business. Consumers are not impacted by these rules.

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

Name: Jobalena Yates, Administrative Manager

Address: 1501 W. Madison
Phoenix, AZ 85007

Telephone: (602) 542-6252

Email: jobalena.yates@azdoa.gov

Web site: <https://gsd.az.gov>

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

All State employees, members of the public, small business, the Department, protestors and event organizers.

5. Cost benefit analysis:

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

This rulemaking is an update to Title 2, Chapter 11, Article 3, "Solicitation", Article 4, and Article 4, "Special Events. The proposed rules under Article 3 and 4 regulate the use of state property for solicitation and gatherings for special events. The estimated economic impact of the special events rules arises from the requirement for special event insurance to be purchased by the event organizer. The estimated cost to purchase that insurance is between five and twenty dollars per thousand dollars of coverage. This is a requirement of State Risk Management to limit the liability of the State. The administrative costs of compliance are estimated to be minimal to the Department as ADOA has determined no additional full-time employees will be required to implement the rulemaking. There are no viable alternative methods of compliance that would apply to small businesses.

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

No political subdivision is directly affected by the rulemaking.

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

The costs to businesses is the requirement by State Risk Management for event organizers to purchase special event insurance. Again, the estimated cost to purchase that insurance is between five and twenty dollars per thousand dollars of coverage. The benefit is both the businesses and the State are protected by the insurance requirement for event organizers to purchase.

6. Impact on private and public employment:

We believe the rulemaking will have no impact on private or public employment.

7. Impact on small businesses:

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

Event organizers, solicitors.

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

We expect the rulemaking changes to have minimal costs for compliance.

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

None

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

The benefit of blending Article 3 and 4 should provide better understandability, clarity and provide less confusion for the public in the application process for either a solicitation or special event on state property since both articles in their current form are nearly identical.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

ADOA could have not completed the rulemaking. However, this would result in rules that are unnecessary, obsolete, and apt to cause confusion for agencies, boards, commissions and universities.

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director 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, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies 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.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.



Jobalena Yates <jobalena.yates@azdoa.gov>

Fwd: GSD rulemaking

1 message

Christopher Kleminich <Christopher.Kleminich@azdoa.gov>

Fri, Jul 20, 2018 at 10:42 AM

To: Jobalena Yates <jobalena.yates@azdoa.gov>

Chris Kleminich

Attorney

ADOA – Governor's Regulatory Review Council | State of Arizona

100 North 15th Avenue, Suite 305, Phoenix, AZ 85007

p: 602.542.2024 | christopher.kleminich@azdoa.gov<http://grcc.az.gov>**How am I doing? Please take a moment to answer a few questions.**<https://www.surveymonkey.com/r/VOCDGRRRC>

----- Forwarded message -----

From: **Elizabeth Bartholomew** <elizabeth.bartholomew@azdoa.gov>

Date: Tue, Jun 12, 2018 at 2:06 PM

Subject: Fwd: GSD rulemaking

To: Nicole Colyer <Nicole.Ong@azdoa.gov>, Christopher Kleminich <christopher.kleminich@azdoa.gov>, Nola Barnes <Nola.Barnes@azdoa.gov>, John Hauptman <john.hauptman@azdoa.gov>

Here's the approval from the Governor's Office!

----- Forwarded message -----

From: **Robert Smook** <Robert.Smook@azdoa.gov>

Date: Thu, Apr 27, 2017 at 2:05 PM

Subject: RE: GSD rulemaking

To: Elizabeth Bartholomew <Elizabeth.Bartholomew@azdoa.gov>Cc: Nola Barnes <Nola.Barnes@azdoa.gov>, Jobalena Yates <Jobalena.Yates@azdoa.gov>

Wow that was fast! Thanks Elizabeth!

From: Elizabeth Bartholomew**Sent:** Thursday, April 27, 2017 2:01 PM**To:** Robert Smook <Robert.Smook@azdoa.gov>**Cc:** Nola Barnes <Nola.Barnes@azdoa.gov>**Subject:** FW: GSD rulemaking

GSD is good to proceed!

From: Mara Mellstrom [mailto:mmellstrom@az.gov]
Sent: Thursday, April 27, 2017 2:00 PM
To: Elizabeth Bartholomew <Elizabeth.Bartholomew@azdoa.gov>
Subject: Re: GSD rulemaking

Hi Elizabeth - This exempt rulemaking request is approved. Thank you.

Mara Mellstrom

Policy Advisor

Office of the Arizona Governor

1700 W. Washington Street

Phoenix, AZ 85007

O: (602)542-1626

E: mmellstrom@az.gov



From: Elizabeth Bartholomew <Elizabeth.Bartholomew@azdoa.gov>
Date: Thursday, April 27, 2017 at 1:12 PM
To: Mara Mellstrom <mmellstrom@az.gov>
Subject: GSD rulemaking

Hello Mara,

I've attached the proposed rulemaking changes as well as the justifications from the Executive Order from ADOA's General Services Division.

Let me know if you need anything else,

Elizabeth Bartholomew

Legislative Liaison and Communications Manager

Arizona Department of Administration | Office of the Director

P. 602-542-0007 | C. 602-541-7614

elizabeth.bartholomew@azdoa.gov

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 2. ADMINISTRATION
CHAPTER 11. PUBLIC BUILDINGS MAINTENANCE**

1. Identification of the rulemaking:

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- Repeals all of Article 4 and blends into Article 3.
- Article 5 is renumbered and amended.

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

The proposed rule amendments identified above updates the existing rules to:

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

The Department will continue to see confusion for the public in understanding the application process for either solicitation or special event on state property as both articles are currently identical.

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Since both Articles 3 and 4 are nearly identical, consolidating both articles into one should improve clarification and understanding for the public. The Department anticipates less confusion for the public in understanding the application process for either a solicitation or special event on state property.

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

Name: Jobalena Yates, Administrative Manager

Address: 1501 W. Madison
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Telephone: (602) 542-6252

Email: jobalena.yates@azdoa.gov

Web site: <https://gsd.az.gov>

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

All State employees, members of the public, small business, the Department, protestors and event organizers.

5. Cost benefit analysis:

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

This rulemaking is an update to Title 2, Chapter 11, Article 3, "Solicitation", Article 4, and Article 4, "Special Events. The proposed rules under Article 3 and 4 regulate the use of state property for solicitation and gatherings for special events. The estimated economic impact of the special events rules arises from the requirement for special event insurance to be purchased by the event organizer. The estimated cost to purchase that insurance is between five and twenty dollars per thousand dollars of coverage. This is a requirement of State Risk Management to limit the liability of the State. The administrative costs of compliance are estimated to be minimal to the Department as ADOA has determined no additional full-time employees will be required to implement the rulemaking. There are no viable alternative methods of compliance that would apply to small businesses.

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The costs to businesses is the requirement by State Risk Management for event organizers to purchase special event insurance. Again, the estimated cost to purchase that insurance is between five and twenty dollars per thousand dollars of coverage. The benefit is both the businesses and the State are protected by the insurance requirement for event organizers to purchase.

6. Impact on private and public employment:

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7. Impact on small businesses:

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

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9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

ADOA could have not completed the rulemaking. However, this would result in rules that are unnecessary, obsolete, and apt to cause confusion for agencies, boards, commissions and universities.

CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

1. On a pedestrian path or sidewalk; or
 2. In any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices.
- D.** A person shall not park outside of the area designated by painted white lines when using a parking space.
- E.** In an emergency the Department may impose parking limitations or prohibitions required by the particular circumstances.
- F.** For special events the Department may impose parking limitations or prohibitions based on all of the following factors:
1. Previous experience with similar events, and
 2. Risk data.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-204. Parking Decals

- A.** Unless a person is a visitor using parking reserved for visitors, the person shall properly display a reserved parking space decal in the manner prescribed in this Section to be authorized to park in a reserved parking space.
- B.** To park in a parking space reserved for the physically disabled, a person shall obtain a removable windshield placard or special plates, bearing the international symbol of access, from the Department of Transportation, Motor Vehicle Division, and display the placard or plates as prescribed by rules of the Department of Transportation.
- C.** A person with a decal for any other kind of reserved parking space shall display the decal from the rearview mirror, attach the decal to the left side of the windshield, or display the decal on the left side of the dashboard. The person shall ensure that the decal is visible through the windshield so it can be read by someone standing outside the vehicle.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-205. Operation of Vehicles on State Property

- A.** On state property the Department shall enforce all state laws governing the operation of vehicles.
- B.** A person driving or parking a vehicle on state property shall obey posted traffic and parking signs.
- C.** The Department's Capitol Police shall enforce a maximum speed limit of 5 miles per hour in all state parking lots under the Department's jurisdiction.
- D.** Any person who has been in an accident involving a moving vehicle on state property shall immediately report the accident to the Department's Capitol Police.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-206. Expired**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-207. Expired**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-208. Expired**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-209. Removal of Vehicles from State Property

The Department shall remove any vehicle on state property parked in a barricaded area, abandoned, or parked in a manner that constitutes a hazard or impediment to vehicular or pedestrian traffic or to the movement and operation of emergency equipment. The registered owner of the vehicle shall pay for all costs of removal.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 3. SOLICITATION**R2-11-301. Definitions**

The following definitions apply in this Article:

1. "Solicitation" means any activity that can be interpreted as being for the promotion, sale, or transfer of products, services, memberships, or causes. Distribution or posting of advertising, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
2. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
3. "Solicitor" means a person conducting a solicitation.
4. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency. Cafeterias and break rooms are not work sites.

Historical Note

New Section made by emergency rulemaking under

CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-302. Unauthorized Solicitation Prohibited

A person shall not conduct a solicitation on state property without express written permission from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-303. Application

- A. Any person who would like to conduct a solicitation on state property may apply for a permit by filing, either in person or by mail, a Department-approved solicitation application form with the Director's Office.
- B. The completed application form shall be submitted at least 15 days before the desired date of the solicitation. A completed application form is one that is legible and contains, at a minimum, all of the following information:
 1. The name, address, and telephone number of the solicitor;
 2. The proposed date of the solicitation and the approximate starting and concluding times;
 3. The specific, proposed location for the solicitation;
 4. A general description of the solicitation's purpose; and
 5. Copies of solicitation materials to be used.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-304. Processing Procedure

- A. Within three days of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-303.
- E. The Director shall render a permit decision no later than three days after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 1. Administrative completeness review time-frame: three days.
 2. Substantive review time-frame: three days.
 3. Overall time-frame: six days.

Historical Note

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-305. Permit Issuance; Denial

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has complied with the application requirements in R2-11-303.
- C. The Director may deny a permit for one or more of the following reasons:
 1. The solicitation interferes with the work of an employee or daily business of an agency;
 2. The solicitation conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
 3. The solicitation creates a risk of injury or illness to persons or risk of danger to property; or
 4. The applicant or solicitation fails to comply with the requirements of this Article.
- D. A permit shall not be issued earlier than 60 days before the solicitation.
- E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
 1. The reason for denial, with citations to supporting statutes or rules,
 2. The applicant's right to seek a hearing to challenge the denial,
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06, and
 4. The time periods for appealing the denial.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-306. Bulletin Boards

- A. The Director shall designate at least one bulletin board for solicitation material in each state building.
- B. A person conducting a solicitation shall post solicitation material only on bulletin boards designated under subsection (A).
- C. The Department shall remove solicitation material that is outdated or improperly posted.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-307. State Resources

A person shall not use state materials, supplies, or equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under

CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-308. Work Sites

Except for posting solicitation material on a bulletin board designated under R2-11-306, a person shall not conduct a solicitation at a work site.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-309. Exemptions

- A. This Article does not apply to the following state programs:
1. The State Deferred Compensation Program,
 2. The State Employees Charitable Campaign,
 3. The U.S. Savings Bond Drive,
 4. The United Blood Services Blood Drive,
 5. The Capitol Rideshare Commuter Club,
 6. The Capitol Rideshare Clean Air Campaign,
 7. The Employee Wellness Program, and
 8. The employee recognition programs of each agency subject to these rules.
- B. An employee association composed principally of employees of state government agencies may apply under this Article for a permit to conduct a solicitation at a work site.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 5184, effective December 7, 2004 under A.R.S. § 41-1052(E) (Supp. 04-4).

R2-11-310. Suspension or Revocation

- A. The Director may suspend or revoke a permit for failure to comply with this Article or other applicable laws.
- B. Before the Director suspends or revokes a permit, the Department shall send the solicitor written notice, explaining:
1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 2. The solicitor's right to a hearing before suspension or revocation;
 3. The time and place of the hearing concerning the suspension or revocation.
- C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend the permit pending proceedings for revocation or other action, based on circumstances of the emergency.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-311. Review of Denial or Summary Suspension

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or solicitor may obtain a hearing on a denial or summary suspension.
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-305(E).
- C. If the Director summarily suspends a permit under R2-11-310(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.
- D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 4. SPECIAL EVENTS**R2-11-401. Definitions**

The following definitions apply in this Article:

1. "Special event" or "event" means an assembly, demonstration, display, festival, parade, or rally conducted by a person other than a ceremony, gathering, or press conference conducted by a person authorized by the head of a state agency using the agency's own office space.
2. "Sponsor" means the person holding a special event.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-402. Unauthorized Special Event Prohibited

A person shall not use state buildings or grounds for a special event without express written permission from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-403. Application

- A. Any person who would like to hold a special event may apply for a permit by filing, either in person or by mail, a Department-approved event application form with the Office of Special Events.
- B. The completed application form shall be submitted at least two days before the desired date of the special event. A completed application form is one that is legible and contains, at a minimum, all of the following information:
1. The name, address, and telephone number of the sponsor;
 2. The proposed date of the event and the approximate starting and concluding times;
 3. The specific, proposed location for the event;
 4. A general description of the event, including equipment and facilities to be used;
 5. Approximate number of persons expected to be in attendance;

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6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B)(1);
 7. The name, address, and telephone number of any chief monitor who will be designated to direct the event;
 8. A description of the badge or article of clothing used to identify monitors;
 9. A copy of any insurance policy for the special event; and
 10. A copy of any contract for medical, sanitary, and security services.
- C. The Director may accept a completed application form submitted less than two days before a press conference if the Director determines that enforcing the two-day requirement would nullify the need for the press conference. In this situation, R2-11-404 does not apply.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-404. Processing Procedure

- A. Within one day of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-403.
- E. The Director shall render a permit decision no later than one day after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 1. Administrative completeness review time-frame: one day.
 2. Substantive review time-frame: one day.
 3. Overall time-frame: two days.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-405. Permit Issuance; Denial

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has:
 1. Complied with the application requirements in R2-11-403;
 2. Posted any deposit necessary under R2-11-407;
 3. Obtained any insurance necessary under R2-11-407; and
 4. Submitted evidence that the applicant will provide any medical, sanitary, and security services necessary under

R2-11-407. Submission of a copy of the contract for these services will satisfy this requirement.

- C. The Director may deny a permit for one or more of the following reasons:
 1. The event interferes with the work of an employee or daily business of an agency;
 2. The event conflicts with the time, place, manner, or duration of other events for which permits have been issued or are pending;
 3. The event creates a risk of injury or illness to persons or risk of danger to property; or
 4. The applicant or permit fails to comply with the requirements of this Article.
- D. A permit shall not be issued earlier than 60 days before the special event.
- E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
 1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a hearing to challenge the denial;
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 4. The time periods for appealing the denial.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-406. Monitors

The sponsor shall designate one monitor for every 50 persons expected to be in attendance. The monitors shall wear a uniform, distinctive badge, or a distinctive article of clothing at all times during the event for identification purposes.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-407. Risk Management

- A. The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:
 1. Impose conditions on the conduct of the event in the permit;
 2. Require the applicant to post a deposit against damage and clean-up expense;
 3. Require the applicant to carry liability insurance and provide the certificate of insurance; and
 4. Require the applicant to provide medical, sanitary, and security services.
- B. The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:
 1. Previous experience with similar events;
 2. Deposits required for similar events in Arizona;
 3. Risk data;
 4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.

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- C. The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.
- D. If the Director requires insurance for a special event, the sponsor shall list the state of Arizona and the Department of Administration as additional insured entities.
- E. The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-408. Suspension or Revocation

- A. The Director may suspend or revoke a permit for failure to comply with this Article, permit conditions, or other applicable laws.
- B. Before the Director suspends or revokes a permit, the Department shall send the sponsor written notice, explaining:
 1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 2. The sponsor's right to a hearing before suspension or revocation.
- C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend a permit pending proceedings for revocation or other action, based on the circumstances of the emergency.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency

Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-409. Review of Denial or Summary Suspension

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or sponsor may obtain a hearing on a denial or summary suspension.
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-405(E).
- C. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
- D. If the Director summarily suspends a permit under R2-11-408(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 5. SEVERABILITY**R2-11-501 Validity of Rules**

If a rule or portion of a rule contained in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director 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, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies 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.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-791. Powers and duties relating to public buildings maintenance; compensation of personnel

A. The department is responsible for the direction and control of public buildings maintenance as prescribed in this article.

B. The department is responsible for the allocation of space, operation, alteration, renovation and security of the following buildings:

1. The state capitol executive tower of the state capitol building.

2. The state office buildings in Tucson.

3. The state office buildings located at:

(a) 519 East Beale Street in Kingman.

(b) 2910 North 44th Street in Phoenix.

(c) 417 West Roosevelt Street in Phoenix.

(d) 9535 East Doubletree Ranch Road in Scottsdale.

(e) 9545 East Doubletree Ranch Road in Scottsdale.

4. All other buildings owned or leased by the state and located near the state capitol building and the state office buildings in Tucson, except for:

(a) Buildings occupied, operated and maintained by the following state agencies:

(i) The department of transportation.

(ii) The Arizona power authority.

(b) The state capitol museum, the legislative services wing, the house of representatives and senate wings of the state capitol building and the building located at 1716 West Adams street in Phoenix.

(c) The department of economic security facilities purchased with federal funding assistance and exclusively and continuously operated and maintained for the department's own occupancy.

(d) The Arizona courts building.

(e) The mining, mineral and natural resources educational museum.

C. The department is responsible for the maintenance of the following buildings and grounds:

1. The entire state capitol building and the grounds adjacent to it.

2. The state office buildings in Tucson and the grounds adjacent to them.

3. Other buildings and grounds owned or leased by the state if the function is not otherwise assigned, except for the interior of the Arizona courts building.

D. The director may establish rules for the operation, maintenance and security of buildings and grounds under the director's jurisdiction.

E. The department shall:

1. Employ engineers and maintenance and operations personnel as required, including a buildings manager for the state office buildings in Tucson.
 2. Determine the hours of duty and assignment of personnel.
- F. All personnel employed under this article are eligible to receive compensation as determined under section 38-611.

41-796. Regulation of traffic and parking; monetary penalties; hearing; state traffic and parking control fund; definition

A. The department of administration may adopt and administratively enforce rules for the control of vehicles on state property with respect only to the following:

1. Maximum speed of vehicles.
2. Direction of travel.
3. Place, method and time of parking.
4. Nonparking areas.
5. Designation of special parking areas for state employees and the general public.
6. Prohibiting parking in vehicle emissions control areas as defined in section 49-541 of those vehicles which fail to comply with section 49-542.

B. The department shall adopt and administratively enforce rules requiring the designation of preferential parking areas, such as reserved, close-in or covered parking, to state employees with offices in vehicle emissions control areas as defined in section 49-541 who are car pool operators as defined in section 28-4032 or who drive vehicles powered by alternative fuel as defined in section 1-215.

C. The department may prescribe and collect reasonable monetary penalties for violations of the rules adopted pursuant to subsection A of this section.

D. The department shall:

1. Cause signs, markings and notices to be posted on the property for the regulation of vehicles.
2. Maintain parking lots and structures.

E. On the failure of a person who is issued a citation for a violation of a rule adopted pursuant to this section to appear, the administrative law judge may proceed to determine whether a violation has occurred and, if so, the penalty to be imposed.

F. Penalties that are imposed pursuant to this section and that are not paid within the time prescribed by the administrative law judge may be collected by an action filed with the justice court.

G. A state traffic and parking control fund is established consisting of monetary penalties collected pursuant to this section. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. All monetary penalties collected by the department for violations of the rules adopted pursuant to subsection A of this section shall be deposited in the state traffic and parking control fund.

I. Except as provided in section 41-1092.08, subsection H, a person who has received a final administrative ruling concerning a penalty imposed on the person as a result of a violation of a rule adopted pursuant to this section may have that ruling reviewed by the superior court in the county in which the institution involved is located pursuant to title 12, chapter 7, article 6.

J. For the purposes of this section, "state property" means property that is the responsibility of the department under section 41-791 and property that is the responsibility of the speaker of the house of representatives or the president of the senate under section 41-1304.05.

DEPARTMENT OF ADMINISTRATION (R19-0803)

Title 2, Chapter 6, Article 1, Department of Administration - Benefit Services Division



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 9, 2019

SUBJECT: DEPARTMENT OF ADMINISTRATION (R19-0803)
Title 2, Chapter 6, Article 1, Department of Administration - Benefit Services
Division

Amend: R2-6-105

This rulemaking from the Arizona Department of Administration, Benefit Services Division (ADOA) seeks to amend R2-6-105, a rule relating to times for enrollment in insurance plans for retirees.

Currently, the rules governing ADOA medical and dental insurance plans allow an employee that retires to opt in or out of ADOA medical or dental insurance plans and re-enroll at a later date. A retiree may do this as long as the retiree maintains coverage in either a medical or dental plan. Thus, a retiree can be enrolled in the ADOA dental insurance plan and the ASRS medical plan, and has the option to later switch to the ADOA medical plan. According to the Department, a retiree who does not initially select the ADOA medical plan at the time of retirement, but who later decides to enroll in the plan, is more expensive to insure than a retiree who maintains continuous coverage on the ADOA plan.

ADOA is amending this rule by adding language that eliminates the possibility of non-continuous enrollment in the ADOA health plans and the cost consequences of a retiree coming on and off the plan. ADOA anticipates long term cost savings as a result.

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 this rule.

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

No. The rule does not establish a new fee or contain a fee increase.

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

The Department believes that the rules do not have any small business or consumer impact, but they affect the state employee population. For plan year 2017, ADOA's medical plan covered 54,185 active employees, 7,267 retirees, and 74,776 dependents of active and retiree populations. The rules are being amended to notify retirees that, at the time of enrollment, a retiree must elect coverage in the medical, dental, and/or vision plan to be eligible to participate. Failing to enroll in a plan disqualifies a retiree from enrolling in that plan at any point in the future unless the retiree returns to employment with the State of Arizona and subsequently becomes eligible to enroll in ADOA coverage. The separation from state employment will allow a re-enrollment opportunity in the ADOA plans as a retiree.

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 anticipates a slight increase in enrollment initially, but over time, the higher premiums of the ADOA plans versus the ASRS plans will result in lower enrollment and costs. ADOA indicates that a retiree who does not initially elect the medical plan at the time of retirement tends to be more expensive to insure than a retiree who has continuous coverage. ADOA found that "non-continuous" retirees' claim costs are approximately 26% higher than the retirees who are covered continually.

This rule change is designed to eliminate this non-continuous enrollment of the health plans and the negative consequences associated with coming on and off the plan. The Department did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of eliminating non-continuous enrollment while still maintaining health plan access for retirees.

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

Stakeholders include the Department and the state employee population (active employees, retirees, and dependents). Currently, the ADOA medical and dental insurance plans, by administrative rule, allow employees that retire to opt in or out of medical or dental insurance offered by ADOA, and re-enroll at a later date, as long as the retiree maintains coverage in either a medical or dental plan. If the Council approves this

rulemaking, state employees will no longer have this option. Eligible retirees who choose to dis-enroll or who do not re-enroll in ADOA health benefit plans for 2020 would bear the costs of this rulemaking.

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

The Department did not receive any comments on the proposed rule change and the supplemental proposal.

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

Yes. As described in the Notice of Final Rulemaking, the final rule amendment is “substantially different” from the proposed rule amendment under A.R.S. § 41-1025.

In response, the Department published a Notice of Supplemental Rulemaking at 25 A.A.R. 1186 on May 10, 2019, pursuant to A.R.S. § 41-1022.

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

Not applicable. There is no corresponding 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. This rule does not require a permit.

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?**

The Department did not review or rely on a study in conducting this rulemaking.

11. **Conclusion**

Council staff finds that the justification for this rulemaking is thorough and finds that it will result in a rule that is more clear and effective. Council staff also notes the potential cost savings to the Department associated with making this rule change.

ADOA seeks an effective date of January 1, 2020 for this rulemaking, which is longer than the usual 60-day delayed effective date. ADOA states that the later effective date allows current eligible retirees a final opportunity to enroll in an ADOA plan or opt out. It also gives new retirees a one-time opportunity to opt in to the ADOA retiree benefit

program. If they do not select a plan, they permanently lose their opportunity to participate in that particular ADOA plan.

Council staff finds that ADOA has demonstrated good cause for a later effective date and that it would not harm the public interest. Council staff recommends approval of this rulemaking.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 6. DEPARTMENT OF ADMINISTRATION BENEFIT SERVICES DIVISION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

R2-6-105

Amend

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

Authorizing statute: A.R.S. §41:703(3)

Implementing statute: A.R.S. §38:651.01

3. The effective date of the rule: January 1, 2020

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):

The effective date ensures all current eligible retirees have a final opportunity to enroll in an ADOA sponsored plan, or definitively choose to opt out. Additionally, new retirees would have their one time opportunity to opt into the ADOA retiree benefit programs. If a plan is not selected, they forever lose their opportunity to participate in that particular ADOA plan.

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

Notice of Rulemaking Docket Opening: 24 A.A.R. 2361, August 24, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 2349, August 24, 2018

Notice of Supplemental Proposed Rulemaking: 25 A.A.R. 1186, May 10, 2019

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

Name: Scott Bender

Address: 100 N. 15th Avenue, Suite 260

Phoenix, AZ 85007

Telephone: (602) 542-4958

Fax: (602) 542-4048

E-mail: scott.bender@azdoa.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:

R2-6-105 provides the times for enrollment into the insurance benefits for different classifications of members. The Arizona Department of Administration is proposing the amend R2-6-105. Currently, the ADOA medical and dental insurance plans, by administrative rule, allow employees that retire to opt in or out of the medical or dental insurance offered by ADOA, and re-enroll at a later date, as long as the retiree maintains coverage in either a medical or dental plan. For example, a retiree may be currently enrolled in ADOA dental insurance and an ASRS medical plan. If at some later date the retiree decides to elect the ADOA medical plan, he has the option to do so. A retiree who does not initially elect the medical plan at the time of retirement tends to be more expensive to insure than a retiree who has continuous coverage.

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

No study was received.

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:

The proposed amendment does not diminish a previous grant of authority of a political subdivision of this state.

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

A retiree who does not initially elect the medical plan at the time of retirement tends to be more expensive to insure than a retiree who has continuous coverage. ADOA completed a study of the retirees' medical claims, showing that the "non-continuous" retirees' claim costs are approximately 26% higher than the retirees who are covered continually. This results in an estimated impact to the plan of approximately \$1.6 million annually.

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

The Division's initial proposed rulemaking sought to amend rule R2-6-105 for clarification on enrollment into insurance benefits. R2-6-105 stipulates the times for enrollment into the insurance benefits for different classifications of members. In a Notice of Supplemental Proposed Rulemaking, a revised subsection (E) was incorporated to notify retirees that, at the time of enrollment, a retiree must elect coverage in the Medical, Dental, and/or vision plan to be eligible to participate. Failing to enroll in a plan during the required enrollment period disqualifies a retiree from enrolling in that plan option at a later date.

The clarified return to work retiree section is as follows: when a return to work retiree separates employment, this is a qualifying life event and the retiree must elect coverage in the Medical, Dental, and/or vision plan within 31 days of separation to be eligible to participate. Failing to enroll in a plan disqualifies the retiree from enrolling in that plan at a later date.

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

The Benefit Services Division of ADOA submitted a Notice of Supplemental Rulemaking to the Arizona Administrative Register, which was posted on May 10, 2019. The Benefit Services Division received no public or written comments.

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 rule does 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:

No federal law applies.

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

No analysis was submitted.

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

Not applicable

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

Not applicable

15. The full text of the rules follows:

R2-6-105. Times for Enrollment

A. An employee, officer, retiree, or former elected official may enroll or may enroll an eligible dependent in one or more of the insurance plans made available by the Department only at the following times:

1. Within 31 days of becoming eligible to participate in an insurance plan,

2. Within 31 days of a qualified life event, and

3. At open enrollment for active employees and officers. Retirees and former elected officials may only change their plan election during open enrollment if they are changing an election in an existing plan type. For example, changing from one medical plan to another. New enrollments during open enrollment are not permitted unless a qualified life event occurs.

B. A surviving dependent, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, and vision insurance plans made available by the Department shall enroll within six months after the death that makes the surviving dependent eligible to continue enrollment.

C. A surviving spouse, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, vision, or life insurance plans made available by the Department shall enroll within 31 days after the death of the incumbent or former elected official.

D. If a surviving spouse or surviving dependent of a deceased law enforcement officer killed in the line of duty was enrolled in the health insurance program made available by the Department or the health insurance program that is offered by the state retirement system or a plan from which the surviving spouse or surviving dependent is receiving benefits at the time the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty, and is eligible to receive health insurance premium payments but is no longer enrolled in either health insurance program, the employer shall allow the surviving spouse and any surviving dependent to enroll in the employer's health insurance program to receive health insurance premium payments pursuant to A.R.S. § 38- 1114.

E. To be covered under the health, dental, or vision insurance plans made available by the Department, a retiree shall enroll within 31 days of initial eligibility for retirement and shall maintain continuous enrollment in the selected health, dental, and/or vision insurance plans. If a retiree fails to maintain continuous enrollment in an ADOA plan, either as a member or a spouse, upon initial eligibility, or terminates participation in the selected health, dental or vision insurance plans for any reason, neither the retiree nor the retiree's eligible dependent is eligible and may not re-enroll in the health, dental or vision plans at a later time. If the retiree returns to employment with the State of Arizona and subsequently becomes eligible for and enrolls in the health, dental, and/or vision plans, separation from State employment will allow a re-enrollment opportunity in the ADOA plans as a retiree.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-105 renumbered to R2-6-205, new Section R2-6-105 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

AGENCY RECEIPT

NOTICE OF RULEMAKING DOCKET OPENING

1. Agency name:

ARIZONA DEPARTMENT OF ADMINISTRATION

2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

Article, Part, or Section Affected (as applicable) Rulemaking Action

(in numerical order)

R2-6-105

Amend

2. Identifying information for the type of notice filed, such as a title or subject:

AGENCY RECEIPT

NOTICE OF FINAL RULEMAKING

1. Agency name:

ARIZONA DEPARTMENT OF ADMINISTRATION

2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

Article, Part, or Section Affected (as applicable) Rulemaking Action

(in numerical order)

R2-6-105

Amend

2. Identifying information for the type of notice filed, such as a title or subject:

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 2. ADMINISTRATION
CHAPTER 6. DEPARTMENT OF ADMINISTRATION BENEFIT SERVICES
DIVISION
ARTICLE R2-6-105

1. Identification of rulemaking.

The Department engages in this rulemaking to amend the eligibility criteria for enrollment or re-enrollment in the ADOA health benefit plans for eligible retirees. The change seeks to eliminate a practice which increases cost and risk for the health plans.

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

Currently, the ADOA medical and dental insurance plans, by administrative rule, allow employees that retire to opt in or out of the medical or dental insurance offered by ADOA, and re-enroll at a later date, as long as the retiree maintains coverage in either a medical or dental plan. For example, a retiree may be currently enrolled in the ADOA dental insurance and the ASRS medical plan. If at some time in the future the retiree decides to elect the ADOA medical plan, he has the option to do so. A retiree who does not initially elect the ADOA medical plan at the time of retirement, and joins at a later time (presumably when more costly health care services are required) has shown to be considerably more expensive to insure than a retiree who has maintained continuous coverage on the plan. This rule change is designed to eliminate this non-continuous enrollment of the health plans and the negative consequences associated with coming on and off the plan. While the initial notice of the elimination of this non-continuous coverage option may cause some retirees to enroll in the plans, out of fear of losing a choice of plans in the future, long term savings are anticipated.

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

Approximately \$1.6 million annually in health plan claims can be avoided if the rule change is implemented.

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

The frequency of targeted conduct should cease as of the effective date, January 1, 2020.

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

The cost to be born under this change would be to eligible retirees who choose to disenroll, or do not re-enroll, in the ADOA health benefit plans for 2020. The cost of these decisions is dependent upon the value of the alternate plans selected if the ADOA plans are no longer available. ADOA and the State of Arizona agencies who fund the plan, could bear costs

associated with additional enrollment. Current State employees subsidize retirees as all members are rated in the same risk pool. ADOA, State employees, and the State of Arizona agencies would all benefit from the reduced cost associated with the rule change.

Persons to bear costs	Persons to directly benefit
ADOA	ADOA
Retirees	Current State employees
Current State employees	State of Arizona
State of Arizona	

3. Cost benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost : A slight increase of enrollment initially is anticipated by ADOA, but over time, the higher premiums of the ADOA plans versus the ASRS plans will result in lower enrollment and costs.

ii. Benefit : Over time, the rule change is expected to save approximately \$1.6 million annually.

iii. Need for additional Full-time Employees :

ADOA does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking does not directly affect political subdivisions.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

ADOA anticipates a minimal economic impact on public and private employment.

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

a. Identification of the small businesses subject to the proposed rulemaking.

There are no small businesses affected by the rulemaking.

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

This rulemaking does not impose compliance requirements.

c. Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency’s decision to use or not use each method:

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule;

This rulemaking does not establish performance standards for small businesses.

v. Exempting small businesses from any or all requirements of the rule.

Exempting small businesses is not applicable to this rulemaking.

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

Private persons and consumers are not affected by the proposed rulemaking.

6. Statement of the probable effect on state revenues.

It is anticipated that the rulemaking will not affect state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives.

ADOA did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of eliminating the undesirable behavior while still maintaining health plan access for retirees.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

ADOA utilizes a secure database of all health plan claims and eligibility, which is used for analyzing a wide variety of data. We evaluate types of services received, such as inpatient and outpatient services, prescription drug costs, cost trends, fraud, waste, abuse, and many other actuarial factors. The ADOA health plan actuary completed a study of the retirees' medical claim costs, focusing on "non-continuous" retirees' claim versus continuously covered retirees. The non-continuously covered retirees claim costs were approximately 26% higher than the retirees who maintained continuous coverage. This results in an additional cost to the plan of approximately \$1.6 million annually.

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director 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, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies 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.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

38-651.01. Group health and accident coverage for retired public employees and elected officials and their dependents

A. The department of administration, by rule, shall adopt standards to establish group health and accident coverage for former employees who worked for the state of Arizona and who opt on retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona, or with a disability, and receiving either income from a retirement program of this state or long-term disability income benefits pursuant to section 38-651.03 or chapter 5, article 2.1 of this title and their dependents and to establish eligibility for retired state employees or state employees with a disability to participate in the coverage. The department of administration may adopt rules that provide that if a retired insured or insured person with a disability dies before an insured surviving dependent, the insured surviving dependent is entitled to extended coverage at group rates if the insured surviving dependent elects to continue in the coverage within six months of the death of the retired insured or insured person with a disability and the insured surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the death, the department of administration shall immediately notify an insured surviving dependent of the provisions of this section. The department of administration may enter into agreements with former state employees with a disability and their dependents who elect to obtain the coverage provided by this section. The agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage. The department of administration may adopt rules that provide that on the death of a state employee who at the time of death was eligible for normal retirement pursuant to section 38-757 under the Arizona state retirement system, the insured surviving spouse and eligible dependent children are entitled to continue coverage under group rates provided that the deceased insured state employee, spouse and dependent children were insured at the time of the employee's death. The insured surviving spouse shall be charged an amount sufficient to pay the full premium for the coverage.

B. The department of administration, by rule, may adopt standards to establish group health and accident coverage for former elected officials of this state or its political subdivisions and their dependents and to establish eligibility for former elected officials to participate in the coverage. Qualifications for eligibility shall include that the former elected official has at least five years of credited service in the elected officials' retirement plan pursuant to chapter 5 of this title, had been covered under a group health or group health and accident plan while serving as an elected official and had been serving as an elected official on or after January 1, 1983. The department of administration may adopt rules that provide that on the death of an elected official or insured former elected official, the insured surviving spouse is entitled to coverage at group rates provided that the deceased insured former elected official met or would have met the qualifications for eligibility pursuant to this subsection or that the deceased elected official would have met the qualifications for eligibility had the deceased not been in office at the time of death. Except as provided in subsection J of this section, the insured former elected official or the insured surviving spouse shall be charged amounts that are sufficient to pay for the premium and state administrative expense of providing coverage. Notwithstanding subsection J of this section, the standards shall provide that all or any portion of the former state employees or former elected officials or their dependents shall be grouped with officers and employees of the state and its departments and agencies or their dependents as necessary to obtain health and accident coverage at favorable rates.

C. The Arizona state retirement system board may enter into agreements with state employee members of the system and plan who are retired or who have a disability, retired members of the elected officials' defined contribution retirement system established pursuant to chapter 5, article 3.1 of this title and retired participants of the public safety personnel defined contribution retirement plan established pursuant to chapter 5, article 4.1 of this title who elect to obtain the coverage provided pursuant to subsection A of this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing coverage.

D. Retired state employee members or state employee members with a disability of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to chapter 5, article 4.1 of this title, the elected officials' retirement plan, the elected officials' defined contribution

retirement system established pursuant to chapter 5, article 3.1 of this title, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15-1628 who opt on retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona and their dependents and who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to chapter 5, article 4.1 of this title, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to chapter 5, article 3.1 of this title, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15-1628 may participate in group health and accident coverage provided pursuant to this section. The department of administration shall adopt rules that are necessary for the implementation of this subsection.

E. The board of trustees of the public safety personnel retirement system may enter into agreements with retired state employee members and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing coverage.

F. The board of trustees of the public safety personnel retirement system may enter into agreements with retired judges and retired elected officials and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing coverage.

G. The board of trustees of the public safety personnel retirement system may contract with an insurance carrier and adopt standards to establish a group health and accident insurance coverage program for retired members of the public safety personnel retirement system, their dependents and their spouses. Any members or spouses who elect to obtain the group health and accident coverage provided under this subsection shall agree to a deduction from their monthly retirement benefits of an amount sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing coverage.

H. A county board of supervisors may enter into agreements to establish group health and accident coverage for retired county employees or county employees with a disability and their dependents who elect to obtain the coverage provided pursuant to section 11-263, subsection B. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing for the coverage.

I. Nonmedicare eligible retirees who live in this state, who enroll in a qualifying plan under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the retiree.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the retiree living outside the area of the qualifying health maintenance organization.

J. Public funds shall not be expended to pay all or any part of the premium of insurance pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

K. A retired member of the elected officials' defined contribution retirement system established pursuant to chapter 5, article 3.1 of this title may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

L. A retired participant of the public safety personnel defined contribution retirement plan established pursuant to chapter 5, article 4.1 of this title may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-857.

DEPARTMENT OF HEALTH SERVICES (R19-0804) (Expedited Rulemaking)
Title 9, Chapter 16, Department of Health Services - Occupational Licensing



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: June 21, 2019

SUBJECT: ARIZONA DEPARTMENT OF HEALTH SERVICES (R19-0804)
Title 9, Chapter 16, Article 6, Radiation Technologies

New Article: Article 6

New Section: R9-16-601, R9-16-602, R9-16-603, R9-16-604, R9-16-605, R9-16-606,
R9-16-607, R9-16-608, R9-16-609, R9-16-610, R9-16-611, R9-16-612,
R9-16-613, R9-16-614, R9-16-615, R9-16-616, R9-16-617, R9-16-618,
R9-16-619, R9-16-620, R9-16-621, R9-16-622, R9-16-623, R9-16-624

Summary:

This is an expedited rulemaking from the Arizona Department of Health Services (Department) that seeks to create a new article within Title 9, Chapter 16 relating to occupational licensing. The new rules within Article 6 relate to occupational licensing for radiation technologies.

Recently, Laws 2017, Chapter 313, and Laws 2018, Chapter 234, made the Department responsible for radiation technologies, replacing the Arizona Radiation Regulatory agency, hearing board, and board of examiners. The Department seeks to create Article 6 in order to comply with House Bill 2569 (Laws 2019, Ch. 55) relating to reciprocity of professional licenses. Additionally, Article 6 creates more consistency with statutory requirements and is easier to understand than prior rules. Thus, Article 6 aims to lessen confusion on the part of regulated people and decrease administrative burden.

The Department indicates that this rulemaking will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The Department proposes to make the new rulemaking effective the day that the Notice of Final Rulemaking is filed with the Office of the Secretary of State.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. The rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

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

Yes. The Department cites to general and specific authority for these rules.

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

No. The rules do not establish a fee or contain a fee increase. The rules will not increase the cost of regulatory compliance.

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

The Department received no written or oral comments about the rulemaking.

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

No. The Department did not make any changes between the proposed expedited rulemaking and the final rulemaking.

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

Not applicable. There is no corresponding federal law.

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

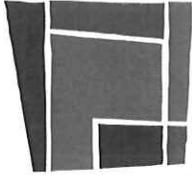
Yes, the rules comply with A.R.S. § 41-1037. Certification issued to an individual is a general permit because it specifies the individual and the tasks and services that the certified individual is authorized to provide.

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

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

9. Conclusion

The Department is conducting an expedited rulemaking pursuant to A.R.S. § 41-1027(A) (8) to create Article 6 and the rules therein. Council staff finds that this is an acceptable basis upon which to conduct an expedited rulemaking because it “adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency” and complies with House Bill 2569 (Laws 2019, Ch. 55) relating to reciprocity of professional licenses. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

June 17, 2019

VIA EMAIL: grrc@azdoa.gov

Connie Wilhelm, Vice-Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 16, Article 6 Expedited Rulemaking

Dear Ms. Wilhelm:

1. The close of record date: June 17, 2019
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year-review report approved by the Council pursuant to section A.R.S. § 41-1056. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(7). Finally, the rulemaking contains changes to comply with requirements in HB 2569 (Laws 2019, Ch. 55) relating to reciprocity of professional licenses, which meet the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(1) and (6).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 16, Article 6, relates to a five-year-review report for 12 A.A.C. 2, that was approved by the Council on December 4, 2018.

The Department certifies 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.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Materials incorporated by reference
 - c. Statutory authority
 - d. Other statutes and rules referred to in a definition

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'RL', with a large, sweeping flourish underneath.

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING

PREAMBLE

<u>1. Article, Part, of Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 6	New Article
R9-16-601	New Section
R9-16-602	New Section
R9-16-603	New Section
R9-16-604	New Section
R9-16-605	New Section
R9-16-606	New Section
R9-16-607	New Section
R9-16-608	New Section
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R9-16-617	New Section
R9-16-618	New Section
R9-16-619	New Section
R9-16-620	New Section
R9-16-621	New Section
R9-16-622	New Section
R9-16-623	New Section
R9-16-624	New Section

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

Authorizing Statutes: A.R.S. §§ 32-2803, 36-136(G)

Implementing Statutes: A.R.S. §§ 32-2803, 32-2804, 32-2811 through 32-2819, 32-2821, 32-2824 and 36-2841 through 32-2843

3. The effective date of the rules:

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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

Notice of Docket Opening: 25 A.A.R. 1270, May 17, 2019

Notice of Proposed Expedited Rulemaking: 25 A.A.R. 1329, May 31, 2019

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

Name: Megan Whitby, Bureau Chief

Address: Department of Health Services

Public Health Licensing Services

150 N. 18th Ave., Suite 400

Phoenix, AZ 85007

Telephone: (602) 364-3052

Fax: (602) 364-2079

E-mail: Megan.Whitby@azdhs.gov

or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules

150 N. 18th Ave., Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

6. 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:

Arizona Revised Statutes (A.R.S.) Title 9, Chapter 28, Article 2 provides for the certification of different

classifications of radiation technologists. Rules for certification are currently in Arizona Administrative Code (A.A.C.) **Title 12, Chapter 2. Laws 2017, Ch. 313, and Laws 2018, Ch. 234**, makes the Arizona Department of Health Services (Department) responsible for regulating radiation technologists, replacing the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in these duties. The rules in 12 A.A.C. 2 do not refer to the Department as the agency responsible for regulating radiation technologists. Moreover, the rules are inconsistent with statutory requirements and formatted in a way that is difficult to understand. All of these issues may cause confusion on the part of regulated persons, unnecessarily adding to their administrative burden, as described in a five-year-review report approved by the Governor's Regulatory Review Council in December 2018. In addition, the rules do not comply with requirements in HB 2569 relating to reciprocity of professional licenses. After receiving an exception from the Governor's rulemaking moratorium established by Executive Order 2019-01, the Department has revised the rules by expedited rulemaking to make changes described in the five-year-review report and to comply with HB 2569 to reduce the regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of the public. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

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

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

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department received no written or oral comments about the rulemaking.

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

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

The Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

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

Federal laws do not apply to the certification rules. However, federal regulations may impact the scope of practice and methodologies employed by certified individuals.

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:

Materials incorporated by reference in this rulemaking are:

- In R9-16-603(B)(1) - 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards
- In R9-16-604(B)(1) - 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards
- In R9-16-605(B)(1) - 2017 American Society of Radiologic Technologists Bone Densitometry Practice Standards
- In R9-16-608(B) - 2017 American Society of Radiologic Technologists Radiography Practice

Standards

- In R9-16-608(C)(1) - 2017 American Society of Radiologic Technologists Nuclear Medicine Practice Standards
- In R9-16-608(D) - 2017 American Society of Radiologic Technologists Radiation Therapy Practice Standards
- In R9-16-610(B)(1) - 2017 American Society of Radiologic Technologists Mammography Practice Standards
- In R9-16-613(B)(1) - 2017 American Society of Radiologic Technologists Computed Tomography Practice Standards
- In R9-16-616(B)(1) - 2017 American Society of Radiologic Technologists Radiologist Assistant Practice Standards

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

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING

ARTICLE 6. RADIATION TECHNOLOGISTS

- R9-16-601. Definitions
- R9-16-602. Training Programs
- R9-16-603. Practical Radiological Technologist - Eligibility and Scope of Practice
- R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice
- R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice
- R9-16-606. Application for Examination
- R9-16-607. Application for Initial Certification
- R9-16-608. Radiological Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice
- R9-16-609. Initial Application for a Radiological Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist
- R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice
- R9-16-611. Student Mammographic Technologist Permit
- R9-16-612. Initial Application for Certification for a Mammographic Technologist
- R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice
- R9-16-614. Application for Computed Tomography Technologist Preceptorship and Temporary Permit
- R9-16-615. Application for Initial Certification for a Computed Tomography Technologist
- R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice
- R9-16-617. Application for Initial Certification for a Radiologist Assistant
- R9-16-618. Special Permit
- R9-16-619. Application
- R9-16-620. Renewal of Certification
- R9-16-621. Time Frames
- R9-16-622. Changes Affecting a Certificate or Certificate Holder; Request for a Duplicate Certificate
- R9-16-623. Fees
- R9-16-624. Enforcement

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-601. Definitions

In addition to the definitions in A.R.S. § 32-2801, the following definitions apply in this Article unless otherwise specified:

1. “Applicant” means:
 - a. An individual who submits an application packet, or
 - b. A person who submits a request for approval of a radiation technologist training program.
2. “Application packet” means the information, documents, and fees required by the Department for a certificate or permit.
3. “ARRT” means the American Registry of Radiologic Technologists.
4. “Authorized user” means the same as in A.A.C. R9-7-102.
5. “Calendar day” means each day, not including the day of the act, event, or default, from which a designated period of time beings to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. “CBRPA” means the Certification Board for Radiology Practitioner Assistants.
7. “Certification” means the issuing of a certificate.
8. “Chest radiography” means radiography performed to visualize the heart and lungs only.
9. “Continuing education” means a course or learning activity that provides instruction and training designed to develop or improve the professional competence of a certificate holder related to the certificate holder’s scope of practice.
10. “Contrast media” means material intentionally administered to a human body to define a part or parts of the human body that are not normally radiographically visible.
11. “Department-approved educational program” means a curriculum of courses and learning activities that is accredited by a nationally recognized accreditation body or granted approval through the Department.
12. “Department-approved examination” means a test administered through ARRT, NMTCB, ISCD, or CBRPA.
13. "Extremity" means the same as in A.A.C. R9-7-102.

14. "Fluoroscopy" means the use of radiography to directly visualize internal structures of the human body, the motion of internal structures, and fluids in real time, or near real-time, to aid in the treatment or diagnosis of disease or the performance of other medical procedures.
15. "ISCD" means the International Society for Clinical Densitometry.
16. "Nationally recognized accreditation body" means ARRT, NMTCB, ISCD, or CBRPA.
17. "NMTCB" means the Nuclear Medicine Technology Certification Board.
18. "Radiograph" means the record of an image, representing anatomical details of a part of a human body examined through the use of ionizing radiation, formed by the differential absorption of ionizing radiation within the part of the human body.
19. "Radiography" means the use of ionizing radiation in making radiographs.
20. "Radiopharmaceutical agent" means a radionuclide or radionuclide compound designed and prepared for administration to human beings.

R9-16-602. Training Programs

- A. The Department shall maintain a list of Department-approved educational programs according to A.R.S. § 32-2804 on the Department's website at <https://www.azdhs.gov/licensing/special/index.php#mrt-provider-info>.
- B. An applicant may request Department approval of a curriculum of courses and learning activities as a training program by submitting an application packet that contains:
 1. An application, in a Department-provided format, that includes:
 - a. The name and address of the school providing the training program;
 - b. The name, title, telephone number, and e-mail address of the administrator or designee of the school; and
 - c. A list of each training program for which approval is being requested, including the number of hours of instruction provided for each;
 2. A copy of the curriculum that includes course titles and course descriptions; and
 3. A list of instructors providing the instruction and the credentials of each.
- C. The Department shall:
 1. Review each application packet according to R9-16-621; and
 2. If approved, add the applicant's school to the list of Department-approved educational programs in subsection (A).
- D. If an applicant for certification or permit did not complete a Department-approved educational program, the applicant may submit to the Department a copy of the curriculum for the training

program completed by the applicant with the applicant's application packet in R9-16-606(B), R9-16-607(A), or R9-16-609(A).

R9-16-603. Practical Technologist in Radiology - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in radiology if the individual:

1. Is at least 18 years of age; and
2. Either:
 - a. Has completed a training program in radiologic technology through a Department-approved educational program and achieved a score of at least 67% on a Department-approved examination; or
 - b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in radiology shall:

1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments;
2. Perform only:
 - a. Chest radiography, and
 - b. Radiography of the extremities; and
3. Not use fluoroscopy or contrast media.

R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in podiatry if the individual:

1. Is at least 18 years of age; and
2. Either:
 - a. Has:
 - i. Completed a training program in podiatry radiology through a Department-approved educational program;
 - ii. Received a signed and dated attestation from a podiatrist licensed according to A.R.S. Title 32, Chapter 7, verifying that the applicant:
 - (1) Completed training under the direction of the licensed podiatrist, and
 - (2) Is proficient in independently taking radiographs; and

iii. Achieved a score of at least 70% on a Department-approved examination; or

b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in podiatry shall:

1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Only perform radiographic examinations of the lower leg, ankle, and foot, without the use of fluoroscopy or contrast media.

R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in bone densitometry if the individual:

1. Is at least 18 years of age; and
2. Either:
 - a. Has completed a training program in bone densitometry through a Department-approved educational program and achieved a score of at least 70% on a Department-approved examination, or
 - b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in bone densitometry shall:

1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Bone Densitometry Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_bd.pdf?sfvrsn=11e176d0_22, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Apply ionizing radiation only to a person's hips, spine, and extremities through the use of a bone density machine without the use of fluoroscopy or contrast media.

R9-16-606. Application for Examination

A. An individual may apply for examination if the individual meets eligibility criteria for a:

1. Practical technologist in radiology listed in R9-16-603(A);
2. Practical technologist in podiatry listed in R9-16-604(A); or
3. Practical technologist in bone densitometry listed in R9-16-605(A).

- B.** An applicant for examination shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
 2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program; and
 3. For an applicant for examination as a practical technologist in podiatry, the attestation specified in R9-16-604(A)(2)(a)(ii).
- C.** The Department shall approve or deny an individual's application for examination according to R9-16-621.
- D.** If the Department determines that the application packet submitted under subsection (B) is complete and in compliance, the Department shall notify the applicant that the applicant is approved to test.
- E.** Upon notification by the Department according to subsection (D), and applicant:
1. Shall arrange testing through AART, and
 2. Has six months to complete testing before the applicant is required to re-apply for examination.

R9-16-607. Application for Initial Certification as a Practical Technologist in Radiology, Practical Technologist in Podiatry, or Practical Technologist in Bone Densitometry

- A.** Except as provided in subsection (B), an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
 2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program;
 3. Documentation of achieving the applicable minimum score on a Department-approved examination;
 4. For an application for a practical technologist in podiatry, the signed attestation in R9-16-604(A)(2)(a)(ii) containing:
 - a. The name and date of birth of the applicant.
 - b. The name and license number of the licensed podiatrist.
 - c. A statement by the licensed podiatrist verifying completion of the applicant's clinical training and approval of radiographic images taken by the applicant, and
 - d. The licensed podiatrist's signature and date; and
 5. The applicable fee in R9-16-623.

- B.** If an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
 2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
 3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 4. The applicable fee in R9-16-623.
- C.** The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-608. Radiologic Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice

- A.** An individual is eligible to apply for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist if the individual:
1. Is at least 18 years of age; and
 2. Satisfies one of the following:
 - a. Holds current applicable ARRT or NMTCB certification,
 - b. Has completed a Department-approved educational program in radiation technology and has a passing score on a Department-approved examination, or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a radiologic technologist shall follow the standards specified in the 2017 American Society of Radiologic Technologists Radiography Practice Standards, available at

https://www.asrt.org/docs/default-source/practice-standards-published/ps_rad.pdf?sfvrsn=13e176d0_18, incorporated by reference, on file with the Department, and including no future editions or amendments.

C. An individual certified as a nuclear medicine technologist shall:

1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Nuclear Medicine Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_nm.pdf?sfvrsn=1ee176d0_14, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Use radiopharmaceutical agents on humans for diagnostic or therapeutic purposes only.

D. An individual certified as a radiation therapy technologist shall follow the standards specified in the 2017 American Society of Radiologic Technologists Radiation Therapy Practice Standards, available at

https://www.asrt.org/docs/default-source/practice-standards-published/ps_rt.pdf?sfvrsn=18e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments.

R9-16-609. Application for Initial Certification as a Radiation Technologist, Nuclear Medicine Technologist, or Radiation Therapy Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
 - a. A copy of the applicant's current ARRT or NMTCB certification; or
 - b. Documentation of:
 - i. Completing a Department-approved educational program, except as provided in R9-16-602(D); and
 - ii. Having a passing score on a Department-approved examination; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;

2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice

- A. An individual is eligible to apply for initial certification as a mammographic technologist if the individual:
1. Is at least 18 years of age;
 2. Possesses a current Department-issued certification in radiologic technology; and
 3. Satisfies one of the following:
 - a. Holds a current ARRT certification in mammography;
 - b. Meets the initial training and education requirements in 21 CFR 900.12 and has a passing score on a Department-approved examination in mammography, or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a mammographic technologist:
1. Shall follow the standards specified in the 2017 American Society of Radiologic Technologists Mammography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_mamm.pdf?sfvrsn=10e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and

2. May perform diagnostic mammography or screening mammography, as defined in A.R.S. § 30-651.

R9-16-611. Student Mammography Permits

- A. Before beginning the initial training in 21 CFR 900.12 under R9-16-610(A)(3)(b), an individual shall obtain a student mammography permit from the Department.
- B. An applicant for a student mammography permit shall submit an application packet to the Department that includes:
 1. The information and documents required under R9-16-619; and
 2. A Department-provided agreement form that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology;
 - c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
 - d. The licensed radiologist's signature and date of signing.
- C. The Department shall approve or deny an individual's application for a student mammography permit according to R9-16-621.
- D. A student mammography permit is valid for one year from the date issued and may not be renewed.

R9-16-612. Application for Initial Certification as a Mammographic Technologist

- A. Except as provided in subsection (B), an applicant for initial certification as a mammographic technologist shall submit an application packet to the Department that includes:
 1. The information and documents required in R9-16-619;
 2. The applicant's current radiology technologist certificate number;
 3. The applicant's current student mammography permit number, if applicable;
 4. Either:
 - a. A copy of current ARRT certification in mammography; or
 - b. Documentation of:
 - i. Completing of initial education and training that meets the requirements specified in 21 CFR 900.12, and
 - ii. Having a passing score on a Department-approved examination in mammography; and

5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a mammographic technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;

2. Documentation of the license or certification as a mammographic technologist issued to the applicant by each state in which the applicant holds the license or certification;

3. A statement, signed and dated by the applicant, attesting that the applicant:

a. Has been licensed or certified as a mammographic technologist in another state for at least one year;

b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);

c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a mammographic technologist according to R9-16-621.

R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a computed tomography technologist if the individual:

1. Is at least 18 years of age;

2. Possesses a current Department-issued certification as a radiologic technologist or nuclear medicine technologist; and

3. Satisfies one of the following:

a. Holds a current ARRT or NMTCB certification in computed tomography.

b. Has completed two years of training in computed tomography and twelve hours of computed tomography-specific education, or

c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a computed tomography technologist:

1. Shall follow the standards specified in the 2017 American Society of Radiologic Technologists Computed Tomography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_ct.pdf?sfvrsn=9e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. May apply ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

R9-16-614. Application for Computed Tomography Preceptorship and Temporary Certification

- A. Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.
- B. An applicant for a computed tomography preceptorship certificate shall submit an application packet to the Department that includes:
 1. The information and documents required under R9-16-619; and
 2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
 - c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
 - d. The licensed radiologist's signature and date of signing.
- C. The Department shall approve or deny an individual's application for a computed tomography preceptorship certificate according to R9-16-621.
- D. A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.
- E. At least 30 days before the expiration of an individual's computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary certificate by submitting an application packet to the Department that includes:
 1. The information and documents required under R9-16-619; and
 2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:

- a. The name and date of birth of the applicant;
- b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
- c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
- d. The licensed radiologist's signature and date of signing.

F. The Department shall approve or deny an individual's application for a computed tomography temporary certificate according to R9-16-621.

G. A computed tomography temporary certificate is valid for one year and may not be renewed.

R9-16-615. Application for Initial Certification for a Computed Tomography Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a computed tomography technologist shall submit an application packet to the Department that includes:

- 1. The information and documents required in R9-16-619;
- 2. The applicant's current radiation technologist or nuclear medicine technologist certificate number;
- 3. The applicant's computed tomography preceptorship number or temporary certificate number, if applicable;
- 4. Either:
 - a. A copy of the applicant's current ARRT or NMTCB certification in computed tomography; or
 - b. Documentation of completion of:
 - i. Two years of training in computed tomography, and
 - ii. Twelve hours of computed tomography-specific education; and
- 5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a computed tomography technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

- 1. The information and documentation required in R9-16-619;
- 2. Documentation of the license or certification as a computed tomography technologist issued to the applicant by each state in which the applicant holds the license or certification;
- 3. A statement, signed and dated by the applicant, attesting that the applicant:

- a. Has been licensed or certified as a computed tomography technologist in another state for at least one year;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for initial certification as a computed tomography technologist according to R9-16-621.

R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice

- A. An individual is eligible to apply for initial certification as a radiologist assistant if the individual:
- 1. Is at least 18 years of age; and
 - 2. Satisfies one of the following:
 - a. Holds a current ARRT or CBRPA certification as a radiologist assistant;
 - b. Has:
 - i. Completed a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
 - ii. Achieved a passing score on an ARRT or a CBRPA examination for radiologist assistants; or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a radiologist assistant:
- 1. Shall follow the standards specified the 2017 American Society of Radiologic Technologists Radiologist Assistant Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_raa.pdf?sfvrsn=1ae076d0_16, incorporated by reference on file with the Department, and including no future editions or amendments; and

2. May perform the following procedures under the direction of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology:
 - a. Fluoroscopy;
 - b. Assessment and evaluation of the physiological and psychological responsiveness of individuals undergoing radiologic procedures;
 - c. Evaluation of image quality, making initial image observations and communicating observations to the supervising radiologist; and
 - d. Administration of contrast media or other medications prescribed by the supervising radiologist.

C. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies.

R9-16-617. Application for Initial Certification as a Radiologist Assistant

A. Except as provided in subsection (B), an applicant for initial certification as a radiologist assistant shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
 - a. The applicant's current ARRT or CBRPA certification as a radiologist assistant;
or
 - b. Documentation of:
 - i. Completing a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
 - ii. Having a passing score an ARRT or a CBRPA examination for radiologist assistants; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiologist assistant may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a radiologist assistant issued to the applicant by each state in which the applicant holds the license or certification;

3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified as a radiologist assistant in another state for at least one year;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct;
and

4. The applicable fee in R9-16-623.

- C. The Department shall approve or deny an individual's application for initial certification as a radiologist assistant according to R9-16-621.

R9-16-618. Special Permits

- A. An applicant for a special permit under A.R.S. § 32-2814(B) shall submit an application packet to the Department containing:

1. The information and documents required in R9-16-619;
2. An attestation, in a Department-provided format, from the health care institution in which the applicant proposes to practice:
 - a. Stating that the requesting health care institution is located in an Arizona medically underserved area, as defined in A.A.C. R9-15-101(4), or a health professional shortage area, as defined in A.A.C. R9-15-101(25);
 - b. Verifying that the health care institution developed and is implementing a program of continuing education for the applicant to protect the health and safety of individuals undergoing radiologic procedures; and
 - c. Signed and dated by the health care institution's administrator or designee; and
3. A letter signed by the health care institution's administrator or designee that provides justification for the issuance of a special permit.

- B. The Department shall approve or deny an application for a special permit according to R9-16-621.

- C. A special permit is valid for no more than one year, but may be renewed as provided in subsection (A) if the circumstances justifying the issuance of a special permit have not changed.

R9-16-619. Application Information

An applicant for certification shall submit to the Department:

1. The following information in a Department-provided format:
 - a. The applicant's name;
 - b. The applicant's residential address and, if different, mailing address;
 - c. The applicant's telephone number;
 - d. The applicant's e-mail address;
 - e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - f. The applicant's date of birth;
 - g. The applicant's current employment in the radiation technology field, if applicable, including:
 - i. The employer's name,
 - ii. The applicant's position,
 - iii. Dates of employment,
 - iv. The address of the employer,
 - v. The supervisor's name,
 - vi. The supervisor's email address, and
 - vii. The supervisor's telephone number;
 - h. The applicant's educational history related to radiation technology, including:
 - i. The name and address of each educational institution,
 - ii. The degree or certification received, and
 - iii. The applicant's date of graduation;
 - i. The type of certificate being applied for;
 - j. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;
 - k. If the applicant has been convicted of a felony or a misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - l. Whether the applicant holds other professional licenses or certifications and, if so:
 - i. The professional license or certification, and

- ii. The state in which the professional license or certification was issued;
 - m. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;
 - n. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
 - o. An attestation that the information submitted as part of an application packet is true and accurate; and
 - p. The applicant's signature and date of signing;
2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:
- a. The date of the disciplinary action, revocation, or suspension;
 - b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and
 - c. An explanation of the disciplinary action, revocation, or suspension;
3. If the applicant is currently ineligible for licensing or certification in any state because of a license revocation or suspension, documentation that includes:
- a. The date of the ineligibility for licensing or certification,
 - b. The state or jurisdiction of the ineligibility for licensing or certification, and
 - c. An explanation of the ineligibility for licensing or certification; and
4. Documentation for the applicant that complies with A.R.S. § 41-1080.

R9-16-620. Renewal of Certification

- A.** Certifications issued under R9-16-607, R9-16-609, R9-16-612, R9-16-615, and R9-16-617 are valid for two years after issuance, unless revoked.
- B.** A certificate holder may apply to renew a certification:
 - 1. Within 90 days before the expiration date of the certificate holder's current certification;
 - 2. Within the 30-day period after the expiration date of the certificate holder's certification, if the certificate holder pays the late renewal penalty fee in R9-16-623; or
 - 3. Within the extension time period granted under A.R.S. § 32-4301.
- C.** An applicant for renewal of a certification shall submit to the Department an application packet, including:
 - 1. The following in a Department-provided format:

- a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
- b. The applicant's current certification number and type;
- c. The applicant's current employment in the radiation technology field, if applicable, including:
 - i. The employer's name,
 - ii. The applicant's position,
 - iii. Dates of employment,
 - iv. The address of the employer,
 - v. The supervisor's name,
 - vi. The supervisor's email address, and
 - vii. The supervisor's telephone number;
- d. Whether the applicant has, within the two years before the date of the application, had:
 - i. A certificate issued under this Article suspended or revoked; or
 - ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;
- e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
- f. Attestation that all the information submitted as part of the application packet is true and accurate; and
- g. The applicant's signature and date of signature;

2. Either:

- a. An attestation that the applicant completed continuing education required under A.R.S. § 32-2815(D) and that documentation of completion is available upon request, signed and dated by the applicant; or
- b. A copy of the applicant's current certification from a nationally recognized accreditation body; and

3. The applicable renewal fee and, if applicable, the late renewal penalty fee required in R9-16-623.

D. The Department shall approve or deny an application for recertification according to R9-16-621.

R9-16-621. Review Timeframes

- A.** For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the overall timeframe described in A.R.S. § 41-1072(2).
1. An applicant and the Department may agree in writing to extend the substantive review timeframe and the overall timeframe.
 2. The extension of the substantive review timeframe and overall timeframe may not exceed 25% of the overall timeframe.
- B.** For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the administrative completeness review timeframe described in A.R.S. § 41-1072(1).
1. The administrative completeness review timeframe begins on the date the Department receives an application packet required in this Article.
 2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review timeframe.
 - a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.
 - b. A notice of deficiencies suspends the administrative completeness review timeframe and the overall timeframe from the date of the notice until the date the Department receives the missing information or documentation.
 - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.
 3. If the Department issues a certificate during the administrative completeness review timeframe, the Department shall not issue a separate written notice of administrative completeness.
- C.** For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the substantive review timeframe described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
1. Within the substantive review timeframe, the Department shall provide written notice to the applicant that the Department approved or denied the application.
 2. During the substantive review timeframe:

- a. The Department may make one comprehensive written request for additional information or documentation; and
 - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review timeframe and the overall timeframe from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or permit.
- D.** An applicant who is denied a certificate or permit may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 6.1. Time-frames

<u>Type of Application</u>	<u>Administrative Completeness Review Timeframe (in Calendar Days)</u>	<u>Substantive Review Timeframe (in Calendar Days)</u>	<u>Overall Timeframe (in Calendar Days)</u>
<u>Application for Examination</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Initial Certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Renewal Certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Student Mammography Permit</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Computed Tomography Preceptorship Certificate or Computed Tomography Temporary Certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Special Permit</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>School Approval</u>	<u>60</u>	<u>60</u>	<u>120</u>

R9-16-622. Changes Affecting a Certificate or Certificate Holder; Request for a Duplicate Certificate

- A.** A certificate holder shall notify the Department in writing, within 30 calendar days after the effective date of a change in:

1. The certificate holder's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address;
 2. The certificate holder's name, including a copy of the legal document establishing the certificate holder's new name; or
 3. The certificate holder's employer, including the name and address of the new employer.
- B.** A certificate holder may obtain a duplicate certificate by submitting to the Department:
1. A written request for a duplicate certificate, in a Department-provided format, that includes:
 - a. The certificate holder's name and address,
 - b. The certificate holder's certificate number and expiration date, and
 - c. The certificate holder's signature and date of signature; and
 2. The duplicate certificate fee in R9-16-623.
- C.** A certificate holder may submit to the Department, either as a separate written document or as part of the renewal application, a signed and dated request to transfer to inactive status or retirement status under A.R.S. § 32-2816(F).

R9-16-623. Fees

- A.** An applicant shall submit to the Department the following nonrefundable fees for:
1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, \$60;
 2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, \$60;
 3. An initial application or renewal application for certification as a mammographic technologist, \$20;
 4. An initial application or renewal application for certification as a computed tomography technologist, \$20;
 5. An initial application or renewal application for certification as a radiologist assistant, \$60; and
 6. A late renewal penalty fee according to A.R.S. § 32-2816(C), \$50.
- B.** The fee for a duplicate certificate is \$10.

R9-16-624. Enforcement

- A.** The Department may, as applicable:
1. Deny, revoke, or suspend a certificate or permit under A.R.S. § 36-2821;

2. Request an injunction under A.R.S. § 36-2825; or
3. Assess a civil money penalty under A.R.S. § 36-2821.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation.
2. The severity of the violation.
3. The danger to public health and safety.
4. The number of violations.
5. The number of individuals affected by the violations.
6. The degree of harm to an individual.
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder or permittee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

Statutes and Rules for Definitions

Statutes:

32-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Certificate" means a certificate that is granted and issued by the department.
2. "Certified technologist" means a person holding a certificate that is granted and issued by the department.
3. "Computed tomography technologist" means a person who applies ionizing radiation to a human using a computed tomography machine for diagnostic purposes.
4. "Department" means the department of health services.
5. "Direction" means responsibility for and control of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.
6. "Director" means the director of the department of health services.
7. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles or rays.
8. "Leg" means that part of the lower limb between the knee and the foot.
9. "Licensed practitioner" means a person who is licensed or otherwise authorized by law to practice medicine, dentistry, osteopathic medicine, podiatry, chiropractic or naturopathic medicine in this state.
10. "Mammographic technologist" means a person who applies ionizing radiation to the breasts of a human being for diagnostic purposes.
11. "Nuclear medicine technologist" means a person who uses radiopharmaceutical agents on humans for diagnostic or therapeutic purposes as set forth in rules adopted pursuant to section 32-2815.
12. "Practical technologist in bone densitometry" means a technologist who holds a certificate to apply ionizing radiation to a person's hips, spine and extremities through the use of a bone density machine.
13. "Practical technologist in podiatry" means a person holding a practical technologist in podiatry certificate that is granted and issued by the department.
14. "Practical technologist in podiatry certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to the foot and leg for diagnostic purposes while under the specific direction of a licensed practitioner.
15. "Practical technologist in radiology" means a person holding a practical technologist in radiology certificate that is granted and issued by the department.
16. "Practical technologist in radiology certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to specific parts of the human body for diagnostic purposes while under the specific direction of a licensed practitioner.
17. "Radiation therapy technologist" means a person who uses radiation on humans for therapeutic purposes.
18. "Radiologic technologist" means a person who holds a certificate that is issued by the department and that allows that person to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.
19. "Radiologic technology" means the science and art of applying ionizing radiation to human beings for general diagnostic or therapeutic purposes.
20. "Radiologic technology certificate" means a certificate that is issued in radiologic technology to a person with at least twenty-four months of full-time study or its equivalent through an approved program and who has successfully completed an examination by a national certifying body.
21. "Radiologist" means a licensed practitioner of medicine or osteopathic medicine who has undertaken a course of training that meets the requirements for admission to the examination of the American board of radiology or the American osteopathic board of radiology.

22. "Radiologist assistant" means a person who holds a certificate pursuant to section 32-2819 and who performs independent advanced procedures in medical imaging and interventional radiology under the guidance, directions, supervision and discretion of a licensed practitioner of medicine or osteopathic medicine specializing in radiology as set forth in section 32-2819 and the rules adopted pursuant to that section.

23. "Unethical professional conduct" means the following acts, whether occurring in this state or elsewhere:

(a) Intentionally betraying a professional confidence or intentional violation of a privileged communication except as required by law. This subdivision does not prevent the department from exchanging information with the radiologic licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries.

(b) Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401 or hypnotic drugs, derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects or the use of alcohol to the extent that it affects the ability of the certificate or permit holder to practice his profession.

(c) Using drugs for other than accepted therapeutic purposes.

(d) Committing gross malpractice.

(e) Procuring or attempting to procure a certificate or license by fraud or misrepresentation.

(f) Having professional connection with or lending one's name to an illegal practitioner of radiologic technology or any other health profession.

(g) Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

(h) Refusing to divulge to the department, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity. This subdivision does not apply to communication between a technologist or permit holder and a patient with reference to a disease, injury, ailment or infirmity, or as to any knowledge obtained by personal examination of the patient.

(i) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly.

(j) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of radiologic technology.

(k) Having a certificate or license refused, revoked or suspended by any other state, territory, district or country for reasons that relate to the person's ability to safely and skillfully practice radiologic technology or to any act of unprofessional conduct.

(l) Engaging in any conduct or practice that does or would constitute a danger to the health of the patient or the public.

(m) Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

(n) Employing uncertified persons to perform or aiding and abetting uncertified persons in the performance of work that can be done legally only by certified persons.

(o) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate this chapter or a rule adopted by the department.

24. "Unlimited practical technologist in radiology" means a person holding an unlimited practical technologist in radiology certificate that is granted and issued by the department.

25. "Unlimited practical technologist in radiology certificate" means a certificate that was issued to a person in 1977 or 1978, other than a licensed practitioner, who applies ionizing radiation to the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

Rules

R9-7-102. Definitions

Terms defined in A.R.S. § 30-651 have the same meanings when used in this Chapter, unless the context otherwise requires. Additional subject-specific definitions are used in other Articles.

“A1” means the maximum activity of special form radioactive material permitted in a type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“A2” means the maximum activity of radioactive material, other than special form radioactive material, low specific activity (LSA) material, and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedure prescribed in 10 CFR 71, Appendix A, revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“Absorbed dose” means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

“Accelerator” means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, “particle accelerator” is an equivalent term.

“Accelerator produced material” means any material made radioactive by irradiating it in a particle accelerator.

“Act” means A.R.S. Title 30, Chapter 4.

“Activity” means the rate of disintegration, transformation, or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

“Adult” means an individual 18 or more years of age.

“Agreement State” means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274(b) of the Atomic Energy Act of 1954, as amended (73 Stat. 689). “Nonagreement State” means any other state.

“Airborne radioactive material” means any radioactive material dispersed in the air in the form of aerosols, dusts, fumes, mists, vapors, or gases.

“Airborne radioactivity area” means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:

In excess of the derived air concentrations (DACs) specified in Appendix B, Table I of Article 4 of these rules; or

That an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

“ALARA” means as low as is reasonably achievable, making every reasonable effort to maintain exposures to radiation as far below the dose limits in these rules as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

“Analytical x-ray equipment” means equipment used for x-ray diffraction or x-ray-induced fluorescence analysis.

“Analytical x-ray system” means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials.

“Annual” means done or performed yearly. For purposes of Chapter 1, any required activity done or performed within plus or minus two weeks of the annual due date is considered done or performed in a timely manner.

“Approved individual” means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with subpart B of this part and who has completed the training required by 10 CFR 37.43(c).

“Authorized medical physicist” means an individual who meets the requirements in R9-7-711; or is identified as an authorized medical physicist or teletherapy physicist on:

- A specific medical use license issued by the Department, the NRC, or another Agreement State;
- A medical use permit issued by a NRC master material licensee;
- A permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee; or
- A permit issued by a NRC master material license broad scope medical use permittee.

“Authorized nuclear pharmacist” means a pharmacist who meets the requirements in R9-7-712; or is:

- Identified as an authorized nuclear pharmacist on a specific license issued by the Department, the NRC, or another Agreement State that authorizes medical use or the practice of nuclear pharmacy;
- Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;
- Identified as an authorized nuclear pharmacist on a permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or
- Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or
- Identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or
- Designated as an authorized nuclear pharmacist in accordance with R9-7-311(G).

“Authorized user” means a physician, dentist, or podiatrist who meets the requirements in R9-7-719, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; or is identified as an authorized user on:

- The Department, NRC, or another Agreement State license that authorizes the medical use of radioactive material;
- A permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;
- A permit issued by the Department, the NRC, or another Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or
- A permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

“Background investigation” means an assessment of an individual’s prior actions and experience conducted by a licensee or applicant, to support the determination of the individual’s trustworthiness and reliability in accordance with 10 CFR 37.25.

“Background radiation” means radiation from cosmic sources; not technologically enhanced naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of a licensee. “Background radiation” does not include sources of radiation regulated by the Department.

“Becquerel” (Bq) means the International System (SI) unit for activity and is equal to 1 disintegration per second (dps or tps).

“Bioassay” means the determination of kinds, quantities, or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, “radiobioassay” is an equivalent term.

“Brachytherapy” means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary or interstitial application.

“Byproduct material” means:

Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute “byproduct material” within this definition;

Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; or any material that, has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

Any discrete source of naturally occurring radioactive material, other than source material, that the NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and; before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

“Calendar quarter” means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant shall not change the method of determining calendar quarters for purposes of this Chapter except at the beginning of a calendar year.

“Calibration” means the determination of:

The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

The strength of a source of radiation relative to a standard.

“Carrier” means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

“Certifiable cabinet x-ray system” means an existing uncertified x-ray system that meets or has been modified to meet the certification requirements specified in 21 CFR 1020.40, revised April 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“Certificate holder” means a person who has been issued a certificate of compliance or other package approval by the Department or NRC.

“Certificate of Compliance” (CoC) means the certificate issued by the NRC under 10 CFR 71, Subpart D, (Revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.), which authorizes the design of a package for the transportation of radioactive material.

“Certified cabinet x-ray system” means an x-ray system that has been certified in accordance with 21 CFR 1010.2, as being manufactured and assembled on or after April 10, 1975, in accordance with the provisions of 21 CFR 1020.40, both sections revised April 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“CFR” means Code of Federal Regulations.

“Chelating agent” means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

“Civil penalty” means the monetary fine which may be imposed on licensees by the Department, pursuant to A.R.S. § 30-687, for violations of the Act, this Chapter, or license conditions.

“Collective dose” means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

“Committed dose equivalent” (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

“Committed effective dose equivalent” (HE,50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($HE,50 = \sum w_T HT,50$).

“Consortium” means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

“Contamination” means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm² (1×10^{-5} μ Ci/cm²) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm² (1×10^{-6} μ Ci/cm²) for all other alpha emitters.

“Fixed contamination” means contamination that cannot be removed from a surface during normal conditions of transport.

“Non-fixed contamination” means contamination that can be removed from a surface during normal conditions of transport.

“Criticality Safety Index (CSI)” means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks or freight containers containing fissile material during transportation. Determination of the criticality safety index is described in 10 CFR 71.22, 10 CFR 71.23, and 10 CFR 71.59. The criticality safety index for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

“Curie” means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of $3.7E + 10^{10}$ transformations per second (tps).

“Current license or registration” means a license or registration issued by the Department and for which the licensee has paid the license or registration fee for the current year according to R9-7-1304.

“Deep-dose equivalent” (Hd), which applies to external whole body exposure, is the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm²).

“Depleted uranium” means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

“Discrete source” means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

“Dose” is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, “radiation dose” is an equivalent term.

“Dose equivalent” (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

“Dose limits” means the permissible upper bound of radiation doses established in accordance with these rules. For purposes of these rules, “limits” is an equivalent term.

“Dosimeter” (See “Individual monitoring device”)

“Effective dose equivalent” (HE) means the sum of the products of the dose equivalent to each organ or tissue (HT) and the weighting factor (wT) applicable to each of the body organs or tissues that are irradiated ($HE = \sum wTHT$).

“Effluent release” means any disposal or release of radioactive material into the ambient atmosphere, soil, or any surface or subsurface body of water.

“Embryo/fetus” means the developing human organism from conception until the time of birth.

“Enclosed beam x-ray system” means an analytical x-ray system constructed in such a way that access to the interior of the enclosure housing the x-ray source during operation is precluded except through bypassing of interlocks or other safety devices to perform maintenance or servicing.

“Enclosed radiography” means industrial radiography conducted by using cabinet radiography or shielded room radiography.

“Cabinet radiography” means industrial radiography conducted by using an x-ray machine in an enclosure not designed for human admittance and which is so shielded that every location on the exterior meets the conditions for an “unrestricted area.”

“Shielded room radiography” means industrial radiography conducted using an x-ray machine in an enclosure designed for human admittance and which is so shielded that every location of the exterior meets the conditions for an “unrestricted area.”

“Entrance or access point” means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

“Exhibit” for purposes of these rules, is equivalent in meaning to the word “Schedule” as found in previously issued rules, current license conditions, and regulation guide.

“Explosive material” means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

“Exposure” means:

Being subjected to ionizing radiation or radioactive materials.

The quotient of dQ by dm where “ dQ ” is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass “ dm ” are completely stopped in air. The special unit of exposure is the roentgen (R).

“Exposure rate” means the exposure per unit of time.

“External dose” means that portion of the dose equivalent received from any source of radiation outside the body.

“Extremity” means the shoulder girdle to the phalanges and the lower two-thirds of the femur to the phalanges.

“Fail-safe characteristics” means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

“FDA” means the United States Food and Drug Administration.

“Field radiography” means industrial radiography, utilizing a portable or mobile x-ray system, which is not conducted in a shielded enclosure.

“Field station” means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

“Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities” means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

“Generally applicable environmental radiation standards” means standards issued by the U.S. Environmental Protection Agency (EPA), 40 CFR 190 and 191, revised July 1, 2013, incorporated by reference, and available under R9-7-101, under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material. This incorporated material contains no future editions or amendments.

“Gray” (Gy) means the International System (SI) unit of absorbed dose and is equal to 1 joule per kilogram. One gray equals 100 rad.

“Hazardous waste” means those wastes designated as hazardous in A.R.S. § 49-921(5).

“Healing arts” means the practice of medicine, dentistry, osteopathy, podiatry, chiropractic, and veterinary medicine.

“Health care institution” means every place, institution, or building which provides facilities for medical services or other health-related services, not including private clinics or offices which do not provide overnight patient care.

“High radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

“Human use” means the internal or external administration of radiation or radioactive materials to human beings.

“Impound” means to abate a radiological hazard. Actions which may be taken by the Department in impounding a source of radiation include seizing the source of radiation, controlling access to an area, and preventing a radiation machine from being utilized.

“Indian Tribe” means an Indian or Alaska native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

“Individual” means any human being.

“Individual monitoring” means the assessment of:

Dose equivalent

By the use of individual monitoring devices, or

By the use of survey data, or

Committed effective dose equivalent

By bioassay; or

By determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC-hours in Article 4).

“Individual monitoring device” means a device designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this Chapter, “dosimeter” and “personnel dosimeter,” are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, optical stimulation devices, and personal (“lapel”) air sampling devices.

“Individual monitoring equipment” means one or more individual monitoring devices. For purposes of this Chapter, “personnel monitoring equipment” is an equivalent term.

“Industrial radiography” means the examination of the macroscopic structure of materials by non-destructive methods utilizing sources of ionizing radiation.

“Injection tool” means a device used for controlled subsurface injection of radioactive tracer material.

“Inspection” means an examination or observation by a representative of the Department, including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the License or certificate of registration.

“Interlock” means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

“Internal dose” means that portion of the dose equivalent received from radioactive material taken into the body.

“Irradiate” means to expose to radiation.

“Laser” (light amplification by the stimulated emission of radiation) means any device which can produce or amplify electromagnetic radiation with wavelengths in the range of 180 nanometers to 1 millimeter primarily by the process of controlled stimulated emission.

“Lens dose equivalent” (LDE) means the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).

“License” means the grant of authority, issued pursuant to Articles 3 and 14 of this Chapter and A.R.S. §§ 30-671, 30-672, and 30-721 et seq., to acquire, possess, transfer, and use sources of radiation. The types of licenses issued by the Department are described in R9-7-1302.

“Licensed material” means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license issued by the Department.

“Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic, podiatry, or naturopathy in this state.

“Licensee” means any person who is licensed by the Department under this Chapter to acquire, possess, transfer, or use sources of radiation.

“Licensing State” means any state having regulations equivalent to this Chapter relating to, and an effective program for the regulation of, naturally occurring and accelerator-produced radioactive material (NARM).

“Limits” (See “Dose limits”)

“Local components” means those parts of an analytical x-ray system that are struck by x-rays, including radiation source housings, port and shutter assemblies, collimator, sample holders, cameras, goniometer, detectors and shielding but not including power supplies, transformers, amplifiers, readout devices, and control panels.

“Logging supervisor” means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

“Logging tool” means a device used subsurface to perform well logging.

“Lost or missing licensed or registered source of radiation” means licensed or registered source of radiation the location of which is unknown. Included are licensed radioactive material or a registered radiation source that has been shipped but has not reached its planned destination and whose location cannot be readily traced or ascertained in the transportation system.

“Low-level waste” means waste material which contains radioactive nuclides in concentrations or quantities which exceed applicable standards for unrestricted release but does not include:

- High-level waste, such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

- Waste material containing transuranic elements with contamination levels greater than 10 nanocuries per gram (370 kilobecquerels per kilogram) of waste material;

- The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

“Low Specific Activity (LSA) material” means radioactive material with limited specific activity which is nonfissile or is excepted under 10 CFR 71.15, and which satisfies the descriptions and limits set forth in the following section. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. The LSA material must be in one of three groups:

- LSA—I.

Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of these radionuclides;

Natural uranium, depleted uranium, natural thorium or their compounds or mixtures, provided they are unirradiated and in solid or liquid form;

Radioactive material other than fissile material, for which the A2 value is unlimited; or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with appendix A.

LSA—II.

Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 10–4 A2/g for solids and gases, and 10–5 A2/g for liquids.

LSA—III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77, in which:

The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days will not exceed 0.1 A2; and

The estimated average specific activity of the solid, excluding any shielding material, does not exceed $2 \times 10^{-3}A_2/g$.

“Major processor” means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material or exceeding four times Type B quantities as sealed sources but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4, revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“Medical dose” means a radiation dose intentionally delivered to an individual for medical examination, diagnosis, or treatment.

“Member of the public” means any individual except when that individual is receiving an occupational dose.

“MeV” means Mega Electron Volt which equals 1 million volts (10⁶ eV).

“Mineral logging” means any well logging performed in a borehole drilled for the purpose of exploration for minerals other than oil or gas.

“Minor” means an individual less than 18 years of age.

“Monitoring” means the measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, “radiation monitoring” and “radiation protection monitoring” are equivalent terms.

“Multiplier” means a letter representing a number. The use of a multiplier is based on the code given below:

Prefix	Multiplier Symbol	Value
eka	E	10 ¹⁸
peta	P	10 ¹⁵
tera	T	10 ¹²

giga	G	10 ⁹
mega	M	10 ⁶
kilo	k	10 ³
milli	m	10 ⁻³
micro	u	10 ⁻⁶
nano	n	10 ⁻⁹
pico	p	10 ⁻¹²
femto	f	10 ⁻¹⁵
atto	a	10 ⁻¹⁸

“NARM” means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material. This term should not be confused with “NORM” which is defined as naturally occurring radioactive material.

“Normal operating procedures” means the entire set of instructions necessary to accomplish the intended use of the source of radiation. These procedures shall include, but are not limited to, sample insertion and manipulation, equipment alignment, routine maintenance by the licensee, and data recording procedures which are related to radiation safety.

“Natural radioactivity” means the radioactivity of naturally occurring radioactive substances.

“NRC” means Nuclear Regulatory Commission, the U.S. Nuclear Regulatory Commission, or its duly authorized representatives.

“NRC Document Control Desk” means the Nuclear Regulatory Document Control Desk. ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

“Nuclear waste” means any highway route controlled quantity (defined in 49 CFR 173.403, revised October 1, 2012, incorporated by reference, and available under R9-7-101; this incorporated material contains no future editions or amendments) of source, byproduct, or special nuclear material required to be in NRC-approved packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site. Additional requirements associated with transportation of radioactive material can be found in Article 15.

“Occupational dose” means the dose received by an individual in the course of employment in which the individual’s assigned duties involve exposure to sources of radiation, whether in the possession of a licensee, registrant, or other person. Occupational dose does not include a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, voluntary participation in a medical research program, or as a member of the public.

“Open beam system” means an analytical x-ray system in which an individual could place some body part in the primary beam path during normal operation.

“Package” means the packaging together with its radioactive contents as presented for transport.

“Particle accelerator” (See “Accelerator”)

“Permanent radiographic installation” means a fixed, shielded installation or structure designed or intended for industrial radiography and in which industrial radiography is regularly performed.

“Personnel dosimeter” (See “Individual monitoring device”)

“Personnel monitoring equipment” (See “Individual monitoring device”)

“Personal supervision” means supervision in which the supervising individual is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the supervised individual and in such proximity that immediate assistance can be given if required.

“PET” (See Positron Emission Tomography (PET))

“Pharmacist” means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

“Physician” means an individual licensed pursuant to A.R.S. Title 32, Chapters 13 or 17.

“Positron Emission Tomography (PET)” means an imaging technique using radionuclides to produce high resolution images of the body’s biological functions.

“Positron Emission Tomography radionuclide production facility” means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

“Preceptor” means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

“Primary beam” means radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing.

“Public dose” means the dose received by a member of the public from radiation from radioactive material released by a licensee or registrant, or exposure to a source of radiation used in a licensed or registered operation. It does not include an occupational dose or a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, or voluntary participation in a medical research program.

“Pyrophoric liquid” means any liquid that ignites spontaneously in dry or moist air at or below 130° F (54.4° C).

“Pyrophoric solid” means any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently that it creates a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

“Qualified expert” means an individual certified in the appropriate field by the American Board of Radiology or the American Board of Health Physics, or having equivalent qualifications that provide the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs; or an individual certified in Therapeutic Radiological Physics or X-ray and Radium Physics by the American Board of Radiology, or having equivalent qualifications that provide training and experience in the clinical applications of radiation physics to radiation therapy, to calibrate radiation therapy equipment. The detailed requirements for a particular qualified expert may be provided in the respective Articles of this Chapter. For clarification purposes, a qualified expert is not always an authorized medical physicist; however, an authorized medical physicist is included within the definition of “qualified expert.”

“Quality Factor” (Q) means the modifying factor, listed in Tables I and II of this Article, that is used to derive dose equivalent from absorbed dose.

“Quarter” (See “Calendar quarter”)

“Rad” means the special unit of absorbed dose. One rad equals 100 ergs per gram, or 0.01 gray.

“Radiation” means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules, this term is synonymous with ionizing radiation. Equivalent terminology for non-ionizing radiation is defined in Article 14.

“Radiation area” means any area accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

“Radiation dose” (See “Dose”)

“Radiation machine” means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

“Radiation Safety Officer” (RSO) means the individual and who for license conditions:

Meets the requirements in 10 CFR 35.50(a) or (c)(1) and 10 CFR 35.59, (revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future

editions or amendments.); or is identified as a Radiation Safety Officer on a specific medical use license issued by the NRC or an Agreement State; or a medical use permit issued by a NRC master material licensee; or

Who, for registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

“Radiation Safety Officer” (RSO) means the individual and who for license conditions:

Meets the requirements of R9-7-407, and for a medical license meets the training requirements of R9-7-710 or is identified as a Radiation Safety Officer on a specific medical use license issued by the Department, the NRC, or another Agreement State; or a medical use permit issued by a NRC master material licensee; or

Who meets the requirements in R9-7-512 on a specific industrial license issued by the Department, the NRC, or another Agreement State; or an industrial use permit issued by a NRC master material licensee; or

Who, for registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

“Radioactive marker” means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

“Radioactive material” means any solid, liquid, or gas which emits radiation spontaneously.

“Radioactivity” means emission of electromagnetic energy or particles or both during the transformation of unstable atomic nuclei.

“Radiographer” means any individual who performs or personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of this Chapter and all conditions of the license or certificate of registration.

“Radiographer’s assistant” means any individual who, under the personal supervision of a radiographer, uses sources of radiation, radiographic exposure devices, related handling tools, or survey instruments in industrial radiography.

“Registrant” means any person who is registered with the Department and is legally obligated to register with the Department pursuant to these rules and the Act.

“Registration” is the process by which a person becomes a registrant pursuant to Article 2 or 14 of this Chapter. With the exception of registration of persons who install or service radiation machines, the types of registrations issued by the Department are described in R9-7-1302.

“Regulations of the U.S. Department of Transportation” means the federal regulations in 49 CFR 107, 171 through 180, revised October 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“Rem” means the special unit of dose equivalent (see “Dose equivalent”). The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem - 0.01 sievert).

“Research and Development” means exploration, experimentation, or the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and Development does not include the internal or external administration of radiation or radioactive material to human beings.

“Restricted area” means any area where the licensee or registrant controls access for purposes of protecting individuals from exposure to radiation and radioactive material. A restricted area does not include any areas used for residential quarters, although a room or separate rooms in a residential building may be set apart as a restricted area.

“Roentgen” (R) means the special unit of exposure and is equal to the quantity of x or gamma radiation which causes ionization in air equal to 258 microcoulomb per kilogram (see “Exposure”).

“Safety system” means any device, program, or administrative control designed to ensure radiation safety.

“Sealed source” means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

“Sealed Source and Device Registry” means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for each source or device.

“Shallow dose equivalent” (HS), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²).

“Shielded position” means the location within a radiographic exposure device or storage container which, by manufacturer’s design, is the proper location for storage of the sealed source.

“Sievert” means the SI unit of dose equivalent (see “Dose equivalent”). The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

“Site boundary” means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

“Source changer” means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

“Source holder” means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

“Source material” means:

Uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form; or
Ores that contain by weight 1/20 of 1 percent (0.05 percent) or more of uranium, thorium, or any combination of uranium and thorium.

Source material does not include special nuclear material.

“Source material milling” means any activity that results in the production of byproduct material as defined by the second subsection under the definition of “Byproduct material.”

“Source of radiation” or “source” means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

“Special form radioactive material” means radioactive material that satisfies all of the following conditions:

It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

It satisfies the test requirements specified in 10 CFR 71.75, revised January 1, 2013, incorporated by reference, available under R9-7-101. This incorporated material contains no future editions or amendments. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996 (see 10 CFR part 71, revised as of January 1, 1996), and constructed before April 1, 1998; and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used.

Any other special form encapsulation must meet the specifications of this definition.

“Special nuclear material in quantities not sufficient to form a critical mass” means Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; Uranium-233 in quantities not exceeding 200 grams; Plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between

the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

“Storage area” means any location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, storage container, sealed source, or other source of radiation when it is not in use.

“Storage container” means a device in which sealed sources are transported or stored.

“Subsurface tracer study” means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

“Survey” means an evaluation of the production, use, release, disposal, or presence of sources of radiation or any combination thereof under a specific set of conditions to determine actual or potential radiation hazards. Such evaluations include, but are not limited to, tests, physical examination and measurements of levels of radiation or concentration of radioactive material present.

“TEDE” (See “Total Effective Dose Equivalent”)

“Teletherapy” means therapeutic irradiation in which the source of radiation is at a distance from the body.

“Temporary job site” means any location where sources of radiation are used other than the specified locations listed on a license document. Storage of sources of radiation at a temporary jobsite shall not exceed six months unless the Department has granted an amendment authorizing storage at that jobsite.

“Test” means the process of verifying compliance with an applicable rule, order, or license condition.

“These rules” means all Articles of 9 A.A.C. 7.

“Total Effective Dose Equivalent” (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

“Total Organ Dose Equivalent” (TODE) means the sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose. Determination of TODE is described in R9-7-411.

“Tribal official” means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

“Unrefined and unprocessed ore” means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

“Unrestricted area” means any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive material. Any area used for residential quarters is an unrestricted area.

“Uranium - natural, depleted, enriched.”

Natural uranium means uranium (which may be chemically separated) with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

Depleted uranium means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

Enriched uranium means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

“U.S. Department of Energy” means the Department of Energy established by P.L. 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department of Energy exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers, and components; and transferred to the U.S. Energy Research and Development Administration and to the administrator of that agency under sections 104(b), (c), and (d) of the Energy Reorganization Act of 1974 (P.L. 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of

Energy under Section 301(a) of the Department of Energy Organization Act (P.L. 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

“Very high radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose that exceeds 5 grays (500 rads) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

“Waste” (See “Low-level waste”)

“Waste handling licensees” means persons licensed to receive and store radioactive wastes prior to disposal and persons licensed to dispose of radioactive waste.

“Week” means seven consecutive days starting on Sunday.

“Well-bore” means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

“Well-logging” means the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well and adjacent formations.

“Whole body” means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

“Wireline” means an armored cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

“Wireline service operation” means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

“Worker” means any individual engaged in work under a license or registration issued by the Department and controlled by employment or contract with a licensee or registrant.

“WL” means working level, any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of $1.3E + 5$ MeV of potential alpha particle energy. The short-lived radon daughters are – for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

“WLM” means working level month, an exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

“Workload” means the degree of use of an x-ray or gamma-ray source per unit time.

“Year” means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

R9-15-101. Definitions

In addition to the definitions in A.R.S. §§ 36-401 and 36-2171, the following definitions apply in this Chapter unless otherwise stated:

1. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
2. “Application” means the information and documents submitted to the Department by a primary care provider requesting to participate in the Loan Repayment Program.
3. “Arizona Health Care Cost Containment System” or “AHCCCS” means the Arizona state agency established by A.R.S. Title 36, Chapter 29 to administer 42 U.S.C. 1396-1, Title XIX health care programs.
4. “Arizona medically underserved area” or “AzMUA” means a primary care area where access to primary care service is limited as designated according to A.R.S. § 36-2352.
5. “Calendar day” means each day, not excluding the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday,

Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.

6. "Calendar year" means the period of 365 days starting from the first day of January.
7. "Cancellation" means the discharge of a primary care provider's loan repayment contract based on one of the following:
 - a. A primary care provider requests a discharge of the primary care provider's loan repayment contract as allowed by this Chapter; or
 - b. The Department determines:
 - i. There are no loan repayment funds available;
 - ii. A primary care provider is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter;
 - iii. A primary care provider's service site is not complying with the requirements in A.R.S. Title 36, Chapter 21 or this Chapter; or
 - iv. A primary care provider fails to meet the terms of the primary care provider's loan repayment contract with the Department.
8. "Certified nurse midwife" means a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period.
9. "Clinical social worker" means an individual licensed under A.R.S. § 32-3293.
10. "Critical access hospital" means a facility certified by the Centers for Medicare & Medicaid Services under Section 1820 of the Social Security Act.
11. "Denial" means the Department's determination that a primary care provider is not approved to:
 - a. Participate in the LRP,
 - b. Renew a loan repayment contract,
 - c. Suspend or cancel a loan repayment contract, or
 - d. Waive liquidated damages owed by the primary care provider for failure to comply with A.R.S. Title 36, Chapter 21 and this Chapter.
12. "Dental services" means the same as "dentistry" in A.R.S. § 32-1201.
13. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
14. "Direct patient care" means medical services, dental services, pharmaceutical services, or behavioral health services provided to a specific individual by a primary care provider and for services provided by the primary care provider to or for the specific individual including:
 - a. Documenting the services in the specific individual's medical records,
 - b. Consulting with other health care professionals about the specific individual's need for services, and
 - c. Researching information specific to the individual's need for services.
15. "Educational expenses" has the same meaning as in 42 C.F.R. § 62.22.
16. "Encounter" means a face-to-face visit, which may include a visit using telemedicine, between a patient and a primary care provider during which primary care services are provided.
17. "Family unit" means a group of individuals residing together who are related by birth, marriage, or adoption or an individual who does not reside with another individual to whom the individual is related by birth, marriage, or adoption.
18. "Federal prison" means a secure facility managed and run by the Federal Bureau of Prisons that confines an individual convicted of a crime.
19. "Full-time" means working at least 40 hours per week for at least 45 weeks per service year.

20. "Free-clinic" means a facility that provides primary care services, on an outpatient basis, to individuals at no charge.
21. "Government student loan" means an advance of money made by a federal, state, county, or city agency that is authorized by law to make the advance of money.
22. "Half-time" means working at least 20 hours per week, but not more than 39 hours per week, for at least 45 weeks per service year.
23. "Health professional school" has the same meaning as "school" in 42 C.F.R. § 62.2.
24. "Health professional service obligation" means a legal commitment in which a primary care provider agrees to provide primary care services for a specified period of time in a designated area or through a designated service site.
25. "Health professional shortage area" or "HPSA" means a geographic region, population group, or public or non-profit private medical facility or other public facility determined by the U.S. Department of Health and Human Services to have an inadequate number of primary care providers under 42 U.S.C. § 254e.
26. "Health service experience to a medically underserved population" means at least 500 clock hours of medical services, dental services, pharmaceutical services, or behavioral health services provided by a primary care provider, including clock hours completed during the primary care provider's residency or graduate education:
 - a. Under the direction of a governmental agency, an accredited educational institution, or a non-profit organization; and
 - b. At a service site located in:
 - i. A medically underserved area designated by a federal or state agency, or
 - ii. A HPSA designated by a federal agency.
27. "Health service priority" means the number assigned by the Department to an initial application or renewal application and used to determine whether loan repayment funds are allocated to a primary care provider requesting approval to participate in the LRP.
28. "Immediate family" means an individual in any of the following relationships to a primary care provider:
 - a. Spouse;
 - b. Natural, adopted, foster, or stepchild;
 - c. Natural, adoptive, or stepparent;
 - d. Brother or sister;
 - e. Stepbrother or stepsister;
 - f. Grandparent or spouse of grandparent;
 - g. Grandchild or spouse of grandchild;
 - h. Father-in-law or mother-in-law;
 - i. Brother-in-law or sister-in-law; or
 - j. Son-in-law or daughter-in-law.
29. "Licensee" means:
 - a. An owner approved by the Department to operate a health care institution, or
 - b. An individual licensed under A.R.S. Title 32.
30. "Living expenses" has the same meaning as in 42 C.F.R. § 62.22.
31. "Loan repayment funds" means:
 - a. State loan repayment funds,
 - b. State-appropriated funds, or
 - c. Monies donated to the Department and designated for use by the LRP.

32. "Loan Repayment Program" or "LRP" means the unit in the Department that implements the Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172, and the Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174.
33. "Marriage and family therapist" means an individual licensed under A.R.S. § 32-3311.
34. "Newly employed" means when a primary care provider's first-time employee start date with a service site or employer identified in an initial application occurred within 12 months before the primary care provider's initial application submission date.
35. "Non-government student loan" means an advance of money made by a bank, credit union, savings and loan association, insurance company, school, or other financial or credit institution that is subject to examination and supervision in its capacity as a lender by an agency of the federal government or of the state in which the lender has its principle place of business.
36. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
37. "Pharmaceutical services" means the same as "practice of pharmacy" in A.R.S. § 32-1901.
38. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
39. "Physician" has the same meaning as in A.R.S. § 36-2351.
40. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
41. "Population" means the total number of permanent residents according to the most recent decennial census published by the U.S. Census Bureau or according to the most recent Population Estimates for Arizona's Counties and Incorporated Places published by the Arizona Department of Economic Security.
42. "Poverty level" means a measure of income, issued annually by the U.S. Department of Health and Human Services and published in the Federal Register.
43. "Primary care area" has the same meaning as in A.A.C. R9-24-201.
44. "Primary care loan" means a long-term, low-interest-rate financial contract between the U.S. Department of Health and Human Services, Health Resources and Services Administration and a full-time student pursuing a degree in allopathic or osteopathic medicine.
45. "Primary care provider" means one of the following providing direct patient care:
 - a. A physician practicing:
 - i. Family medicine,
 - ii. Internal medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Obstetrics-gynecology, or
 - vi. Psychiatry;
 - b. A physician assistant practicing:
 - i. Adult medicine,
 - ii. Family medicine,
 - iii. Pediatrics,
 - iv. Geriatrics,
 - v. Women's health, or
 - vi. Behavioral health;
 - c. A registered nurse practitioner practicing:
 - i. Adult medicine,
 - ii. Family medicine,
 - iii. Pediatrics,

- iv. Geriatrics,
 - v. Women's health, or
 - vi. Behavioral health;
 - d. A certified nurse midwife;
 - e. A dentist practicing:
 - i. General dentistry,
 - ii. Geriatric dentistry, or
 - iii. Pediatric dentistry;
 - f. A pharmacist; or
 - g. A behavioral health provider practicing as:
 - i. A psychologist,
 - ii. A clinical social worker,
 - iii. A marriage and family therapist, or
 - iv. A professional counselor.
46. "Primary care service" means medical services, dental services, pharmaceutical services, or behavioral health services provided on an outpatient basis by a primary care provider.
47. "Private practice" means an individual or entity in which:
- a. One or more primary care providers provide primary care services; and
 - b. Each primary care provider is an owner who can be held personally responsible for the primary care services provided by any of the primary care providers.
48. "Professional counselor" means an individual licensed under A.R.S. § 32-3301.
49. "Psychiatrist" means a physician who is board certified or board eligible to provide behavioral health services.
50. "Psychologist" has the same meaning as in A.R.S. § 32-2061.
51. "Public" means any:
- a. State or local government; or
 - b. Department, agency, special purpose district, or other unit of a state or local government, including the legislature.
52. "Qualifying educational loan" means a government or a non-government student loan:
- a. Used for the actual costs paid for educational expenses and living expenses that occurred during the undergraduate or graduate education of a primary care provider, and
 - b. Obtained before the submission of an initial application.
53. "Qualifying health plan" means health insurance coverage provided to a consumer through the Arizona State Health Insurance Marketplace established by 42 U.S.C.A. § 18001 (2010).
54. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
55. "Service site" means a health care institution that provides primary care services at a specific location.
56. "Service verification form" means a document confirming a primary care provider's full-time or half-time continuous employment at the primary care provider's approved service site.
57. "Sliding-fee schedule" has the same meaning as in A.A.C. R9-1-501.
58. "State-appropriated funds" means monies provided to the Department for the Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2172, and the Rural Private Primary Care Provider Loan Repayment Program, established according to A.R.S. § 36-2174.

59. "State loan repayment funds" means monies provided to the Department from the U.S. Department of Health and Human Services, Health Resources and Services Administration.
60. "State prison" means a secure facility managed and run by a state in which an individual convicted of a crime is confined.
61. "Student" means an individual pursuing a course of study at a health professional school.
62. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
63. "Suspend" means to temporarily interrupt a primary care provider's loan repayment contract for a specified period of time, based on a request submitted by the primary care provider.
64. "Telemedicine" has the same meaning as:
 - a. "Telemedicine" as defined in A.R.S. § 36-3601,
 - b. "Teledentistry" as defined in A.R.S. § 36-3611, or
 - c. "Telepractice" as defined in A.R.S. §32-3251.
65. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a federal and state holiday or a statewide furlough day.

Statutory Authority for the Rules in 9 A.A.C. 16, Article 6

32-2803. Rules

The director may adopt rules as may be needed to carry out the purposes of this chapter. The rules shall include:

1. Minimum standards of training and experience for persons to be certified pursuant to this chapter and procedures for examining applicants for certification.
2. Provisions identifying the types of applications of ionizing radiation for a practical technologist in podiatry, practical technologist in radiology, practical technologist in bone densitometry, radiologic technologist, radiation therapy technologist, mammographic technologist, nuclear medicine technologist, computed tomography technologist and radiologist assistant and any new radiologic modality technologist and those minimum standards of education and training to be met by each type of applicant.

32-2804. School approval; standards; considerations

A. The department may approve a school of radiologic technology as maintaining a satisfactory standard if its course of study:

1. Is for a period of at least twenty-four months of full-time study or its equivalent and is accredited by the committee on allied health accreditation or meets or exceeds the standards of this chapter.
2. Includes at least four hundred hours of classroom work, including radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy and physiology, radiographic positioning, radiation therapy and professional ethics.
3. Includes at least one thousand eight hundred hours devoted to clinical experience.
4. Includes demonstrations, discussions, seminars and supervised practice.
5. Includes at least eighty hours of regularly scheduled supervised film critiques.

B. An approved school of radiologic technology may be operated by a medical or educational institution or other public or private agency or institution and, for the purpose of providing the requisite clinical experience, shall be affiliated with one or more hospitals that the department determines are likely to provide this experience.

C. In approving a school of radiologic technology, the department shall consider the standards adopted by appropriate professional organizations, including the joint review committee on education in radiologic technology, and may accept the certification of a school of radiologic technology or the accreditation of a hospital to provide requisite clinical experience if the department finds that certification or accreditation was granted on the basis of standards that will afford the same protection to the public as the standards provided by this chapter.

32-2811. Prohibitions and limitations; exceptions

A. No person may use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.

B. A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner, except that a person holding a certificate may use ionizing radiation on human beings for diagnostic purposes only while operating in each particular case at the direction of a licensed practitioner who is licensed in any other state, territory or district of the United States. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body specified in the law under which the practitioner is licensed. The provisions of the technologist's certificate govern the extent of application of ionizing radiation.

C. Nothing in this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.

D. The requirement of a certificate shall not apply to:

1. A hospital resident specializing in radiology who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, naturopathic medicine, chiropractic or radiologic technology who applies ionizing radiation to a human being while under the specific direction of a licensed practitioner.

2. A person engaged in performing the duties of a technologist in that person's employment by an agency, bureau or division of the government of the United States.
 3. Dental hygienists licensed in the state of Arizona and dental assistants holding a valid certificate in dental radiology from a course approved by the state board of dental examiners.
 4. Persons providing assistance during an ionizing radiation procedure, apart from such procedures conducted in a health care institution, under the direction of a person licensed for the use of an ionizing radiation machine.
 5. A person who is employed by or acting on behalf of the state department of corrections or a county jail and who uses a low-dose ionizing radiation body scanning device to detect contraband, as defined in section 13-2501, in or on an inmate.
- E. Subsection B of this section does not apply to ionizing radiation ordered by a licensed practitioner for other than diagnostic or therapeutic purposes pursuant to section 13-2505, subsection E.

32-2812. Applications for certificate; qualifications; fees; examination; denial

A. An applicant for a certificate shall submit an application for certification or an application for examination for certification, accompanied by a nonrefundable fee established by the director. An applicant who has practiced radiography without certification shall pay a prorated fee retroactively to the earliest date of uncertified practice. The fee for a replacement certificate is ten dollars. The application for examination fee is seventy dollars and shall not be prorated. An application shall contain information that the applicant:

1. Is at least eighteen years of age.
2. Is of good moral character.
3. Meets one of the following requirements:

(a) In the case of an application for radiologic technologist, radiation therapy technologist or nuclear medicine technologist certification, has successfully completed a course of study at a school of radiologic technology that is approved by the department or an out-of-state school of radiologic technology that is approved by the joint review committee on education in radiologic technology, the American registry of radiologic technologists or the nuclear medicine technology certification board.

(b) In the case of an application for practical technologist in podiatry certification, practical technologist in bone densitometry certification and practical technologist in radiology certification, satisfactorily meets the basic requisites determined by the department pursuant to section 32-2803.

(c) In the case of an application for radiologist assistant certification, has obtained a baccalaureate degree or postbaccalaureate certificate from an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship. An applicant for certification before April 1, 2009 is not required to have a baccalaureate degree or postbaccalaureate certificate, but must have completed an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship.

B. If the application is in proper form and it appears that the applicant meets the eligibility requirements, the applicant shall be notified of the time and place of the next examination.

C. The department may accept, in lieu of its own examination, a certificate issued on the basis of an examination by a certificate-granting body recognized by the department or a certificate, registration or license issued by another state if that state's standards for certification, registration or licensure are satisfactory to the department.

D. The department may deny a certificate to an applicant who has committed an act or engaged in conduct in any jurisdiction that resulted in a disciplinary action against the applicant or that would constitute grounds for disciplinary action under this chapter.

32-2813. Examination; contents; subsequent examinations

A. Examinations for certification shall include the subjects of radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy terminology, radiological mathematics, professional ethics and such other subjects as the department may deem appropriate.

B. The department shall prepare lists of examination questions or problems and administer the examinations.

C. Examinations shall include written questions but may also include practical and oral portions. Following each examination, the papers and the practical and oral examinations shall be graded and the standing of each applicant shall be recorded. The department shall either pass or reject each applicant.

D. An applicant who fails to pass an examination may reapply for examination in the manner prescribed by section 32-2812. The department shall require a candidate who fails the examination three times to successfully complete additional training prescribed by the department before accepting the candidate for reexamination.

32-2814. Initial certificates; special permits; temporary certificates

A. The department shall issue an initial certificate that is valid for two years to each candidate who has paid the prescribed fee and who either has successfully passed the examination or has been accepted pursuant to section 32-2812.

B. The department, on application, may issue a special permit to exempt a person from this chapter if the department finds to its satisfaction that there is substantial evidence that the people in the locality of the state in which such an exemption is sought would be denied adequate medical care because of the unavailability of certified licensed practitioners or persons holding certificates pursuant to this chapter. The department shall issue a special permit for a limited period of time, not to exceed one year, to be prescribed by the department in accordance with the purposes of this chapter. The department may renew a special permit if the permittee's circumstances have not changed.

C. The department may issue a temporary certificate to any person whose certification or recertification is pending and in whose case the issuance of a temporary certificate may be justified by reason of special circumstances.

D. A temporary certificate shall be issued only if the department finds that its issuance will not violate the purposes of this chapter or tend to endanger the public health and safety. A temporary certificate expires thirty days after the date of the next examination if the applicant is required to take the examination or, if the applicant does not take the examination, on the date of the examination. In all other cases, a temporary certificate expires when the determination is made either to issue or to deny the issuance of a certificate. A temporary certificate shall not be valid for more than one year and may not be renewed.

E. A person shall submit an application for certification in a form prescribed by the department.

32-2815. Rules; bone densitometry certification; nuclear medicine certification; continuing education

A. The department shall adopt rules regarding the certification of practical technologists in bone densitometry to allow the certificate holder to apply ionizing radiation to a person's extremities through the use of a bone densitometry machine. The rules shall prescribe:

1. The minimum education and training qualifications for certification. The qualifications prescribed by the department shall allow a person who does not meet the education and training requirements of a radiologic technologist or a practical technologist in radiology to obtain a certificate as a practical technologist in bone densitometry.

2. The application and renewal fees.

B. Subsection A of this section does not prohibit a radiologic technologist or a practical technologist in radiology from operating a bone densitometry machine.

C. A person who wishes to practice as a nuclear medicine technologist must apply to the department for certification as prescribed by rule. The department shall adopt rules to establish minimum educational and training requirements for nuclear medicine technologists.

D. The department shall adopt rules to prescribe the following minimum continuing education requirements for the renewal of the following certificates:

1. Practical technologist in podiatry, two hours every two years.

2. Practical technologist in radiology, six hours every two years.

3. Practical technologist in bone densitometry, two hours every two years.

4. Unlimited practical technologist in radiology, twenty-four hours every two years.

5. Nuclear medicine technologist, twenty-four hours every two years.

6. Radiologist assistant, fifty hours every two years.

7. Radiologic technologist, twenty-four hours every two years.

8. Radiation therapy technologist, twenty-four hours every two years.

E. The department may require an applicant for renewal to document compliance with the appropriate continuing education requirements of subsection D of this section.

32-2816. Certificates; fee; terms; registration; renewal; cancellation; waiver

A. Except as provided in section 32-4301, a certificate issued under this section is valid for two years.

B. The department may renew a certificate for two years on payment of a renewal fee established by the director and submission of a renewal application containing information the department requires to show that the applicant for renewal is a technologist in good standing. The applicant for renewal shall also present evidence satisfactory to the department of having completed the required continuing education in radiologic technology within the preceding two years. If a radiologic technologist is certified by the American registry of radiologic technologists or nuclear medicine technology certification board, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry.

C. A certificate holder who fails to renew the certificate on or before the certificate's expiration as prescribed in subsection B of this section shall pay a penalty fee of fifty dollars for late renewal.

D. A certificate holder who does not renew a certificate within thirty days after the certificate expires and who continues the active practice of radiologic technology without adequate cause satisfactory to the department is subject to censure, reprimand or denial of right to renew the certificate pursuant to section 32-2821.

E. On the request of a certificate holder in good standing, the department shall cancel a certificate.

F. The department shall waive the renewal fee if a certificate holder submits an affidavit to the department stating that the certificate holder is retired from the practice of radiologic technology or wishes to be placed on inactive status. A retired or inactive technologist who practices is subject to the same penalties imposed pursuant to this chapter on a person who practices radiologic technology without a certificate.

G. The department may reinstate a technologist on retired or inactive status on payment of the renewal fee pursuant to subsection B of this section.

32-2817. Use of title; display of certificate or permit

A. A person holding a certificate may use the title "certified radiologic technologist", "certified nuclear medicine technologist", "certified radiation therapy technologist", "certified computed tomography technologist", "certified mammographic technologist", "certified radiologist assistant", "certified practical technologist in podiatry", "certified practical technologist in bone densitometry" or "certified practical technologist in radiology", as applicable. No other person shall be entitled to use such titles or title or letters after such person's name that indicates or implies that such person is a certified technologist or to represent the person in any way, whether orally or in writing, expressly or by implication, as being so certified.

B. Every technologist or special permit holder shall display a certificate or permit at the technologist's or permit holder's place of employment.

32-2818. Lapsed certification; inactive status; reinstatement

A person who was an unlimited practical technologist in radiology under this chapter from and after December 31, 1992 and whose certificate was not suspended or revoked but who failed to renew the certificate, on application to the department, may be placed on inactive status or reinstated pursuant to section 32-2816.

32-2819. Radiologist assistants; certification; rules; scope of practice

A. A person who wishes to practice as a radiologist assistant must apply to the department for a certificate on a form and in the manner prescribed by the department pursuant to the requirements of section 32-2812.

B. The department shall adopt rules to implement this section. The rules shall include the following:

1. Continuing education requirements.

2. Any other requirements the department considers appropriate to implement this section.

C. Pursuant to rules adopted by the department, a radiologist assistant may do the following under the direct supervision of a radiologist:

1. Perform fluoroscopic procedures.

2. Assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures.

3. Evaluate image quality, make initial image observations and communicate observations to the supervising radiologist.

4. Administer contrast media or other medications prescribed by the supervising radiologist.

5. Perform any other procedures consistent with rules adopted by the department.

D. In adopting rules pursuant to subsection C of this section, the department shall consider guidelines established by the the American society of radiologic technologists and the American registry of radiologic technologists.

E. A radiologist assistant shall not interpret images, make diagnoses or prescribe medications or therapies.
F. A radiologist who supervises a radiologist assistant may authorize the assistant to perform only those radiologic procedures described in this section.

G. A person shall not do any of the following without a certificate issued pursuant to this section:

1. Perform the radiologic procedures described in subsection C of this section.
2. Claim to be a radiologist assistant, including using any sign, advertisement, card, letterhead, circular or other writing, document or design to induce others to believe the person is authorized to practice as a radiologist assistant.

H. Subsection G of this section does not apply to either of the following:

1. A person engaging in the scope of practice for which the person holds a valid license or certificate.
2. A person performing a task as part of an advanced academic program.

32-2821. Revocation or suspension of certificate or permit; civil penalties; enforcement; appeals; hearings

A. The director may revoke or suspend a certificate or permit issued under this chapter if the holder of the certificate or permit:

1. Is guilty of any fraud or deceit in activities as a technologist or radiologist assistant or has been guilty of any fraud or deceit in procuring or maintaining a certificate.
2. Has been convicted in a court of competent jurisdiction of a crime involving moral turpitude. If the conviction has been reversed and the holder of the certificate or permit has been discharged or acquitted or if the holder of the certificate or permit has been pardoned or the holder's civil rights have been restored, the certificate may be restored.
3. Is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect, is insane or uses hallucinogens.
4. Has knowingly aided or abetted a person, not otherwise authorized, who is not a certified technologist or radiologist assistant or has not been issued a special permit in engaging in the activities of a technologist or radiologist assistant.
5. Has undertaken or engaged in any practice beyond the scope of the authorized activities of a certified technologist, radiologist assistant or permit holder pursuant to this chapter.
6. Has impersonated a duly certified technologist, radiologist assistant or permit holder or former duly certified technologist, radiologist assistant or permit holder or is engaging in the activities of a technologist, radiologist assistant or permit holder under an assumed name.
7. Has been guilty of unethical professional conduct.
8. Has continued to practice without obtaining a certificate renewal or a special permit renewal.
9. Has applied ionizing radiation to a human being when not operating in each particular case under the direction of a duly licensed practitioner or to any person or part of the human body other than specified in the law under which the practitioner is licensed.
10. Has acted or is acting as an owner, co-owner or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation or the treatment of disease, without being under the direction of a licensed practitioner.
11. Has used or is using the prefix "Dr.", the word "doctor" or any prefix or suffix to indicate or imply that the person is a duly licensed practitioner if this is not true.
12. Is or has been guilty of incompetence or negligence in activities as a technologist.
13. Is or has been afflicted with any medical problem, disability or addiction that the department determines impairs the certificate or permit holder's professional competence.
14. Has interpreted a diagnostic image for a physician, a patient, the patient's family or the public.
15. Has violated any provision of this chapter or rule adopted pursuant to this chapter.

B. A person may appeal the revocation or suspension under subsection A of this section by requesting a hearing pursuant to title 41, chapter 6, article 10. If the revocation or suspension is appealed, the director may not take further action to enforce the revocation or suspension until after the hearing.

C. If the certificate of any person has been revoked or suspended, the department, after the expiration of two years, may consider an application for restoration of the certificate.

D. The director may assess a civil penalty against a person in an amount not to exceed two hundred fifty dollars for each violation of this chapter or a rule adopted pursuant to this chapter. Each day a violation occurs constitutes a separate violation.

E. The director shall issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under this subsection, the department shall consider all of the following:

1. Repeated violations of statutes and rules.
2. Patterns of noncompliance.
3. Types of violations.
4. The severity of violations.
5. The potential for and occurrences of actual harm.
6. Threats to health and safety.
7. The number of persons affected by the violations.
8. The number of violations.
9. The length of time the violations have been occurring.

F. A person may appeal the civil penalty assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. If an assessment is appealed, the director may not take further action to enforce and collect the assessment until after the hearing.

G. Actions to enforce the collection of civil penalties assessed pursuant to this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

H. The department shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

I. The department shall conduct any hearing to revoke or suspend a certificate or permit or impose a civil penalty under this section pursuant to title 41, chapter 6, article 10.

J. The department may issue a nondisciplinary order requiring the certificate holder or permit holder to complete a prescribed number of hours of continuing education in an area or areas prescribed by the department to provide the certificate holder or permit holder with the necessary understanding of current developments, skills, procedures or treatment. The department may also file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a certificate or permit holder.

32-2824. Inspections

A. The department or its duly authorized representatives may enter during scheduled work hours on private or public property for the purpose of:

1. Ensuring that only certified individuals or individuals who are exempt from certification are operating ionizing radiation machines.
2. Determining whether a certified individual is practicing beyond the scope of the person's certificate.
3. Determining whether a certified individual has violated the provisions of this chapter.
4. Auditing ionizing radiation logbooks.
5. Determining compliance with this chapter and the rules adopted pursuant to this chapter.

B. The department may enter areas under the jurisdiction of the federal government only with its permission.

32-2841. Mammographic technologists; computed tomography technologists; certification; renewal

A. A person who wishes to perform diagnostic mammography or screening mammography as defined in section 30-651 shall obtain a mammographic technologist certificate from the department. A person who wishes to perform computed tomography shall obtain a computed tomography technologist certificate from the department. The department shall issue a certificate to an applicant who:

1. Pays a twenty dollar application fee.
2. Holds a current radiologic technology certificate issued by the department.

3. For a mammographic certification, completes the training and education requirements of subsection B of this section and passes an examination as prescribed in subsection D of this section.

4. For a computed tomography technologist certification, provides documentation of two years of experience in computed tomography and completion of twelve hours of computed tomography specific education or passes an examination as prescribed in subsection D of this section.

B. To satisfy the education requirements of subsection A of this section, an applicant shall meet the initial training and education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12.

C. The department shall issue a student mammography permit, preceptorship or temporary certificate to a person who is in training and meets the requirement of subsection A, paragraph 2 of this section if the applicant also provides the department with verification of employment and the name of the radiologist who agrees to be responsible for the applicant's supervision and training. A student mammography permit, preceptorship or temporary certificate is valid for one year from the date it is issued and may not be renewed. If the holder completes all of the requirements of subsection A of this section within the permitted period, the department shall issue a mammographic or computed tomography technologist certificate. The mammographic or computed tomography technologist certificate shall be renewed as prescribed under subsection E of this section.

D. To satisfy the examination requirements of this section an applicant shall pass an examination in mammography or computed tomography administered by the department or, in lieu of its own examination, the department may accept a certificate issued on the basis of an examination by a certificate-granting body recognized by the department.

E. Except as provided in section 32-4301, a certificate that is issued under this section is valid for two years. The department shall notify a certificate holder thirty days before the expiration date of the certificate. An applicant for renewal of a mammographic technologist certificate shall meet the continuing education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12. If a radiologic technologist is certified by the American registry of radiologic technologists, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry. The applicant shall also pay a twenty dollar renewal fee to the department.

F. A person or facility that employs a person certified under this section shall report any suspected violations of section 32-2821 to the department. The department shall investigate the complaint. If in the course of its investigation the department determines that a person regulated by another regulatory agency of this state may have violated that agency's laws, the department shall report the violation to the other agency for disciplinary action.

32-2842. Mammographic images; physicians; requirements

A physician licensed under chapter 13 or 17 of this title who reads or interprets mammographic images shall meet the following requirements:

1. Have completed forty hours of medical education credits in mammography.
2. Be certified by either the American board of radiology in diagnostic radiology or the American osteopathic board of radiology in diagnostic radiology, as applicable, or meet the requirements of the mammography quality standards act regulations for quality standards of interpreting physicians, 21 Code of Federal Regulations section 900.12.

32-2843. Facilities; requirements

A. A facility that wishes to conduct patient self-referral mammographic screening examinations after January 1, 1994 shall submit the following to the department:

1. The physician-approved guide for accepting self-referrals by patients.
2. A copy of the facility's quality assurance program.
3. The medical physicist's evaluation report of the facility.

B. A facility that does not have a darkroom on-site or that does not develop the films within one hour of exposure shall submit the following to the department:

1. A description of how the facility plans to ensure that the equipment is operating properly at the start of each day.
2. Information regarding the darkroom that develops the film that demonstrates to the department's satisfaction that transportation conditions will not adversely affect a person's ability to interpret the films.

C. The director shall prescribe requirements for the documents required to be submitted to the department under subsections A and B of this section.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the

accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. 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) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing

the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

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 cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

INDUSTRIAL COMMISSION (R19-0802)
Title 20, Chapter 5, Article 5, Elevator Safety



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Article 5, Elevator Safety

Amend: R20-5-507

Summary:

This rulemaking from the Industrial Commission of Arizona ("Commission") seeks to amend rules in Title 20, Chapter 5, Article 5 related to elevator safety in Arizona. Specifically, the Commission is amending R20-5-507 regarding the safety code for elevators, escalators, dumbwaiters, moving walks, material lifts, and dumbwaiters with automatic transfer devices to incorporate by reference the national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

Currently, R20-5-507 incorporates the national consensus standards contained in ASME A17.1-2007 (Safety Code for Elevators and Escalators), which apply to the construction and installation of elevators and other conveyances. ASME A17.7-2007 contains national consensus performance standards for elevators and other conveyances and would permit the use of newer elevator/escalator technologies that may not fall under ASME A17.1-2007. Although ASME A17.1-2007 references ASME A17.7-2007, R20-5-507 does not expressly adopt ASME A17.7-2007. The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME 17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards.

The Commission requested an exception to the rulemaking moratorium from the Governor's office which was approved on March 4, 2019.

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

Yes. The Commission cites to both general and specific statutory authority for the rules.

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

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

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

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

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

The Commission is proposing to add American Society of Mechanical Engineers (ASME) A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) to the safety code for elevators, escalators, dumbwaiters, moving walks, material lifts, and dumbwaiters with automatic transfer devices. The code currently only lists ASME A17.1-2007 (Safety Code for Elevators and Escalators). The Commission notes that adding ASME A17.7-2007 will expand the types of technology that businesses will be able to install.

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

The Commission concludes that the rulemaking reduces regulatory burdens on the regulated public without decreasing safety. The Commission will incur minimal training costs for elevator inspectors. Elevator installation businesses will benefit because they will be able to install newer technologies. The benefits outweigh the costs.

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

Key stakeholders are the Commission and elevator installers.

The Commission anticipates that this rulemaking will impose minimal training costs for the Commission's elevator inspectors. The Commission regularly trains elevator inspectors, so these costs will be minimal.

Elevator installers will benefit from this rulemaking because it will allow them to use newer technologies than the current rules permit. This rulemaking expands allowable elevator technologies by incorporating ASME A17.1-2007 by reference.

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

No. There were no changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking

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

The Commission indicates that it did not receive any written or oral comments related to this rulemaking.

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

The rules do not require a permit or license.

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

There is not a federal law applicable to the subject of the proposed rulemaking.

11. **Conclusion**

Council staff finds that the rules are written in a manner that is clear, concise, and understandable to the general public.

The Commission has requested an immediate effective date pursuant to A.R.S. § 41-1032(A)(5), asserting that the rule is less stringent than the rule that is currently in effect and does not have an adverse impact on the public health, safety, welfare or environment. Council staff believes the Commission has provided adequate justification in support of an immediate effective date.

Council staff recommends approval of this rulemaking.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
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June 7, 2019

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue
Phoenix, Arizona 85007

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RE: Request for Approval of Rulemaking: A.A.C. Title 20, Chapter 5, Article 5
("Elevator Safety") Rulemaking

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

a. The close of record date.

May 20, 2019.

b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.

The subject rulemaking activity does not relate to a five-year review report.

c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.

The subject rulemaking does not establish a new fee.

d. Whether the rule contains a fee increase.

The subject rulemaking does not contain a fee increase.

e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.

The Commission is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(5) because the rule is less stringent than the rule that is currently in effect and does not have an adverse impact on the public health, safety, welfare or environment.

- f. A certification 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.**

The Commission did not rely on a study for justification of the subject rulemaking.

- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.**

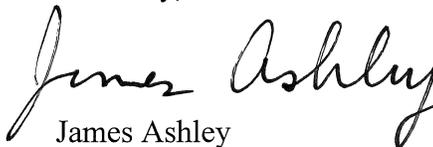
The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the subject rulemaking.

- h. A list of all documents enclosed.**

Governor's Office Approval of Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
General and Specific Statutes Authorizing Rulemaking

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Gaetano Testini, Chief Legal Counsel, at 602-542-5905.

Sincerely,



James Ashley
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R20-5-507	Amend

2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:

Authorizing statute: A.R.S. § 23-491.04(A)(2)

Implementing statute: A.R.S. § 23-491.06

Note: An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, Policy Advisor in the Office of the Arizona Governor, by e-mail dated March 4, 2019.

3. The effective date of the rules:

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

The Industrial Commission of Arizona (the “Commission”) is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(5) because the rule is less stringent than the rule that is currently in effect and does not have an adverse impact on the public health, safety, welfare or environment.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 15, April 12, 2019

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

Name: Jessie Atencio, Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-5795
Fax: (602) 542-1614
E-mail: Jessie.atencio@azdosh.gov

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

Pursuant to A.R.S. §§ 23-491.04(A)(2) and 23-491.06, the Commission is required to promulgate standards and regulations necessary to carry out Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances), including adopting national consensus standards. The Commission is proposing to amend A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

Currently, R20-5-507 incorporates the national consensus standards contained in ASME A17.1-2007 (Safety Code for Elevators and Escalators), which apply to the construction and installation of elevators and other conveyances. ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) contains national consensus performance standards for elevators and other conveyances and would permit the use of newer elevator/escalator technologies that may not fall under ASME A17.1-2007. Although ASME A17.1-2007 references ASME A17.7-2007, R20-5-507 does not expressly adopt ASME A17.7-2007. Thus, elevator/escalator technologies not permitted by ASME A17.1-2007 arguably cannot be installed in Arizona. The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern

equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards.

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

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

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 Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by enabling the construction and installation of new elevator/escalator technologies that are currently not permitted under A.A.C. R20-5-507.

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

None.

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

No written or oral comments were received by the Commission.

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:

Not applicable.

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

The proposed amended rule does not require issuance of a regulatory permit or license.

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

requirements of federal law:

There is not a federal law applicable to the subject of the proposed rulemaking.

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

No analysis was submitted.

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

The Commission is proposing to amend R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>.

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 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 (Safety Code for Elevators and Escalators) or ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) as referenced in ASME A17.1-2007, which isare incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed between May 5, 2009, and the effective date of this Section shall comply with ASME A17.1- 2007 or, as an alternative, may comply with ASME A17.7- 2007. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before ~~the effective date of this Section~~ May 5, 2009, shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1- 2007 or ASME 17.7-2007.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY

1. Identification of the proposed rulemaking:

The Industrial Commission of Arizona (the “Commission”) is proposing to amend A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

Currently, R20-5-507 incorporates the national consensus standards contained in ASME A17.1-2007 (Safety Code for Elevators and Escalators), which apply to the construction and installation of elevators and other conveyances. ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) contains national consensus performance standards for elevators and other conveyances and would permit the use of newer elevator/escalator technologies that may not fall under ASME A17.1-2007. Although ASME A17.1-2007 references ASME A17.7-2007, R20-5-507 does not expressly adopt ASME A17.7-2007. Thus, elevator/escalator technologies not permitted by ASME A17.1-2007 arguably cannot be installed in Arizona. The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

The Commission anticipates that the amendment will primarily benefit property owners seeking to utilize newer technology for the construction and engineering of elevators and other conveyances in residential properties and businesses engaged in the construction and installation of elevators and other conveyances.

3. A cost benefit analysis of the following:

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

The Commission does not anticipate any significant costs or benefits to any state agencies as a result of the proposed rulemaking. The only state agency that is anticipated to be affected is the Commission, as the proposed rulemaking will require an investment in training the Commission's elevator inspectors on the use of the new standards. However, training costs are expected to be nominal, as the Commission already engages in continuous training of inspectors. The Commission does not anticipate the need to hire any new full-time employees as a result of the proposed rulemaking.

- (b) Costs and benefits to political subdivisions directly affected by the rulemaking;
and

The proposed rulemaking does not apply to political subdivisions, except to the extent that a political subdivision seeks to benefit from the proposed rulemaking by utilizing newer technologies for the construction and engineering of elevators and other conveyances.

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

The Commission anticipates that the amendment will primarily benefit property owners seeking to utilize newer technology for the construction and engineering of elevators and other conveyances in residential properties and businesses engaged in the construction and installation of elevators and other conveyances..

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards. The Commission anticipates that the proposed rulemaking will benefit businesses who manufacture, install, or provide services related to the construction and engineering of elevators and other conveyances. The Commission anticipates that the proposed rulemaking will result in an increase in employment in the elevator industry in Arizona.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

The proposed rulemaking will benefit any business that elects to utilize newer technology for the construction and engineering of elevators and other conveyances, including small businesses.

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

The proposed rulemaking does not impose new obligations, costs, or time constraints on small businesses. Instead, the proposed rulemaking is intended to reduce regulatory burdens.

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

The proposed rulemaking is not intended to impose new obligations, costs, or time constraints on small businesses. *See supra* Section 2.

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private persons and consumers who elect to utilize newer technology for the construction and engineering of elevators and other conveyances will benefit from the proposed rulemaking. *See supra* Section 2.

6. Probable effect on state revenues:

The Commission does not anticipate that the proposed rules will have any direct effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

Because the subject rulemaking will primarily benefit impacted stakeholders, the Commission did not consider less costly alternative methods. *See supra* Section 2.

8. Data on which the rule is based:

The subject rulemaking incorporates by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at <http://www.asme.org>.

Statutory Authority

23-491.04. Commission Powers and Duties

A. The commission shall:

1. Administer this article through the division of occupational safety and health.
2. Promulgate standards and regulations pursuant to § 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out this article.

B. The commission, by rule and regulation, may set fees not to exceed the actual cost for inspections performed pursuant to this article.

23-491.06. Development of Standards and Regulations

A. Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with other persons knowledgeable in the business for which the standards or regulations are being formulated.
2. Proposed standards or regulations, or both, shall be submitted to the commission for approval.

B. Any person who may be adversely affected by a standard or regulation issued under this article may, at any time within sixty days after such standard or regulation is promulgated by the commission, file a complaint challenging the validity of such standard or regulation with the superior court in the county in which the person resides or has the person's principal place of business, for a judicial review of such standard or regulation. The filing of a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

C. In case of conflict between standards and regulations, the regulations shall take precedence.

**AGENCY CERTIFICATE
NOTICE OF FINAL RULEMAKING**

1. Agency name:

Industrial Commission of Arizona

2. Chapter heading:

Industrial Commission of Arizona

3. Code citation for the Chapter: 20 A.A.C. 5

4. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R20-5-507	Amend

5. The rules contained in this package are true and correct as proposed:

6.  _____	<u>June 7, 2019</u>
Signature of Agency Chief Executive Officer in ink	Date signed
<u>James Ashley</u>	<u>Director</u>
Printed or typed name of signer	Title of signer

AGENCY RECEIPT

NOTICE OF FINAL RULEMAKING

1. Agency name:

Industrial Commission of Arizona

2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:

Article, Part, or Section Affected (as applicable) Rulemaking Action

R20-5-507

Amend



Stacey Rogan <stacey.rogan@azica.gov>

Fwd: ICA Elevator Rulemaking Request

1 message

Trevor Laky <trevor.laky@azica.gov>

Mon, Mar 4, 2019 at 12:11 PM

To: Stacey Rogan <stacey.rogan@azica.gov>, Gaetano Testini <gaetano.testini@azica.gov>

----- Forwarded message -----

From: **Kaitlin Harrier** <kharrier@az.gov>

Date: Mon, Mar 4, 2019 at 12:07 PM

Subject: Re: ICA Elevator Rulemaking Request

To: James Ashley <james.ashley@azica.gov>

Cc: Trevor Laky <trevor.laky@azica.gov>, Gretchen Conger <gconger@az.gov>

Good afternoon Director,

This request is approved, you may now proceed to the GRRC process. Thank you for identifying the the need to modernize this section of rule.

Thank you,
Kaitlin

On Thu, Jan 17, 2019 at 6:35 PM James Ashley <james.ashley@azica.gov> wrote:

Hi Kaitlin,

Attached is our request for an exemption to the Governor's rulemaking moratorium to enable the construction and installation of new elevator technologies currently not permitted in Arizona.

Please let me know if you have any questions or concerns.

Thank you,

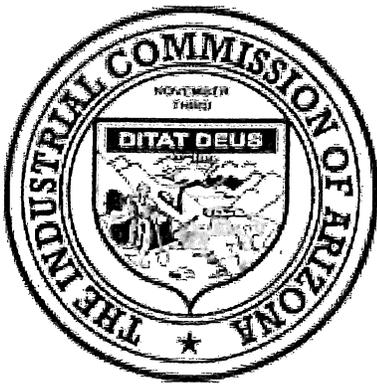
James Ashley

Director

Industrial Commission of Arizona

azica.gov

602-542-4411



3/14/2019

State of Arizona Mail - Fwd: ICA Elevator Rulemaking Request

Kaitlin Harrier

Policy Advisor, Administration and Economic Affairs

Office of the Arizona Governor

1700 W. Washington St.

Phoenix, AZ 85007

O: 602.542.6404

C: 602.622.8543

E: kharrier@az.gov

Trevor Laky

Chief of Legislative Affairs

Public Information Officer

Industrial Commission of Arizona

602-542-4478 Office

Trevor.Laky@azica.gov



CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Historical Note

Former Rule E-5. R20-5-505 recodified from R4-13-505 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-506. Recordkeeping

- A.** The Elevator Safety Section shall assign a State Serial Number to every elevator, dumbwaiter, escalator, and moving walk for recordkeeping purposes. The State Serial Number shall be on a tag that is affixed to the controller or mainline disconnect in the elevator machine room.
- B.** The owner or operator shall notify the Elevator Safety Section at least 90 days before installation, relocation, or major alteration of a dumbwaiter with automatic transfer device within the state, elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.
- C.** The building owner or operator shall notify the Elevator Safety Section within 24 hours of every accident involving personal injury or disabling damage to a dumbwaiter with automatic transfer device, an elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.

Historical Note

Former Rule E-6. Amended effective November 9, 1979 (Supp. 79-6). R20-5-506 recodified from R4-13-506 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 Safety Code for Elevators and Escalators, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before the effective date of this Section shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007.

Historical Note

Former Rule R4-13-507 repealed, new Section R4-13-507 adopted effective November 9, 1979 (Supp. 79-6). Amended effective March 30, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Amended effective July 24, 1985 (Supp. 85-4). Amended effective September 5, 1989 (Supp. 89-3). Amended effective March 20, 1992 (Supp. 91-2). R20-5-507 recodified from R4-13-507 (Supp. 95-1). Amended effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2935, effective August 4, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009

(Supp. 09-2).

R20-5-508. Safety Standards for Belt Manlifts

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Standard for Belt Manlifts, ASME A90.1-2003, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). R20-5-508 recodified from R4-13-508 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations, ANSI, A10.4-2007, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-509 recodified from R4-13-509 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-510. Safety Requirements for Material Hoists

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Material Hoists, ANSI, A10.5-2006, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-510 recodified from R4-13-510 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

R20-5-511. Guide for Inspection of Elevators, Escalators, and Moving Walks

Every Elevator Inspector under A.R.S. § 23-491.05 shall use the American National Standard Institute, Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME, A17.2-2004, which is incorporated by reference. This incorporation by reference does

DEPARTMENT OF ADMINISTRATION (F19-0803)

Title 2, Chapter 6, Department of Administration - Benefit Services Division



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 12, 2019

SUBJECT: DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 6, Department of Administration - Benefit Services Division

Summary

This five-year review report (5YRR) from the Arizona Department of Administration, Benefits Services Division ("Division") relates to six (6) rules found in Title 2, Chapter 6 related to insurance benefits plans made available by the agency, eligibility criteria, enrollment periods, effective dates, and the procedures for requesting a review of either a plan provider decision or an agency decision.

The last 5YRR for all Articles in Chapter 6 was due in January 2014 and was approved by the Council in April 2014. Since then, of the eighteen (18) rules found in Title 2, Chapter 6, ten (10) were amended and two (2) were repealed by rulemaking which became effective in June 2017. These rules were changed in order to reflect continuing implementation of the Federal Patient Protection and Affordable Care Act.

The Division submitted this current 5YRR having only reviewed the six (6) remaining rules found in Title 2, Chapter 6 which were not substantially revised or repealed in June 2017. Pursuant to A.R.S. § 41-1056(H) and R1-6-302, an agency may request that a 5YRR be rescheduled for any rule that is scheduled for review and was substantially revised within two years before the due date of the report, as would be the case here for the ten (10) additional rules in Title 2, Chapter 6 which were substantially revised in June 2017. However, the Division did

not request to reschedule any portion of the report before the due date and a review of these ten (10) additional rules should have been included in the current 5YRR.

As a result, the current 5YRR is inadequate as it does not include a review of all applicable rules in Title 2, Chapter 6 as required by A.R.S. § 41-1056(A). Pursuant to A.R.S. § 41-1056(C) and R1-6-305, the Council may vote to return a 5YRR after identifying the manner in which the 5YRR does not meet the standards in A.R.S. § 41-1056(A) and, in consultation with the agency, shall schedule submission of a revised report. Council staff recommends that the current report be returned pursuant to A.R.S. § 41-1056(C) and R1-6-305, revised to include a review of all rules in Title 2, Chapter 6, and resubmitted at a date determined by the Council and the Division.



Douglas Ducey
Governor

Elizabeth Thorson
Interim Director

ARIZONA DEPARTMENT OF ADMINISTRATION

BENEFIT SERVICES DIVISION
100 NORTH FIFTEENTH AVENUE · SUITE 260
PHOENIX, ARIZONA 85007
(602) 542-5008

May 29, 2019

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

**Re: Arizona Department of Administration; Five-year Review Report
Arizona Administrative Code (A.A.C.) Title 2, Chapter 6, Benefit Services**

Dear Ms. Sornsin:

In compliance with A.R.S. § 41-1056, the Arizona Department of Administration, Benefits Services Division submits a report of its five-year review of Title 2, Chapter 6 of the Arizona Administrative Code. This chapter contains rules that govern insurance benefits for State officers and employees, retirees, former elected officials, eligible dependents and surviving spouses and dependents. In addition, I certify that the department is in compliance with A.R.S § 41-1091.

No rules subject to review were excluded, and no rules subject to review were disregarded with the intention that the rule become expired. I certify that the agency has been and is in compliance with the enclosed rules. Aside from this required review, there has been no action taken on these rules since the last five year review cycle.

If you have any questions regarding this five-year review report or need additional information please contact Scott Bender, Benefits Services Division, by phone at (602) 542-4958 or by email at Scott.Bender@azdoa.gov.

Sincerely,

Elizabeth Thorson
Interim Director

cc: Paul Shannon, Benefits Services Director
Scott Bender, Plan Administration Manager
Jennifer Bowling, Operations Manager
Monika Lukisikova-Hickcox, Finance & Audit Manager
Tracie Carruthers, Plan Administrator

FIVE-YEAR REVIEW REPORT

TITLE 2. ADMINISTRATION CHAPTER 6. DEPARTMENT OF ADMINISTRATION BENEFIT SERVICES DIVISION

INTRODUCTION AND BACKGROUND

The Arizona Department of Administration Benefit Services Office fulfils the statutory responsibility to provide health and other insurance benefits to the State of Arizona employees, retirees, long-term disability recipients, COBRA participants and their eligible dependents. Amendment of rules are required in order to remain consistent with the rules with state and federal statutes and other rules made by the agency, which are already followed by ADOA Benefits Services Division but require updating existing rule to reflect current practices.

According to the *2017 Benefit Options Annual Report* published by ADOA, during the 2017 Plan Year (the period of January 1, 2017 through December 31, 2017), the Benefit Options program offered a comprehensive insurance package to approximately 136,000 members consisting of active State and university employees, retirees, and their qualified dependents. The benefits include medical, pharmaceutical, dental, flexible spending, vision, wellness, life and disability insurance. For 2017, the health benefit plan and one dental plan were self-funded; whereas the dental HMO, vision, disability insurance, and life insurance plans were fully-insured. Based on the 2017 contribution strategy, the total health and dental premiums collected was \$858M with total plan expenses of \$981M.

Title 2, Chapter 6, Department of Administration - Benefit Service Division, is the set of rules that govern the insurance benefit plans made available by the agency, eligibility criteria, enrollment periods, effective dates, and the procedures for requesting a review of either a plan provider decision or an agency decision. These rules impact all state employees (including university employees), retirees, former elected officials and their eligible dependents, as well as plan providers.

During the past 5 years, 2 A.A.C. 6 rules were substantially revised with the majority of rules being amended and with an immediate effective date of June 6, 2017 and Council approval date of June 6, 2017. Of the eighteen rules found in 2 A.A.C. 6, ten were amended and two were repealed. The final rules were published in the Register by the Office of the Secretary of State on June 30, 2017 in 2017- Volume 23, Issue 26. These rules were changed in order to amend and reflect several rules to reflect to the change with the continuing implementation of the Federal Patient Protection and Affordable Care Act and federal and state regulations. This review focuses on the remaining 6 rules not included in the 2017 review.

Governor’s Regulatory Review Council

Five-Year-Review Report

1. Authorization of the rules by existing statutes

General Statutory Authority: A.R.S. § 41-703(3)

Specific Statutory Authority: A.R.S. § 38-653; A.R.S. § 38-651.03; A.R.S. § 38-651.05; A.R.S. § 38-651

2. The objective of each rule:

Rules	Objective
R2-6-103 Authority of the Director	This rule describes the authority of the ADOA Director pertaining to the insurance plans made available by the agency, including provisions for the ADOA Director to delegate specific authority to an agency head. A.R.S. § 41-703(11) provides general authority for the ADOA Director to delegate administrative functions, duties and powers as the Director deems necessary. The rule is necessary to outline the ADOA Director’s scope and authority for parties subject to the Benefit Rules.
R2-6-202 Long Term Disability Insurance	The rule provides that employees will be automatically enrolled in a long-term disability (LTD) plan, the plan in which an employee is enrolled is dependent on the retirement plan to which the employee is contributing, and payments and benefits may offset the amount and employee receives under an LTD plan. The rule is necessary so employees are aware of the automatic enrollment and offset provision.
R2-6-203 Flexible Spending Accounts	The rule identifies the types of flexible spending accounts that employees may establish and specifies that such accounts are regulated by federal law. The rule is necessary so employees are aware they may establish a flexible spending account, which can provide certain tax benefits and, if an employee establishes such an account, of the requirement to annually sign a salary reduction order for the account.
R2-6-205 Performance Standards for Health, Dental, and Vision Insurance Plans	The rule sets forth the minimum performance standards for health, dental and vision insurance plans. The rule is necessary so that plan providers are aware of the minimum performance standards with which they must comply in the areas of cost competitiveness, utilization review, network development/access, conversion and implementation, report accuracy and timeliness, quality outcomes and customer satisfaction.

ANALYSIS THAT IS IDENTICAL FOR ALL OF THE RULES

As provided by Arizona Administrative Code(A.A.C.) R1-6-301(B), the following information is the same for all of the rules in this report:

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

Rule	Explanation
	<p>Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:</p> <p>A) <u>Consistency with federal statutes</u></p> <p>Except as indicated in the “Notes” provided below, the rules are consistent with applicable federal laws. The federal law used in determining the consistency include, but are not limited to:</p> <ul style="list-style-type: none"> ● The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, which provides employees and their dependents the opportunity to continue group insurance coverage that might otherwise be terminated ● The Health Information Technology for Economic and Clinical Health (HITECH) Act, which addresses privacy and security concerns associated with the electronic transmission of health information ● The Health Insurance Portability and Accountability Act (HIPAA) of 1996, which protects health insurance coverage for employees and their covered dependents when they change or lose their jobs and establishes the requirements for the security and privacy of health data, including who is covered, what information is protected, and how protected health information can be used and disclosed ● The Newborns’ and Mothers’ Health Protection Act (Newborns’ Act) of 1996, which includes important protections of mothers and their newborn children with regard to the length of the hospital stay following childbirth, and the notice to satisfy the Newborns’ Act disclosure requirement. ● The Patient Protection and Affordable Care Act (PPACA), which includes a requirement for insurance companies to cover all applicants within new minimum standards and regardless of pre-existing conditions; requires that adult children be allowed to remain on their parents’ insurance plan

to employees who work an average of 30 or more hours per week, with some exceptions

- Section 125 of the Internal Revenue Code, which sets forth the requirements and tax treatment of cafeteria [insurance} plans, including flexible spending accounts

Notes:

It is important to note that the Employee Retirement Income Security Act (ERISA), which covers most private sector employee benefit plans, does not cover plans established or maintained by government entities; thus, ERISA was not used in determining consistency.

B) Consistency with state statutes

The state laws used in determining the consistency include, but are not limited to:

- Applicable state statute in Title 20 (because the health benefit plan is self-funded , A.R.S. § 38-651 requires the agency to provide that the self-insurance program include all health coverage benefits that are mandated pursuant to Title 20)
- A.R.S. § 38-612, Administration of payroll salary deductions, which allows state officers or employees to authorize deductions to be made from their salaries or wages for the payment of premiums on any health benefits, disability plans or group life plans provided for by statute and any existing insurance programs already provided by payroll deduction
- The statutes in Title 38, Chapter 4, Article 4, Health and Accident Insurance
- A.R.S. § 38-1103, Health Insurance payments for spouse or dependents of law enforcement officers killed in the line of duty; applicability; definitions
- A.R.S. § 41-073, Duties of [ADOA} director, which grants general authority to the ADOA Director for the agency’s activities and operations; A.R.S. § 41-703(11) authorizes the ADOA Director to delegate “as the director deems necessary to carry out the efficient operation of the department.”

C) Consistency with other rules made by the agency

	<p>Except as indicated in the “Notes” provided below, the rules are consistent with other rules made by the agency. The rules used in determining the consistency include, but are not limited to:</p> <ul style="list-style-type: none"> ● 1 A.A.C. 6, Governor’s Regulatory Review Council ● 2 A.A.C. 1, Department of Administration ● 2 A.A.C. 5, Department of Administration - State Personnel System ● 2 A.A.C. 7, Department of Administration - Finance Division, Purchasing Office ● 2 A.A.C. 10, Department of Administration - Risk Management Division ● 2 A.A.C. 11, Department of Administration - Public Buildings Maintenance ● 2 A.A.C. 15, Department of Administration - General Services Division <p><u>Notes:</u></p> <p>The definition of “employee” in R2-6-101(21) is inconsistent with the definition of “employee” in 2 A.A.C 1, 2 A.A.C. 5 and 2 A.A.C 11, which define “employee” more broadly. The definition of “employee” in the Benefit Services rules (2 A.A.C. 6) incorporates eligibility for insurance benefits in the definition.</p>
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5. **Are the rules enforced as written?** Yes X No

Rule	Explanation
	<p>The rules have been enforced consistently during the past five years through highly centralized control of interpretation and application by the ADOA Benefits Services Division. Although A.A.C. R2-6-103, Authority of the Director, permits the ADOA Director to delegate authority regarding the insurance plans to the agency head, the ADOA director has not delegated this authority.</p> <p>The ADOA Benefits Services Division maintains a comprehensive website to provide information to state officers and employees relating to various benefit topics. The information is applicable to all state employees (including employee if State Personnel System (SPS) agencies and non-SPS agencies, i.e., the legislative and judicial branches, the state universities, the Department of Public Safety, ect.) and retired state employees. The topics include a summary of who is eligible to participate in benefit plans, detailed plan descriptions, guides and forms for enrollees, legal notifications, and other information.</p> <p>Benefit guides are published annually, by plan year, according to audience: new hires, active employees, retired state employees and COBRA participants. The guides provide</p>

	<p>insurance enrollment information, a summary of any benefit changes for the plan year, eligibility criteria and documentation requirements for eligible dependents. Notice is provided that Benefit Services may audit a member's documentation to determine whether an enrolled dependent is eligible according to plan requirements.</p> <p>The Benefit Services Audit Unit performs systematic evaluations of contract compliance, operational controls, risk management and dependent eligibility. Dependent eligibility audits are performed annually on the health plan;s membership. The eligibility audits provide assurance that dependent eligibility is monitored and enforced.</p>
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7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules has not differed significantly from that projected in the economic impact statement (EIS) submitted in the last rulemaking. The rules directly affect state agencies and employees and not small businesses or consumers.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

Not Applicable. No analysis was submitted to the agency regarding the impact of the rules on business competitiveness.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In the agency's previous five-year-review report it was indicated changes to several changes over the last five years. R2-6-101, R2-6-106, R2-6-107, R2-6-108, R2-6-301, and R2-6-303 were amended in June of 2017 as previously indicated in the last report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The agency believes that once the changes indicated in this report are made, the rules will impose the least burden and costs to persons regulated by the rules.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not Applicable. The Rule in Title 2, Chapter 6 were adopted prior to July 29, 2010. In addition, the rules do not require issuance of a regulatory permit, license or agency authorization.

Governor's Regulatory Review Council

Five-Year-Review Report

1. Authorization of the rules by existing statutes

General Statutory Authority: A.R.S. § 41-703(3)

Specific Statutory Authority: A.R.S. § 38-653; A.R.S. § 38-651.03; A.R.S. § 38-651.05; A.R.S. § 38-651

2. The objective of each rule:

Rules	Objective
R2-6-103 Authority of the Director	This rule describes the authority of the ADOA Director pertaining to the insurance plans made available by the agency, including provisions for the ADOA Director to delegate specific authority to an agency head. A.R.S. § 41-703(11) provides general authority for the ADOA Director to delegate administrative functions, duties and powers as the Director deems necessary. The rule is necessary to outline the ADOA Director's scope and authority for parties subject to the Benefit Rules.
R2-6-202 Long Term Disability Insurance	The rule provides that employees will be automatically enrolled in a long-term disability (LTD) plan, the plan in which an employee is enrolled is dependent on the retirement plan to which the employee is contributing, and payments and benefits may offset the amount and employee receives under an LTD plan. The rule is necessary so employees are aware of the automatic enrollment and offset provision.
R2-6-203 Flexible Spending Accounts	The rule identifies the types of flexible spending accounts that employees may establish and specifies that such accounts are regulated by federal law. The rule is necessary so employees are aware they may establish a flexible spending account, which can provide certain tax benefits and, if an employee establishes such an account, of the requirement to annually sign a salary reduction order for the account.
R2-6-205 Performance Standards for Health, Dental, and Vision Insurance Plans	The rule sets forth the minimum performance standards for health, dental and vision insurance plans. The rule is necessary so that plan providers are aware of the minimum performance standards with which they must comply in the areas of cost competitiveness, utilization review, network development/access, conversion and implementation, report accuracy and timeliness, quality outcomes and customer satisfaction.

R2-6-401 Appeal of a Plan-Provider Decision	The rule delineates the authority delegated to the plan providers by the agency and outlines that a member who wishes to appeal a decision by the plan provider is required to follow the appeal procedures as outlined in the plan. The rule is necessary so that members are aware of the authority that has been delegated to the plan providers and the method for appealing a plan provider's decision.
R2-6-402 Grievance of a Department's Decision	The rule identifies insurance benefit-related matters that may be grieved through the agency's benefits grievance procedure, the process for filing a grievance and how and when the agency will provide a response. The rule is necessary so that members are aware of which insurance benefits matters are grievable, the method for filing benefits grievance and when the member can expect a response.

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

Rules	Explanation
R2-6-103 R2-6-202 R2-6-203 R2-6-205 R2-6-401 R2-6-402	The agency has not received any comments, criticisms or questions from subject to the rule, the agency believes the rule is effective in achieving the objective.

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

Rule	Explanation
R2-6-103 R2-6-202 R2-6-203 R2-6-205 R2-6-401 R2-6-402	The agency considers the language of the rule to be clear, concise, and understandable.

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

None of the listed rules are more stringent than corresponding federal law. Regarding R2-6-103 Authority of the Director, there is no federal law pertaining to the authority of the ADOA director. ADOA Director's authority is prescribed by state laws.

14. Proposed course of action

The rules remains effective, and no repeal or amendment is projected.

Governor's Regulatory Review Council
Five-Year-Review Report
Authorizing Statutes

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director 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, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies 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.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

38-653. Rules and regulations

The department of administration shall adopt and promulgate rules and regulations necessary to administer the provisions of this article.

38-651.03. Expenditure of funds for disability income insurance

The department of administration may expend public funds appropriated for such purpose to procure disability income coverage for full-time officers and employees of the state, its departments and agencies. The department of administration by rule shall adopt standards for integrating such coverage with other forms of income protection and for eligibility of officers and employees. Such coverage shall provide two-thirds of the gross monthly salary of such officer or employee after a waiting period prescribed by the department of administration.

38-651.05. Flexible or cafeteria employee benefit plan; fund; exception

A. The department of administration is authorized to establish a flexible or cafeteria employee benefit plan which may provide for deductions or salary reductions for group life insurance, disability insurance, group accidental death and dismemberment insurance, long-term care coverage, health and accident insurance or other authorized employee benefits, which meet the requirements of the United States internal revenue code of 1986 and regulations thereunder and to adopt rules for its administration.

B. The department of administration shall determine the frequency of payroll deductions for purposes of this section for those state officers or employees under payroll systems under the direction of the department of administration. For all other state officers or employees under other state payroll systems, the appropriate state agency, board, commission or institution shall determine the frequency of payroll deductions for purposes of this section.

C. A flexible or cafeteria employee benefit plan fund is established. Monies received by the department of administration from employee contributions to the flexible or cafeteria employee benefit plan established pursuant to subsection A shall be deposited in the fund or deposited directly with a third party under contract with the department of administration to administer the plan. Investment earnings shall be deposited to the credit of the fund.

D. The department of administration shall use any monies remaining in the fund or on deposit with a third party under contract to administer the plan at the end of each fiscal year in the following priority:

1. To cover the costs to this state of administering the flexible or cafeteria employee benefit plan under subsection A.

2. After payment of the administrative costs, the remainder shall be used to reduce in a uniform manner the employee and employer contributions to benefits included under a flexible or cafeteria employee benefit plan.

E. Notwithstanding the provisions of subsection A, the flexible or cafeteria employee benefit plan shall not provide cash as an employee benefit. Monies used in accordance with subsection D to establish, fund and administer dependent care accounts or similar accounts, shall not be considered providing cash as an employee benefit.

38-651. Expenditure of monies for health and accident insurance; definition

A. The department of administration may expend public monies appropriated for such purpose to procure health and accident coverage for full-time officers and employees of this state and its departments and agencies. The department of administration may adopt rules that provide that if an employee dies while the employee's surviving spouse's health insurance is in force, the surviving spouse is entitled to no more than thirty-six months of extended coverage at one hundred two per cent of the group rates by paying the premiums. Except as provided by sections 38-1114 and 38-1141, no public monies may be expended to pay all or any part of the premium of health insurance continued in force by the surviving spouse. The department of administration shall seek a variety of plans, including indemnity health insurance, hospital and medical service plans, dental plans and health maintenance organizations. On a recommendation of the department of administration and the review of the joint legislative budget committee, the department of administration may self-insure for the purposes of this subsection. If the department of administration self-insures, the department may contract directly with preferred provider organizations, physician and hospital networks, indemnity health insurers, hospital and medical service plans, dental plans and health maintenance organizations. If the department self-insures, the department shall provide that the self-insurance program include all health coverage benefits that are mandated pursuant to title 20. The self-insurance program shall include provisions to provide for the protection of the officers and employees, including grievance procedures for claim or treatment denials, creditable coverage determinations, dissatisfaction with care and access to care issues. The department of administration by rule shall designate and adopt performance standards, including cost competitiveness, utilization review issues, network development and access, conversion and implementation, report timeliness, quality outcomes and customer satisfaction for qualifying plans. The qualifying plans for which the standards are adopted include indemnity health insurance, hospital and medical service plans, closed panel medical and

dental plans and health maintenance organizations, and for eligibility of officers and employees to participate in such plans. Any indemnity health insurance or hospital and medical service plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees, except that any plan established prior to June 6, 1977 may be continued as a separate plan. Any closed panel medical or dental plan or health maintenance organization designated as the qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees residing within the geographic area or area to be served by the plan or organization. Officers and employees may select coverage under the available options.

B. The department of administration may expend public monies appropriated for such purpose to procure health and accident coverage for the dependents of full-time officers and employees of this state and its departments and agencies. The department of administration shall seek a variety of plans, including indemnity health insurance, hospital and medical service plans, dental plans and health maintenance organizations. On a recommendation of the department of administration and the review of the joint legislative budget committee, the department of administration may self-insure for the purposes of this subsection. If the department of administration self-insures, the department may contract directly with preferred provider organizations, physician and hospital networks, indemnity health insurers, hospital and medical service plans, dental plans and health maintenance organizations. If the department self-insures, the department shall provide that the self-insurance program include all health coverage benefits that are mandated pursuant to title 20. The self-insurance program shall include provisions to provide for the protection of the officers and employees, including grievance procedures for claim or treatment denials, creditable coverage determinations, dissatisfaction with care and access to care issues. The department of administration by rule shall designate and adopt performance standards, including cost competitiveness, utilization review issues, network development and access, conversion and implementation, report timeliness, quality outcomes and customer satisfaction for qualifying plans. The qualifying plans for which the standards are adopted include indemnity health insurance, hospital and medical service plans, closed panel medical and dental plans and health maintenance organizations, and for eligibility of the dependents of officers and employees to participate in such plans. Any indemnity health insurance or hospital and medical service plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees, except that any plan established prior to June 6, 1977 may be continued as a separate plan. Any closed panel medical or dental plan or health maintenance organization designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees residing within the geographic area or area to be served by the plan or organization. Officers and employees may select coverage under the available options.

C. The department of administration may designate the Arizona health care cost containment system established by title 36, chapter 29 as a qualifying plan for the provision of health and accident coverage to full-time state officers and employees and their dependents. The Arizona health care cost containment system shall not be the exclusive qualifying plan for health and accident coverage for state officers and employees either on a statewide or regional basis.

D. Except as provided in section 38-652, public monies expended pursuant to this section each month shall not exceed:

1. Five hundred dollars multiplied by the number of officers and employees who receive individual coverage.

2. One thousand two hundred dollars multiplied by the number of married couples if both members of the couple are either officers or employees and each receives individual coverage or family coverage.

3. One thousand two hundred dollars multiplied by the number of officers or employees who receive family coverage if the spouses of the officers or employees are not officers or employees.

E. Subsection D of this section:

1. Establishes a total maximum expenditure of public monies pursuant to this section.

2. Does not establish a minimum or maximum expenditure for each individual officer or employee.

F. In order to ensure that an officer or employee does not suffer a financial penalty or receive a financial benefit based on the officer's or employee's age, gender or health status, the department of administration shall consider implementing the following:

1. Requests for proposals for health insurance that specify that the carrier's proposed premiums for each plan be based on the expected age, gender and health status of the entire pool of employees and officers and their family members enrolled in all qualifying plans and not on the age, gender or health status of the individuals expected to enroll in the particular plan for which the premium is proposed.

2. Recommendations from a legislatively established study group on risk adjustments relating to a system for reallocating premium revenues among the contracting qualifying plans to the extent necessary to adjust the revenues received by any carrier to reflect differences between the average age, gender and health status of the enrollees in that carrier's plan or plans and the average age, gender and health status of all enrollees in all qualifying plans.

G. Each officer or employee shall certify on the initial application for family coverage that the officer or employee is not receiving more than the contribution for which eligible pursuant to subsection D of this section. Each officer or employee shall also provide the certification on any change of coverage or marital status.

H. If a qualifying health maintenance organization is not available to an officer or employee within fifty miles of the officer's or employee's residence and the officer or employee is enrolled in a qualifying plan, the officer or employee shall be offered the opportunity to enroll with a health maintenance organization when the option becomes available. If a health maintenance organization is available within fifty miles and it is determined by the department of administration that there is an insufficient number of medical providers in the organization, the department may provide for a change in enrollment from plans designated by the director when additional medical providers join the organization.

I. Notwithstanding subsection H of this section, officers and employees who enroll in a qualifying plan and reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization, if:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All non-emergency or nonurgent travel, ambulatory and other expenses from the residence area of the officer or employee to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the officer or employee.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the officer or employee to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are paid pursuant to any agreement between the health

maintenance organization and the officer or employee living outside the area of the qualifying health maintenance organization.

J. The department of administration shall allow any school district in this state that meets the requirements of section 15-388, a charter school in this state that meets the requirements of section 15-187.01 or a city, town, county, community college district, special taxing district, authority or public entity organized pursuant to the laws of this state that meets the requirements of section 38-656 to participate in the health and accident coverage prescribed in this section, except that participation is only allowed in a health plan that is offered by the department and that is subject to title 20, chapter 1, article 1. A school district, a charter school, a city, a town, a county, a community college district, a special taxing district, an authority or any public entity organized pursuant to the laws of this state rather than this state shall pay directly to the benefits provider the premium for its employees.

K. The department of administration shall determine the actual administrative and operational costs associated with school districts, charter schools, cities, towns, counties, community college districts, special taxing districts, authorities and public entities organized pursuant to the laws of this state participating in the state health and accident insurance coverage. These costs shall be allocated to each school district, charter school, city, town, county, community college district, special taxing district, authority and public entity organized pursuant to the laws of this state based on the total number of employees participating in the coverage. This subsection only applies to a health plan that is offered by the department and that is subject to title 20, chapter 1, article 1.

L. Insurance providers contracting with this state shall separately maintain records that delineate claims and other expenses attributable to participation of a school district, charter school, city, town, county, community college district, special taxing district, authority and public entity organized pursuant to the laws of this state in the state health and accident insurance coverage and, by November 1 of each year, shall report to the department of administration the extent to which state costs are impacted by participation of school districts, charter schools, cities, towns, counties, community college districts, special taxing districts, authorities and public entities organized pursuant to the laws of this state in the state health and accident insurance coverage. By December 1 of each year, the director of the department of administration shall submit a report to the president of the senate and the speaker of the house of representatives detailing the information provided to the department by the insurance providers and including any recommendations for possible legislative action.

M. Notwithstanding subsection J of this section, any school district in this state that meets the requirements of section 15-388, a charter school in this state that meets the requirements of section 15-187.01 or a city, town, county, community college district, special taxing district, authority or public entity organized pursuant to the laws of this state that meets the requirements of section 38-656 may apply to the department of administration to participate in the self-insurance program that is provided by this section pursuant to rules adopted by the department. A participating entity shall reimburse the department for all premiums and administrative or other insurance costs. The department shall actuarially prescribe the annual premium for each participating entity to reflect the actual cost of each participating entity.

N. Any person that submits a bid to provide health and accident coverage pursuant to this section shall disclose any court or administrative judgments or orders issued against that person within the last ten years before the submittal.

O. For the purposes of this section, "dependent" means a spouse under the laws of this state, a child who is under twenty-six years of age or a child who was disabled before reaching nineteen years of age, who

continues to be disabled under 42 United States Code section 1382c and for whom the employee had custody before reaching nineteen years of age.



Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

TITLE 2. Administration

Chapter 6. Department of Administration - Benefit Services Division

Sections, Parts, Exhibits, Tables or Appendices modified

R2-6-101, R2-6-102, R2-6-104 through R2-6-108, R2-6-201, R2-6-204, R2-6-301 through R2-6-303

REMOVE Supp. 09-1
Pages: 1 - 10

REPLACE with Supp. 17-2
Pages: 1 - 11

The agency's contact person who can answer questions about rules in this Chapter:

Name: Kayla Stivason
Address: Arizona Department of Administration, Benefit Services Division
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PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION
June 30, 2017

RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 2. ADMINISTRATION

CHAPTER 6. DEPARTMENT OF ADMINISTRATION - BENEFIT SERVICES DIVISION

Editor's Note: New 2 A.A.C. 6 made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Editor's Note: 2 A.A.C. 6 expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Laws 1983, Ch. 98, 167 changed the heading from Public Buildings Maintenance Division to Public Buildings Maintenance; 168 transferred authority for operation of Public Buildings Maintenance to the Director of Administration effective July 27, 1983.

Article 1, consisting of Sections R2-6-101 through R2-6-112, Article 2, consisting of Sections R2-6-201 through R2-6-212, Article 3, consisting of Section R2-6-301, Article 4, consisting of Section R2-6-401 adopted effective July 27, 1983.

Former Sections R2-6-101 through R2-6-112, R2-6-201 through R2-6-212, R2-6-301 readopted with conforming changes.

Former Section R2-1-201 renumbered as Section R2-6-401 and readopted with conforming changes.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-6-101 through R2-6-108, made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Article 1, consisting of Sections R2-6-101 through R2-6-114, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 1, consisting of Sections R2-6-101 through R2-6-114, adopted effective September 16, 1997 (Supp 97-3).

Article 1, consisting of Sections R2-6-101 through R2-6-109, renumbered to Article 2, Sections R2-6-201 through R2-6-209, effective September 16, 1997 (Supp 97-3).

Article 1, consisting of Sections R2-6-101 through R2-6-109, adopted effective August 31, 1984.

Former Article 1, consisting of Sections R2-6-101 through R2-6-112, repealed effective August 31, 1984.

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Article 2, consisting of Sections R2-6-201 through R2-6-209, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 2, consisting of Sections R2-6-201 through R2-6-209, renumbered from Article 1, Sections R2-6-101 through R2-6-109, effective September 16, 1997 (Supp 97-3).

Article 2, consisting of Sections R2-6-201 through R2-6-212 repealed effective September 16, 1997 (Supp. 97-3).

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ARTICLE 3. ELIGIBILITY CRITERIA

Article 3, consisting of Sections R2-6-301 through R2-6-303, made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Article 3, consisting of Sections R2-6-301 through R2-6-311, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 3, consisting of Sections R2-6-301 through R2-6-311, adopted, effective September 16, 1997 (Supp 97-3).

Article 3, consisting of Section R2-6-301, renumbered to Article 5, Section R2-6-501, effective September 16, 1997 (Supp 97-3).

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Article 4, consisting of Sections R2-6-401 through R2-6-409, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 4, consisting of Sections R2-6-401 through R2-6-409, adopted effective September 16, 1997 (Supp 97-3).

Article 4, consisting of Section R2-6-401, repealed effective September 16, 1997 (Supp 97-3).

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ARTICLE 5. EXPIRED

Article 5, consisting of Section R2-6-501, expired under A.R.S.

ARTICLE 1. GENERAL PROVISIONS**R2-6-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Accident and health insurance," as used in A.R.S. Title 38, Chapter 4, Article 4, means health insurance and dental insurance.
2. "Agency" means a department, board, office, authority, commission, or other governmental budget unit of the state.
3. "Agency head" means the chief executive officer of an agency.
4. "Appeal" means a request to a plan provider for review of a decision made by the plan provider.
5. "Approved leave" means an employee's or officer's absence from assigned work that is authorized by the employee's or officer's supervisor.
6. "Base pay" means the fixed compensation paid to an employee or officer. Base pay excludes pay for overtime, shift differential, bonuses, special performance adjustment, special incentive program, or other allowance.
7. "Basic life insurance" means the amount of life insurance that the Department provides at no charge to an employee or officer.
8. "Child" means an individual who falls within one or more of the following categories:
 - a. A natural child, adopted child, stepchild, or foster child of an employee, officer, retiree, or former elected official who is younger than 26;
 - b. A child who is younger than 26 for whom the employee, officer, retiree, or former elected official has court-ordered guardianship;
 - c. A child who is younger than 26 and placed in the home of the employee, officer, retiree, or former elected official by court order pending adoption; or
 - d. A natural child, adopted child, stepchild or foster child of an employee, officer, retiree, or former elected official:
 - i. Who was disabled as defined at 42 U.S.C. 1382c before the age of 26;
 - ii. Who continues to be disabled as defined at 42 U.S.C. 1382c;
 - iii. Who is dependent for support and maintenance upon the employee, officer, retiree, or former elected official; and
 - iv. For whom the employee, officer, retiree, or former elected official had custody before the child was 26.
9. "COBRA" means Consolidated Omnibus Budget Reconciliation Act of 1986, which is a federal law that provides the opportunity to continue group health insurance coverage that might otherwise be terminated.
10. "COBRA member" means a former member or formerly eligible dependent of a member or former member who opts to continue health insurance through COBRA after no longer meeting the eligibility standards in Article 3.
11. "Compensation" means the total taxable remuneration provided by the state to an employee or officer in exchange for the employee's or officer's services.
12. "Creditable coverage" has the same meaning as prescribed at 29 U.S.C. 1181.
13. "Day" means a calendar day.
14. "Dental insurance" means an arrangement under which a policy holder makes advance payment to an insurer and the insurer pays amounts on behalf of an insured for certain preventive, diagnostic, and remedial care of the insured's teeth and gums.
15. "Department" means the Arizona Department of Administration.
16. "Director" means the Director of the Department or the Director's designee.
17. "Disability income insurance" means a form of insurance that insures a specified portion of the compensation of an employee or officer against the risk that disability will make working impossible.
18. "Eligible dependent" means a member's spouse or child, who is lawfully present in the U.S.
19. "Employee" for the purposes of eligibility, means an individual who is hired by the state, including the state universities, and who is regularly scheduled to work at least 20 hours per week for at least 90 days, but does not include:
 - a. A patient or inmate employed at a state institution;
 - b. A non-state employee, officer, or enlisted personnel of the National Guard of Arizona;
 - c. A seasonal, temporary, or variable hour employee, unless the employee is determined to have been paid for an average of at least 30 hours per week using a 12-month measurement period;
 - d. An individual who fills a position designed primarily to provide rehabilitation to the individual;
 - e. An individual hired by a state university or college for whom the state university or college does not contribute to a state-sponsored retirement plan unless the individual is:
 - i. A non-immigrant alien employee,
 - ii. Participating in a medical residency or post-doctoral training program,
 - iii. On federal appointment with Cooperative Extension, or
 - iv. A retiree who has returned to work under A.R.S. § 38-766.01.
20. "Employee flexible benefit plan," is the State of Arizona Cafeteria Plan as approved by the Internal Revenue Service and means the insurance plans specified in R2-6-204, the value of which is excludable from an employee's or officer's compensation under Section 125 of the Internal Revenue Code.
21. "Flexible spending account" means a financial arrangement under which an employee or officer authorizes the Department to reduce the employee's or officer's compensation on a pre-tax basis by a specified amount that the employee or officer uses to pay for eligible out-of-pocket expenses for health care, dependent care, or both.
22. "Former elected official" means an individual who was elected by popular vote in this state to serve, but who no longer serves as a:
 - a. State official;
 - b. County official;
 - c. Justice of the Supreme Court;
 - d. Judge of the court of appeals or superior court;
 - e. Full-time superior court commissioner except a full-time superior court commissioner who did not make a timely election of membership under the judges' retirement plan repealed on August 7, 1985; and
 - f. Official of an incorporated city or town if the incorporated city or town has executed an agreement with the state for coverage of the official.
23. "Grievance" means a written expression of dissatisfaction about any benefits matter other than a decision by a plan provider.
24. "Health insurance" means an arrangement under which a policy holder makes advance payments to an insurer and

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- the insurer pays amounts on behalf of an insured for routine, preventive, and emergency health-care procedures and pharmaceuticals.
25. "Incumbent" means the employee or officer who currently holds a position or office.
 26. "Institution" means a facility that provides supervision or care for residents on a 24-hours-per-day, seven-days-per-week basis.
 27. "Life insurance" means a contract between an insurer and a policy holder under which the insurer agrees to pay a sum of money upon the occurrence of an insured's death in exchange for the policy holder paying a stipulated amount at regular intervals.
 28. "Long-term disability insurance" means an insurance product that replaces part of an employee's or officer's compensation after an initial waiting period for the duration of time that the employee or officer is medically determined to be totally disabled as a result of a covered injury, illness, or pregnancy.
 29. "Manifest error" means an act or failure to act that clearly is or has caused a mistake.
 30. "Member" means an employee, officer, retiree, or former elected official who meets the criteria at R2-6-301(B), who enrolls in one or more of the insurance plans made available by the Department.
 31. "Officer" means an individual who:
 - a. Is elected or appointed to a state office, including a member of the state legislature; or
 - b. Is a member of a state board, commission, or council and serves at least 1,000 hours per year.
 32. "Open enrollment" means a specified period during which a member may make additions, changes, or deletions to the member's participation in the insurance plans made available by the Department.
 33. "Ophthalmic goods" means eyeglasses or contact lenses for which a prescription is required and components of the eyeglasses.
 34. "Plan provider" means an entity that enters into a contract with the Department to provide an insurance plan to members and their eligible dependents.
 35. "Plan year" means a specified period of 12 consecutive months during which a member is able to change the member's participation in the insurance plans made available by the Department only if the member experiences a qualified life event.
 36. "QMCSO" means qualified medical child support order and has the same meaning as prescribed at 29 U.S.C. 1169.
 37. "Qualified life event" means a change in a member's dependents, employment status, or residence that entitles the member to change the member's or an eligible dependent's participation in the insurance plans made available by the Department before the next open enrollment period. Qualified life event includes:
 - a. Change in marital status caused by marriage, divorce, legal separation, annulment, or death of spouse;
 - b. Change in dependent status caused by birth, adoption, placement for adoption, court-ordered guardianship, death, or dependent eligibility due to age;
 - c. Change in employment status or work schedule that affects a member's eligibility to participate in the insurance plans made available by the Department; and
 - d. Change in residence that affects available insurance plan options.
 38. "Retiree" means an employee or officer who is retired under a state-sponsored retirement plan or who receives long-term disability payments under a plan made available by the Department.
 39. "Salary-reduction order" means a document signed by an employee or officer who elects to participate in the employee flexible benefit plan authorizing the state to reduce the employee's or officer's compensation under Section 125 of the Internal Revenue Code.
 40. "Seasonal employee" means an individual who is employed by the state for not more than six months of the year and whose state employment is dependent on an easily identifiable increase in work associated with a specific and reoccurring season. Seasonal employees do not include employees of education entities who work during the active portions of the academic year.
 41. "Short-term disability insurance" means an insurance product that replaces part of an employee's or officer's compensation for a predetermined period if the employee or officer is medically determined to be unable to work due to illness, pregnancy, or a non-work-related injury.
 42. "Spouse" means a member's husband or wife under Arizona law.
 43. "Supplemental life insurance" means life insurance that is in addition to basic life insurance.
 44. "Surviving dependent," as used in A.R.S. § 38-651.01(A) or A.R.S. § 38-1114, means:
 - a. An insured eligible dependent of an insured retiree who dies, or
 - b. An insured spouse or insured eligible dependent child of an insured employee or officer who dies when eligible for retirement under the Arizona State Retirement System, or
 - c. An insured or uninsured dependent of a deceased law enforcement officer killed in the line of duty.
 45. "Surviving spouse," as used in A.R.S. § 38-651.01(B) or A.R.S. § 38-1114, means the insured spouse of:
 - a. An incumbent elected official who dies when the incumbent elected official would be qualified for eligibility under R2-6-301(B) if the incumbent elected official had not been in office at the time of death, or
 - b. An insured former elected official who dies when qualified for eligibility under R2-6-301(B), or
 - c. An insured or uninsured spouse of a deceased law enforcement officer killed in the line of duty.
 46. "Temporary employee" means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year. A temporary appointment employee may work full time for a portion of the year, intermittently, on a seasonal basis, or on an as needed basis.
 47. "Variable hour employee" means an individual who is employed by the state, if based on the facts and circumstances at the employee's start date, for whom the state cannot determine whether the employee is reasonably expected to be employed an average of at least 30 hours per week, including any paid leave, because the employee's hours are variable or otherwise uncertain.
 48. "Vision insurance" means a form of insurance that provides coverage for the services rendered by an eye-care professional and for the purchase of ophthalmic goods.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-101 renumbered to R2-6-201, new Section R2-6-101 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

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New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-102. Repealed**Historical Note**

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-102 renumbered to R2-6-202, new Section R2-6-102 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section repealed by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-103. Authority of the Director

- A. Within the limits prescribed by law, the Director shall determine the type, structure, and components of the insurance plans made available by the Department.
- B. The Director has authority to administer the insurance plans made available by the Department including:
 1. Construing and interpreting each plan;
 2. Deciding questions of eligibility; and
 3. Determining the amount of and manner and time that benefits are paid.
- C. The Director shall determine whether an insurance plan made available by the Department needs to be amended or terminated.
- D. The Director shall establish a procedure for ensuring that a member makes timely payments for participation in an insurance plan made available by the Department.
- E. If the Director determines that it is in the best interest of the state and consistent with law, the Director may delegate authority regarding the insurance plans to an agency head.
- F. The Director shall determine whether a manifest error exists and correct the manifest error.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-103 renumbered to R2-6-203, new Section R2-6-103 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-104. Repealed**Historical Note**

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-104 renumbered to R2-6-204, new Section R2-6-104 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section repealed by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-105. Times for Enrollment

- A. An employee, officer, retiree, or former elected official may enroll or may enroll an eligible dependent in one or more of the insurance plans made available by the Department only at the following times:
 1. Within 31 days of becoming eligible to participate in an insurance plan,

2. Within 31 days of a qualified life event, and
3. At open enrollment.

- B. A surviving dependent, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, and vision insurance plans made available by the Department shall enroll within six months after the death that makes the surviving dependent eligible to continue enrollment.
- C. A surviving spouse, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, vision, or life insurance plans made available by the Department shall enroll within 31 days after the death of the incumbent or former elected official.
- D. If a surviving spouse or surviving dependent of a deceased law enforcement officer killed in the line of duty was enrolled in the health insurance program made available by the Department or the health insurance program that is offered by the state retirement system or a plan from which the surviving spouse or surviving dependent is receiving benefits at the time the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty, and is eligible to receive health insurance premium payments but is no longer enrolled in either health insurance program, the employer shall allow the surviving spouse and any surviving dependent to enroll in the employer's health insurance program to receive health insurance premium payments pursuant to A.R.S. § 38-1114.
- E. To be covered under the health or dental insurance plans made available by the Department, a retiree shall enroll at the time specified in subsection (A) and shall maintain enrollment in the health or dental insurance plan. If a retiree terminates participation in both the health and dental insurance plans made available by the Department, neither the retiree nor the retiree's eligible dependent is eligible to enroll at a later time.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-105 renumbered to R2-6-205, new Section R2-6-105 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-106. Effective Date of Coverage

- A. If an individual enrolls in an insurance plan made available by the Department or provides notice of a qualified life event within the time specified in R2-6-105, the Department shall ensure that the insurance coverage becomes effective on the following dates:
 1. Newly hired employee or officer. The date determined by the Director following submission of a properly completed enrollment form and supporting documentation;
 2. Retiree, former elected official, surviving dependent, or surviving spouse. The first day of the first pay period following the end of active coverage or the first day of the first month following submission of a properly completed enrollment form and supporting documentation, whichever is applicable;
 3. Qualified life event change other than a change in the number of dependents due to birth, adoption, legal placement for adoption, or grant of legal guardianship:
 - a. Non-university employee or officer. The first day of the first pay period following submission of a properly completed enrollment form and supporting documentation;

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- b. University employee. The date determined by the Director; and
- c. Retiree, former elected official, surviving dependent, or surviving spouse. The first of the month following submission of a properly completed enrollment form and supporting documentation; and
4. Change in the number of dependents due to birth, adoption, legal placement for adoption, or grant of legal guardianship. On the date of birth, adoption, legal placement for adoption, or grant of legal guardianship if a properly completed enrollment form and supporting documentation are submitted.
- B.** If a retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse becomes eligible for Medicare, the retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse may cancel or reduce coverage under the health plan made available by the Department. If a retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse ceases to be eligible for Medicare, the retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse may enroll or increase coverage under the health plan made available by the Department. A change made under this subsection becomes effective on the first day of the first month following submission of a properly completed enrollment form and supporting documentation if the enrollment form and supporting documentation are submitted within 31 days of the change in Medicare eligibility.
- C.** If a member experiences one of the following changes in coverage, the member may make a corresponding change to the member's coverage under the health plan made available by the Department by submitting a properly completed enrollment form and supporting documentation within 31 days of the change. A change made under this subsection becomes effective on the first day of the first pay period or first month, as applicable, following submission of a properly completed enrollment form and supporting documentation:
1. Elected coverage provided under the plan is significantly restricted or eliminated,
 2. Non-elected coverage provided under the plan is significantly improved,
 3. The member's spouse makes a change in the coverage provided by the spouse's employer,
 4. The member or an eligible dependent loses coverage under another group health plan sponsored by a governmental or educational entity, or
 5. The member becomes subject to a QMCSO or another person becomes subject to a QMCSO that requires the other person to provide health insurance for the member's eligible dependent.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-106 renumbered to R2-6-206, new Section R2-6-106 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-107. Termination of Coverage

- A.** Insurance coverage of an employee or officer and the employee's or officer's eligible dependent terminates at 11:59 p.m. on the last day of the period for which an insurance pre-

mium was paid if the employee or officer ceases to be eligible to participate in the insurance plan.

- B.** Insurance coverage of an eligible dependent terminates at 11:59 p.m. on the last day of the month that the individual is an eligible dependent under this Chapter.
- C.** Insurance coverage of a retiree or former elected official terminates:
1. Automatically if the retiree or former elected official dies, or
 2. At 11:59 p.m. on the last day of the period for which the last insurance premium was paid.
- D.** Insurance coverage of a surviving dependent or surviving spouse terminates:
1. At 11:59 p.m. on the last day of the period for which the last insurance premium was paid, or
 2. Shall be in accordance with A.R.S. § 38-1114 for surviving spouse and dependents of a deceased law enforcement officer killed in the line of duty, including the termination of payments for health insurance premiums payable by the employer.
- E.** Insurance coverage of a COBRA member terminates at 11:59 p.m. on the last day that the COBRA member is eligible for coverage under COBRA or of the period for which the last insurance premium was paid.
- F.** By providing written notice to the Director at any time, an employee, officer, or former elected official, as applicable, may cease purchasing:
1. Supplemental life insurance in excess of \$35,000;
 2. Life insurance for an eligible dependent; or
 3. Short-term disability insurance.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-107 renumbered to R2-6-207, new Section R2-6-107 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-108. COBRA

- A.** When a member or an insured eligible dependent ceases to be eligible to participate in the health, dental, or vision insurance plans made available by the Department because of a change in the work status of the member, the Director shall inform the member or eligible dependent of whether the member or eligible dependent is eligible for coverage under COBRA.
- B.** When an insured eligible dependent of a member ceases to be eligible to participate in the health, dental, or vision insurance plans made available by the Department because the member dies or because of divorce, legal separation, or ceasing to meet the criteria for a child, the member or affected dependent shall provide written notice of the change to the Director within 60 days of the change. The Director shall inform the affected dependent whether the affected dependent is eligible for coverage under COBRA. The Department shall not make COBRA coverage available to an affected dependent if notice is not provided as specified in this subsection.
- C.** When an employee or officer ceases to be eligible for a health care flexible spending account because of termination of status as an employee or officer, the Director shall inform the former employee or officer and all qualified beneficiaries of whether they are eligible for coverage under COBRA.

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- D. The state shall not pay any of the cost for COBRA coverage. An individual who elects COBRA coverage shall pay all costs plus a small amount for administrative expenses.
- E. COBRA coverage is determined by federal law.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-108 renumbered to R2-6-208, new Section R2-6-108 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-109. Expired**Historical Note**

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-109 renumbered to R2-6-209, new Section R2-6-109 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-110. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-111. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-112. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-113. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-114. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 2. INSURANCE PLANS**R2-6-201. Insurance Plans**

- A. As provided by law, any expenditure of public monies for an insurance plan described in this Chapter is contingent upon the legislature making an appropriation for the plan and the availability of funds.
- B. The Department shall make available the following types of insurance plans:
1. Health insurance,
 2. Dental insurance,
 3. Vision insurance,
 4. Flexible spending account,

5. Life insurance, and
6. Short-term disability insurance.

- C. The Department shall comply with all federal, state, and local laws regarding use and disclosure of protected health information of an individual who participates in an insurance plan made available by the Department.

Historical Notes

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-201 repealed, new Section R2-6-201 renumbered from R2-6-101 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-202. Long-term Disability Insurance

- A. The state shall automatically enroll an employee or officer in a long-term disability insurance plan. The long-term disability insurance plan in which an employee or officer is enrolled depends on the state-sponsored retirement plan to which the employee or officer contributes.
- B. The state may offset the amount that an employee or officer receives under a long-term disability insurance plan by amounts that the employee or officer receives as Social Security payments, retirement benefits, and other disability benefits.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-202 repealed, new Section R2-6-202 renumbered from R2-6-102 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-203. Flexible Spending Accounts

- A. The state shall provide an employee or officer with the opportunity to establish a flexible spending account for:
1. Health-care expenses,
 2. Dependent-care expenses, or
 3. Both health-care and dependent-care expenses.
- B. An employee or officer who elects to establish a flexible spending account shall annually sign a salary reduction order specific for the flexible spending account.
- C. A flexible spending account is regulated by federal law.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-203 repealed, new Section R2-6-203 renumbered from R2-6-103 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-204. Employee Flexible Benefit Plan

- A. The Director shall ensure that the premium paid by an employee or officer for participation in the insurance plans listed in R2-6-201(1) through (3) and for a maximum of

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\$35,000 in supplemental life insurance and the amount set aside in a flexible spending account reduces the employee's or officer's compensation as allowed by Section 125 of the Internal Revenue Code.

- B.** The Director shall ensure that the premium paid by an employee or officer to enroll a dependent in the insurance plans listed in R2-6-201(1) through (3) reduces the employee's or officer's compensation as allowed by Section 125 of the Internal Revenue Code.
- C.** The Director shall ensure that the amount paid by the state to enable a dependent of an employee or officer to participate in the insurance plans listed in R2-6-201(1) through (3) increases the employee's or officer's compensation and is taxed as required by law.
- D.** If an employee or officer experiences a qualified life event during a plan year that adds or deletes a dependent, the Director shall ensure that the compensation of the employee or officer is adjusted accordingly and taxed as required by law.
- E.** The Director shall ensure that the method of adjusting an employee's or officer's compensation under this Section is not changed or canceled until the end of a plan year.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-204 repealed, new Section R2-6-204 renumbered from R2-6-104 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-205. Performance Standards for Health, Dental, and Vision Insurance Plans

As required under A.R.S. § 38-651, the Department establishes and shall require that a plan provider comply with the following minimum performance standards:

1. **Cost competitiveness.** A plan provider shall offer the Department a discount from full-billed charges that is significant and an administrative fee that is reasonable when compared with the discount and administrative fee of other potential plan providers.
2. **Utilization review.** A plan provider of medical management services shall employ utilization review standards that are generally accepted in the industry and specified by the Department in contract.
3. **Network development and access.** A plan provider of a medical network shall comply with the access and availability requirements that the Department develops based on the location of participants and specifies in contract.
4. **Conversion and implementation.** A plan provider shall fully perform in accordance with all requirements that the Department specifies in contract from the date on which the contract begins until the date on which the contract ends or is terminated after giving proper notice.
5. **Report accuracy and timeliness.** A plan provider shall ensure that all reports are complete, accurate, and submitted as specified in contract.
6. **Quality outcomes.** A plan provider shall comply with the quality-outcome standards that the Department specifies in contract. The Department may offset expenses, costs, or damages incurred as a result of the plan provider fail-

ing to comply with the specified quality-outcome standards against any sums due to the plan provider.

7. **Customer satisfaction.** The Department shall annually measure the extent to which participants are satisfied with a plan provider's services.

Historical Notes

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-205 repealed, new Section R2-6-205 renumbered from R2-6-105 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-206. Expired**Historical Notes**

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-206 repealed, new Section R2-6-206 renumbered from R2-6-106 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-207. Expired**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-207 repealed, new Section R2-6-207 renumbered from R2-6-107 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-208. Expired**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-208 repealed, new Section R2-6-208 renumbered from R2-6-108 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-209. Expired**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-209 repealed, new Section R2-6-209 renumbered from R2-6-109 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-210. Repealed**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective September 16, 1997 (Supp. 97-3).

R2-6-211. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective September 16, 1997 (Supp. 97-3).

R2-6-212. Repealed**Historical Note**

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective September 16, 1997 (Supp. 97-3).

ARTICLE 3. ELIGIBILITY CRITERIA**R2-6-301. Eligibility to Participate in Health, Dental, and Vision Insurance Plans**

- A. Employees, officers, and retirees. An employee, officer, or retiree may participate in the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and agreeing to pay the contracted cost of each insurance plan chosen.
- B. Former elected officials. A former elected official may participate in the health, dental, and vision insurance plans made available by the Department if the former elected official:
1. Has at least five years of credited service in the Elected Officials' Retirement Plan established at A.R.S. § 38-802;
 2. Participated in a group health, dental, or vision insurance plan made available to elected officials at the time of leaving office;
 3. Served as an elected official on or after January 1, 1983;
 4. Enrolls at the time specified in R2-6-105; and
 5. Agrees to pay the contracted cost of the insurance plan.
- C. Eligible dependents. A member may enroll an eligible dependent in the health, dental, and vision insurance plans made available by the Department at the time specified in R2-6-105. The member who enrolls an eligible dependent shall pay the contracted cost of the insurance plan.
- D. Surviving dependents. A surviving dependent, as defined at R2-6-101, may continue coverage under the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and paying the contracted cost of the insurance plan.
- E. Surviving spouse. A surviving spouse, as defined at R2-6-101, may continue coverage under the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and paying the contracted cost of the insurance plan.
- F. Eligibility exception. An employee or officer who is on approved leave without pay and the enrolled eligible dependents of the employee or officer may continue enrollment in the health, dental, and vision insurance plans made available by the Department under the conditions specified in R2-5A-C602.
- G. Coverage of a newborn infant.
1. The state shall provide health insurance to an infant born to a member or the member's spouse from the time the infant is born until the infant reaches its 31st day. To ensure that the infant continues to have health insurance coverage, the member shall enroll the infant in the health insurance plan made available by the Department before the infant reaches its 31st day.
 2. In compliance with the Newborns' and Mothers' Health Protection Act of 1996, the state shall provide health insurance to an infant born to a member's eligible dependent other than the member's spouse. As permitted under the Newborns' and Mothers' Health Protection Act of 1996, the state shall limit health insurance provided under this subsection to 48 hours for a vaginal delivery and 96 hours for delivery by cesarean section. A member who

wishes to obtain health insurance for the infant beyond the time required under the Newborns' and Mothers' Health Protection Act of 1996, may enroll the infant in the health insurance plan made available by the Department if the infant is eligible.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-301 renumbered to R2-6-501, new Section R2-6-301 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-302. Eligibility to Participate in Life and Short-term Disability Insurance Plans

- A. Employees and officers.
1. Life insurance. An employee or officer may participate in the life and short-term disability insurance plans made available by the Department by enrolling at the time specified in R2-6-105. The state shall provide basic life insurance to an employee or officer at no charge.
 2. Short-term disability insurance. An employee or officer who chooses to participate in the short-term disability insurance plan made available by the Department shall agree to pay the contracted cost of the plan.
 3. Supplemental life insurance. The state shall make supplemental life insurance available to an employee or officer. An employee or officer may purchase an amount of supplemental life insurance that, does not exceed three times the employee's or officer's base pay, rounded down to the nearest \$5,000 or the maximum amount established by the Director, whichever is less. An employee or officer who chooses to participate in the supplemental life insurance plan shall agree to pay the contracted cost for the supplemental life insurance.
- B. Former elected officials. A former elected official may purchase life insurance made available by the Department if the former elected official meets the criteria at R2-6-301(B)(1) and (3).
- C. Eligible dependents. An employee, officer, or former elected official who meets the criteria at R2-6-301(B)(1) and (3) may purchase life insurance through the plan made available by the Department for an eligible dependent in an amount determined by the Director. An employee, officer, or former elected official who chooses to purchase life insurance for an eligible dependent shall agree to pay the contracted cost for the life insurance.
- D. Surviving spouse of a former elected official. Under A.R.S. § 38-651.02(C), the surviving spouse of a former elected official who met the criteria at R2-6-301(B)(1) and (3) at the time of death may continue to purchase life insurance through the plan made available by the Department if the surviving spouse:
1. Makes application within the time specified in R2-6-105,
 2. Agrees to pay the contracted cost for the life insurance, and
 3. Is receiving a monthly survivor's retirement check from the Elected Officials' Retirement Plan.

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final

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rulemaking at 23 A.A.R. 1719, effective June 6, 2017
(Supp. 17-2).

R2-6-303. Audit of Dependent Eligibility

- A. A member shall not enroll an individual in an insurance plan made available by the Department unless the individual is an eligible dependent as defined in R2-6-101.
- B. The Department shall conduct audits to determine whether individuals enrolled by members in an insurance plan made available by the Department are eligible dependents. The Department shall choose a particular member for audit either randomly or in response to uncertainty concerning dependent eligibility.
- C. If a member is chosen for audit, the Department shall provide the member with written notice and 60 days in which to produce evidence that an individual enrolled by the member in an insurance plan made available by the Department is an eligible dependent. The Director may extend the 60-day requirement in an individual case. Evidence of dependent eligibility may include one or more of the following:
1. Marriage certificate,
 2. Birth certificate,
 3. Receipts for insurance payments made while on leave without pay,
 4. Court order regarding adoption or placement for adoption,
 5. Court order regarding guardianship,
 6. Documentation of foster-child placement,
 7. Tax return,
 8. Declaration of disability from the Social Security Administration,
 9. Documentation of Arizona residence, or
 10. Other documentation acceptable to the Director.
- D. If a member chosen for audit fails to produce evidence of dependent eligibility within the time specified in subsection (C), the Department shall:
1. Upon providing advance notice of at least 30 days to the member, terminate insurance coverage of the individual whose eligibility was not proven;
 2. Require that the member reimburse the Department for all premiums and claims paid since October 1, 2004, on behalf of the individual whose eligibility was not proven; and
 3. Report an employee or officer who misrepresented dependent eligibility to the employee's or officer's agency for possible disciplinary action.

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-304. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-305. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-306. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-307. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-308. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-309. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-310. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-311. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 4. APPEALS AND GRIEVANCES**R2-6-401. Appeal of a Plan-provider Decision**

- A. The Department has delegated to each plan provider the authority to:
1. Interpret and apply the terms of the plan provider's particular insurance plan;
 2. Determine whether a particular benefit is included in the plan and, if included, the amount of payment to be made under the plan; and
 3. Perform a full and fair review of any decision by the plan provider regarding benefits included in or payments to be made under the plan if the decision is appealed in accordance with the plan provider's specified procedures.
- B. An individual who is enrolled in an insurance plan made available by the Department and who wishes to appeal a decision by the plan provider shall follow the appeal procedures specified in the applicable plan description.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002

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(Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-402. Grievance of a Department Decision

- A. An individual who participates in one or more of the insurance plans made available by the Department may file a grievance with the Director regarding:
1. Determination of creditable coverage,
 2. Determination of whether a medical child support order is qualified,
 3. Determination of eligibility,
 4. Dissatisfaction with care,
 5. Dissatisfaction with an insurance plan,
 6. Dissatisfaction with a plan provider,
 7. Access to care, and
 8. Inconsistent application of statute or rule.
- B. To file a grievance, an individual shall submit a letter to the Director that contains the following information:
1. Name and contact information of the individual filing the grievance,
 2. Name of the particular insurance plan that is the subject of the grievance,
 3. Nature of the grievance, and
 4. Nature of the resolution requested.
- C. The Director shall provide a written response to a grievance within 60 days.

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-403. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-404. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-405. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-406. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-407. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-408. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-409. Expired**Historical Note**

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 5. EXPIRED**R2-6-501. Expired****Historical Note**

Section R2-6-501 renumbered from R2-6-301 and amended effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

DEPARTMENT OF ENVIRONMENTAL QUALITY (F19-0804)

Title 18, Chapter 2, Articles 1-5, Appendices 1-3, and 9, Department of Environmental Quality - Air Pollution Control



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: June 19, 2019

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F19-0804)**
Title 18, Chapter 2, Articles 1-5 and Appendices 1-3, and 9, Environmental Quality

Summary

This five year review report (5YRR) from the Arizona Department of Environmental Quality (Department) relates to Articles 1-5, and Appendices 1-3 and 9 of Title 18, Chapter 2, Environmental Quality. The rules address the following:

- **Articles:**
 - **Article 1: General ;**
 - **Article 2: Ambient Air Quality Standards; Area Designations; Classifications;**
 - **Article 3: Permits and Permit Revisions;**
 - **Article 4: Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources;**
 - **Article 5: General Permits.**

- **Appendices:**
 - **Appendix 1: Repealed;**
 - **Appendix 2: Test Methods and Protocols;**
 - **Appendix 3: Logging;**

○ **Appendix 9: Monitoring Requirements.**

In the previous 5YRR from 2014, the Department proposed deadlines for the following: Emergency Episodes, Test Methods, New Source Review/Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS)/National Emission Standards for Hazardous Air Pollutants (NESHAPs)/Acid Rain, Permit Fees, and Appendix 1. The status of each proposed deadline is as follows:

- Emergency Episodes: The Department received an exemption from the Governor's Office on January 4, 2018, submitted a Notice of Final Rulemaking on January 15, 2019 and the Council approved the rulemaking in March of 2019. The rulemaking became effective May 18 of 2019.
- Test Methods: In its previous 5YRR, the Department suggested updating some of its test method regulations. The Department updated the regulations and the regulations became effective on March 21, 2017.
- New Source Review/Prevention of Significant Deterioration: At the time of the last 5YRR the Department considered amending permit rules, making minor definitional changes, adding a new exclusions, revising portions of definitions, and repealing rules. The Department notes updating these rules on March 21, 2017.
- New Source Performance Standards: In its previous 5YRR, the Department was considering incorporating certain federal regulations. The Department updated the applicable rules by exempt rulemaking effective July 2, 2015.
- Permit Fees: In its previous 5YRR the Department considered revising its permitting rules. The Department has since determined that such changes are not necessary.
- Appendix 1: In its previous 5YRR the Department committed to revising Appendix 1 to update filing instructions. Because the Department determined that Appendix 1 was unnecessary and redundant, the Department repealed Article 1 effective March 21, 2017.

Proposed Action

The Department anticipates three rulemakings that will affect the Articles and Appendices covered in this 5YRR. The proposed rulemakings are as follows:

- Yuma Ozone Rulemaking: The Department proposes to amend R18-2-327 in Article 3. The Department is also considering amending the rule to meet federal requirements. The Department anticipates submitting the rulemaking to the Council by January 2020.

- New Source Review: The Department proposes amending the definition of “significant” in order to add a new Significant Emission Rate. If the Department’s current demonstration is unapproved by the EPA, the Department anticipates creating a new Significant Emission Rate. The Department proposes submitting the amendments by June 2019.
- Elective Limits and Control List; Selective Catalytic Reduction for Nitrogen Oxide Reduction: The Department anticipates submitting amendments regarding the creation of a Significant Emission Rate elective limit per Tucson Electric Power’s request by May 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The rules have been amended numerous times from 1990 to 2017. Except for R18-2-220, the Department states that the economic impact of Chapter 2 does not differ significantly from what was originally determined in the economic, small business, and consumer impact statements (EIS) from the rulemakings between 1990 and 2017.

R18-2-220 was amended in 2019, and the new amendments went into effect on May 18, 2019. The Department states that an insufficient amount of time has elapsed to evaluate if the anticipated economic impacts differ significantly from the original determination earlier this year.

The stakeholders include the Department, the EPA, businesses subject to New Source Review (NSR), and the general public.

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

The Department has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Department is not aware of any less costly or burdensome alternatives. The Clean Air Act is the predominant cause of the economic impact on stakeholders, not the rules that the Department uses to enforce the Clean Air Act.

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

Yes. The Department received written criticisms in the last five years regarding rules in Article 1, Article 3, and prior versions of rules in Article 4. The Department adequately responded to the written criticisms.

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 reviewed are clear concise, consistent with other rules and statutes, and effective in achieving their objectives.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department 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 Department indicates that the rules are not more stringent than corresponding 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?**

Yes. The Department indicates that many rules adopted after July 29, 2010 do not require a permit or license. However, multiple rules in Article 3, Article 4, and Article 5 require permits or licenses in compliance with A.R.S. § 41-1037.

9. **Conclusion**

Regarding Article 1, the Department proposes to amend R18-2-101 to include a significance emission rate by submitting a rulemaking to the Council by June 2019. The Department proposes no action for Article 2. For Article 3, the Department is considering amending rules regarding ozone nonattainment areas by January 2020 and responding to a written criticism of rule R18-2-302.01(F) by amendment no later than May 2024. The Department proposes no action regarding Article 4 or Article 5. The Department does not intend any amendments to Appendices 1-3 and 9. Council Staff recommends approval of this report.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

May 30, 2019

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Submittal of Five-Year Rule Review Report for
A.A.C. Title 18, Chapter 2, Articles 1 – 5 and Appendices 1 – 3, and 9

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 2, Articles 1 – 5 and Appendices 1 – 3, and 9.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Zachary Dorn in the Air Quality Division at 602-771-4585, or dorn.zachary@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

**FIVE-YEAR REVIEW REPORT FOR ARIZONA ADMINISTRATIVE CODE,
TITLE 18, CHAPTER 2, ARTICLES 1-5, AND APPENDICES 1-3, AND 9**
(See A.R.S. § 41-1056 and A.A.C. R1-6-301).

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

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FIVE-YEAR REVIEW REPORT

OVERVIEW OF THE FIVE-YEAR RULE REVIEW REPORT FOR ARIZONA ADMINISTRATIVE CODE, TITLE 18, CHAPTER 2, ARTICLES 1, 2, 3, 4, AND 5 AND APPENDICES 1, 2, 3, AND 9.

A. Scope

This five-year review report covers Arizona Administrative Code (A.A.C.) Title 18, Chapter 2, Articles 1, 2, 3, 4, and 5 and Appendices 1, 2, 3, and 9.

B. Objectives

The primary objective of the rules in Articles 1, 2, 3, 4, and 5, and Appendices 1, 2, 3, and 9 is to implement the general statutory mandate in A.R.S. § 49-425(A), which requires the Arizona Department of Environmental Quality (ADEQ) to adopt rules necessary and feasible to:

- a. Reduce the release into the atmosphere of air contaminants origination within the territorial limits of the state or any portion thereof; and
- b. 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.

C. Rule Moratorium

The dates in this document reflect ADEQ's estimated timeline for making changes to the rules and appendices. These anticipated dates reflect the Arizona Governor's Executive Order 2019-01(Executive Order), which does not include an expiration date.

D. Previous Five-Year Review Report Deadlines (2014 Report)

- a. Emergency Episodes – The Governor's Regulatory Review Council (GRRC) approved ADEQ's amendments to A.A.C. R18-2-220, to include threshold levels as provided in EPA's guidance for the 2006 24-hour fine particle matter (PM_{2.5}) standard. This rulemaking will make Arizona's standards contemporary with federal rules and is required under Section 110(a)(2) of the Clean Air Act (CAA). The Governor's Office granted ADEQ an exemption from the rulemaking moratorium (Executive Order 2017-02) on January 4, 2018. ADEQ submitted the Notice of Final Rulemaking (NFRM) to GRRC on January 15, 2019. GRRC approved this rulemaking on March 5, 2019, and it will be effective on May 18, 2019.
- b. Test methods – In its 2014 five-year rule review report, ADEQ proposed updating some of its test method regulations in A.A.C. R18-2-102, R18-2-306, R182-306 in Articles 1 and 3. The purpose of this contemplated rulemaking was to streamline regulations by putting all incorporated references into a single section A.A.C. R18-2-102; increase flexibility by adding alternative and conditional methods approved by the U.S. Environmental Protection Agency (EPA); and to ensure EPA test methods are up-to-date and kept on file with the ADEQ. These rules were updated effective March 21, 2017 at 23 A.A.R. 333.
- c. New Source Review/Prevention of Significant Deterioration (PSD) – At the time of the last report, ADEQ was considering: amending its permit rules for New Source Review (NSR) in Articles 3, 4, and 5; making minor changes to the definition of Volatile Organic Compounds (VOCs) to add a new exclusion, revise portions of the definition of "Regulated NSR

- pollutant”; and repealing PM_{2.5} rules related to significant monitoring concentration and impact levels. These changes were made necessary by *Sierra Club v. EPA*, 705 F.3d 458 (D.C. Cir. 2013). Additionally, ADEQ proposed amending R18-2-201 and R18-2-203 to adopt EPA’s for the 2012 PM_{2.5} and 2015 Ozone National Ambient Air Quality Standards (NAAQS). This change was required by CAA § 110(a)(2) [42 U.S.C. § 7410(a)(2)]. These rules, in Articles 2, were updated effective March 21, 2017 at 23 A.A.R. 333.
- d. New Source Performance Standards (NSPS)/National Emission Standards for Hazardous Air Pollutants (NESHAPs)/Acid rain – At the time of the last report, ADEQ was considering updating the incorporations by reference of the following federal regulations: Acid Rain, NSPS, and NESHAPs by amending R18-2-210, in Article 2, and Appendix 2. These rules were updated by exempt rulemaking effective July 2, 2015 at 21 A.A.R. 1156.
 - e. Permit Fees – In its 2014 five-year review report, ADEQ considered revising its permitting fees to reflect current workload requirements by amending A.A.C. R18-2-326 and R18-2-511. Subsequently, ADEQ has determined that these amendments are not necessary at this time. ADEQ may amend these permitting fees in a future rulemaking.
 - f. Appendix 1 – In its previous five-year rule review report, ADEQ committed to revising Appendix 1 to include updated form and filing instructions. ADEQ found this form to be unnecessarily complex, redundant, and it failed to reflect the scope of information ADEQ currently uses in the permitting process. Therefore, ADEQ repealed Appendix 1 at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Before its repeal, Appendix 1 contained the standard permit application form and filing instructions initially adopted in 1979. Removing the form and related filing instructions from the rules provides ADEQ with flexibility to update them in response to program needs without the delays associated with the rulemaking process.

E. New Rulemakings

ADEQ continues to review rules consistent with Executive Order 2019-01. ADEQ anticipates three rulemakings that will affect the Articles and Appendices covered by this report. A brief summary and explanation of each anticipated rulemaking and the estimated dates that ADEQ proposes to submit the rulemakings to GRRC follows:

- a. Yuma Ozone Rulemaking – ADEQ proposes to amend R18-2-327 in Article 3 to reduce the reporting burden for Class II sources. At the same time, ADEQ is considering amending the rule to require annual ozone precursor emission reporting questionnaires for all sources within ozone nonattainment areas in order to meet federal requirements. ADEQ anticipates submitting these amendments to GRRC by January 2020.
- b. New Source Review – ADEQ proposes amendments to definitions for New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs in Article 1 to make a minor change to the definition of “Significant” to add a new Significant Emission Rate (SER) for ammonia as a precursor to PM_{2.5} in PM_{2.5} nonattainment areas. Currently, ADEQ has submitted a demonstration to EPA that ammonia does not contribute beyond de minimis levels to formation of this pollutant in these areas, pursuant to 40 C.F.R. § 51.165(a)(13) and 83 Fed. Reg. 19631 (May 4, 2018). If EPA does not approve this demonstration, however, ADEQ will need to create a SER for ammonia in order to avoid the imposition of federal sanctions under 42 U.S.C §§ 7410(m), 7509. ADEQ anticipates submitting amendments to GRRC by June 2019.

- c. Elective Limits and Control List; Selective Catalytic Reduction for Nitrogen Oxide Reduction – On March 7, 2019, ADEQ received a comment from Tucson Electric Power (TEP) regarding the application of R18-2-302.01(F) in Article 3 to electrical generating units of less than 10 megawatts that are typically powered by diesel fueled reciprocating internal combustion engines. These types of new engines must meet EPA’s Tier 4 emission standards contained in 40 C.F.R. § 1039. This regulation requires new engines to be equipped with certain controls, including Selective Catalytic Reduction (SCR) for nitrogen oxide (NO_x) reduction.

TEP requests that ADEQ consider adding SCR to the elective limit/control list set forth under R18-2-302.01(F) in order to avoid time and costs associated the public notice and participation requirements, because these types of engines fall categorically below the emission limit threshold.

Under R18-2-302.01(A)(6), a source applying for registration must include its maximum capacity to emit, both without and with elective limits if any are chosen. Paragraph (B)(5) provides that all registrations are subject to public notice and participation (R18-2-330), except where the maximum capacity to emit (with elective limits) is less than the applicable permitting exemption threshold.

TEP argues that the addition of SCR as an elective limit, to R18-2-302.01(F) would help reduce the time and costs associated with the public process specified in R18-2-330 for source registration.

ADEQ agrees with TEP that the addition of SCR to the list contained in R18-2-302.01(F) would reduce or ameliorate a regulatory burden and still achieve the same regulatory objective. ADEQ anticipates submitting amendments to GRRC no later than May 2024.

ARTICLE 1. GENERAL

A. Information that is identical for all rules in A.A.C. Title 18, Chapter 2, Article 1, unless otherwise stated:

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-104, 49-404, and 49-425.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rules, including the Appendices, are consistent with applicable statutes, rules and enforcement policy.

Law	Title
P.L. 88-206 as amended through December 31, 2011 (P.L. 112-81) (42 U.S.C. 7401	Clean Air Act of 1963 as amended through 2011.

<i>et seq.</i>)	
40 C.F.R. Parts 50 – 52	National Primary and Secondary Ambient Air Quality Standards; Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans.
A.R.S. § 49-104	Powers and duties of the department and director
A.R.S. § 49-404	State implementation plan

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Unless otherwise stated in Part B below, all of the rules in Article 1 are enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule;

The rules in Article 1 are clear, concise, and understandable.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

On June 6, 2012, ADEQ adopted comprehensive amendments to the state’s air permit program designed, among other goals, to bring the program into compliance with federal New Source Review (NSR) regulations in 40 C.F.R. Part 51, Subpart I. ADEQ submitted these amendments to EPA as a State Implementation Plan (SIP) revision on October 29, 2012 (the “2012 NSR SIP”) pursuant to Clean Air Act § 110 [42 U.S.C. § 7410 (2012)].

On March 18, 2015, EPA proposed a limited approval and limited disapproval of the 2012 NSR SIP, including the rules. 80 Fed. Reg. 14044 (Mar. 18, 2015). On November 2, 2015, EPA finalized its limited approval and limited disapproval of ADEQ’s 2012 NSR SIP. 80 Fed. Reg. 67319 (Nov. 2, 2015). This federal rulemaking included EPA’s disapproval of ADEQ’s NSR rules related to PM_{2.5} precursors, including ammonia, in nonattainment areas. *Id.*

On May 2, 2016, EPA proposed disapproval of the major nonattainment new source review (NNSR) portions of ADEQ’s submission for PM_{2.5} under CAA § 189(e). 81 Fed. Reg. 26185 (May 2, 2016).

On June 22, 2016, EPA published a limited disapproval of the 2012 NSR SIP for failure to regulate VOCs and ammonia as PM_{2.5} precursors in the West Central Pinal (WCP) and Nogales PM_{2.5} nonattainment areas. This limited disapproval established a deadline of January 22, 2018 (18 months after the disapproval) for ADEQ to cure the deficiency or face the imposition of offset sanctions in those two nonattainment areas. If ADEQ fails to cure the deficiency within six months after the deadline, EPA could impose highway sanctions.

On February 2, 2017, ADEQ adopted amendments to its rules designed, among other goals, to cure the deficiencies relating to PM_{2.5} precursors identified in EPA's June 22, 2016 limited disapproval by the required deadline. On April 28, 2017, ADEQ submitted these amendments as a SIP revision (the "2017 NSR SIP"). As part of this rulemaking AMA also commented regarding the proposed rules. A summary of AMA's comments and ADEQ's responses are contained in the Notice of Final Rulemaking at 23 A.A.R. 333.

On June 6, 2017, EPA proposed limited approval and limited disapproval of the 2017 NSR SIP. The limited disapproval noted that the 2017 NSR SIP addressed all requirements for PM_{2.5} precursors, except for establishing a significant level for ammonia. A significant level is the threshold for emissions increases at major sources that are subject to NNSR. EPA rules establish significant levels for all pollutants subject to NNSR, except ammonia. States containing PM_{2.5} nonattainment areas are obligated either to adopt a significant level for ammonia or to demonstrate that ammonia does not contribute to the area's failure to attain the PM_{2.5} NAAQS.

On December 6, 2017, ADEQ sent EPA a letter committing to correct the deficiency with regard to ammonia by March 31, 2019 by submitting either (1) a demonstration that ammonia does not contribute to nonattainment in the WCP and Nogales PM_{2.5} nonattainment areas or (2) a rule establishing a significant level for ammonia (the "December 2017 commitment"). Based on this commitment, EPA proposed conditional approval of the 2017 NSR SIP with regard to PM_{2.5} precursors on January 10, 2018. This proposal had the effect of deferring sanctions. EPA published a final conditional approval on May 4, 2018.

On March 11, 2019, ADEQ received a public comment from the Arizona Mining Association (AMA). This public comment will be described in greater detail regarding Article 3, *infra* p. 24. AMA suggested revising two definitions in A.A.C. R18-2-101(68, 146) (defining "insignificant activity" and "trivial activity"). ADEQ has not received any other written criticisms of Article 1 in the previous five years.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis has been received by ADEQ.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In the prior five-year review report, ADEQ's proposed course of action for Article 1 included updating R18-2-101 and R18-2-102. ADEQ updated these rules as part of its NSR/PSD Rulemaking, effective March 21, 2017 (23 A.A.R. 333), completing the course of action.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

ADEQ consulted with its Air Quality Division (AQD) Permits and Compliance Section and, unless mentioned below, neither the Section nor any stakeholder has identified unreasonable costs associated with Article 1 rules.

The rules are designed to be, and are, effective in providing definitions for Arizona Administrative Code, Title 18, Chapter 2. In addition, ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules' underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirement of that federal law.

These rules are not more stringent than a corresponding federal law. Specifically, R18-2-101 is the definition section for Chapter 2, and therefore incorporates many federal laws by reference and mirrors federal law and the Clean Air Act, depending on the definition. R18-2-102 and R18-2-103 incorporate federal law by reference and therefore are not more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

R18-2-101 and R18-2-102 were amended after July 29, 2010; however, these rules do not require the issuance of a regulatory permit license or authorization. R18-2-103 was last amended before July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

As discussed above, ADEQ proposes to amend R18-2-101 to include a significance emission rate (SER) for ammonia, as a PM_{2.5} precursor, in PM_{2.5} nonattainment areas. ADEQ anticipates submitting this rulemaking to the GRRC by June 2019. At this time, ADEQ is not proposing any action related to R18-2-102 or R18-2-103. Additionally,

ADEQ may consider amending R18-2-101 upon further review of the AMA's public comment and after additional stakeholder input. At this time, ADEQ does not have a specific timeline for a potential revision.

B. **Section by Section Analysis**
R18-2-101. Definitions

2. Objective of the rule, including the purpose for the existence of the rule:

The objective of the rule is to provide definitions for selected terms that are used in more than one Article within Chapter 2.

3. Effectiveness of the rule in achieving its objective including a summary of any available data supporting the conclusion reached:

Each term needing a definition is listed and clearly defined in this rule, with the exception of the need to add a significant emission rate of ammonia for PM_{2.5} nonattainment areas as discussed above in Section E. Therefore, the rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule was last amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017. The economic impact was addressed in that rulemaking and there has been no identified change since that last amendment. The Economic Impact Statement (EIS) is included as Attachment 1. As this section contains definitions, it does not generate costs or benefits.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

As discussed above, ADEQ intends to add a significant emission rate of ammonia for PM_{2.5} nonattainment areas as discussed above in Section E, *supra* p. 6.

R18-2-102. Incorporated Materials

2. Objective of the rule, including the purpose for the existence of the rule:

The objective of the rule is to incorporate specific materials by reference.

3. Effectiveness of the rule in achieving its objective including a summary of any available data supporting the conclusion reached:

The rule is effective in achieving its objective of incorporating materials by reference.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule was last amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017. The economic impact was addressed in that rulemaking and there has been no identified change since that last amendment. The EIS is included as Attachment 1.

6. Comparison of Economic, Small Business, and Consumer Impact of the Rule with Economic Impact Statement:

This section was last amended as part of the NSR rulemaking, at 23 A.A.R. 333, effective March 21, 2017. This section does not generate costs and benefits, as it only incorporates materials by reference. Therefore, no updated analysis has been performed.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ does not anticipate any updates R18-2-102 at this time.

R18-2-103. Applicable Implementation Plan; Savings

2. Objective of the rule, including the purpose for the existence of the rule:

The objective of the rule is to ensure that no rule will pre-empt or nullify the emission standards included in the Arizona SIP without going through a public notice and hearing process and receiving EPA approval.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached:

Each term needing a definition is listed and clearly defined in this rule, with the exception of the need to add a significant emission rate of ammonia for PM_{2.5}

nonattainment areas as discussed above in Section E. Therefore, the rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The prior section was repealed and a new section adopted effective November 15, 1993. This section states that rules adopted will not preempt or nullify applicable requirements or emission standards in a SIP revision. This section does not generate costs and benefits. Therefore, no updated analysis has been performed.

- 14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

ADEQ does not intend to update R18-2-103 at this time.

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

A. Information that is identical for all rules in A.A.C. Title 18, Chapter 2, Article 2, unless otherwise stated:

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-104(A)(1), 49-104(B)(4), 49-401, 49-404, 49-425, 49-447, and 49-541. Statutes authorizing specific rules are identified in sections below.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
CAA § 109 (42 U.S.C. § 7409)	National ambient air quality standards
40 C.F.R. Part 50	National and Secondary Ambient Air Quality Standards

A.R.S. § 49-425(a).	Rules; hearing
A.R.S. § 41-1023	Public participation; written statements; oral proceedings

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Unless otherwise stated in Part B, *infra*, all of the rules in Article 2 are enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule;

The rules in Article 2 are clear, concise and understandable.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

ADEQ has not received any written criticism of Article 2 in the previous five years.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on this state’s business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis has been received by ADEQ.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

In the prior five-year rule review, ADEQ proposed updating R18-2-201, R18-2-203, and R18-2-210 to include current NAAQS and attainment, unclassifiable, and nonattainment designations.

ADEQ amended R18-2-201 and R18-2-203 as part of its NSR rulemaking, effective March 21, 2017 at 23 A.A.R. 333. R18-2-210 was last amended by an exempt rulemaking authorized by HB 2208 (Fiftieth Legislature, First Regular Session, 2011), effective July 2, 2015 (21 A.A.R. 1156), and updated the rule through July 1, 2014.

Therefore, ADEQ has completed the course of action for Article 2 indicated in the agency’s 2014 five-year review report.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rules' benefits outweigh the costs of the rule and impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirement of that federal law.

Rules R18-2-201 through -210 incorporate by reference federal standards, and are therefore not more stringent than the corresponding federal law. R18-2-216 through -220 are also not more stringent than federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

R18-2-201, R18-2-203, R18-2-204, R18-2-210, and R18-2-15 through R18-2-220 were last amended after July 29, 2010. These rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ has updated R18-2-220 as part of the Emergency Episodes rulemaking. As described above, this rule will be effective May 18, 2019. ADEQ does not intend to amend any other rules at this time.

B. Section by Section Analysis

R18-2-201. Particulate Matter; PM10 and PM2.5

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-401, 49-404, and 49-425(A).

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to set forth the primary and secondary NAAQS for PM₁₀ and PM_{2.5}.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective. *See* 40 C.F.R. §§ 50.6, 50.7, 50.13, and 50.18.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule was last amended by final rulemaking 23 A.A.R. 333, effective March 21, 2017, and was updated to include the PM_{2.5} NAAQS as amended by EPA's final rule in 2013. National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3085 (Jan. 15, 2013). The economic impact was addressed in that rulemaking and there has been no identified change since that last amendment. The EIS is included with this document as Attachment 1.

R18-2-202. Sulfur oxides (Sulfur Dioxide)

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-401, 49-404, and 49-425(A).

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to set forth the primary and secondary NAAQS for sulfur oxides (sulfur dioxide).

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective. *See* 40 C.F.R. §§ 50.4, 50.5, and 50.17.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of ADEQ's NSR rulemaking, 18 A.A.R. 1542, effective August 7, 2012, and was updated to include ozone standards promulgated by EPA in 2008. The impacts associated with this section generally have been consistent with the predicted impact in the last EIS.

R18-2-203. Ozone

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-404, and 49-425(A).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to set forth the primary and secondary NAAQS for ozone.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective. *See* 40 C.F.R. §§ 50.9-10, 50.15, 50.19.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This rule was last amended by final rulemaking 23 A.A.R. 333, effective March 21, 2017, and was updated to include the ozone NAAQS as amended by EPA's final rule in 2015. National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. (Oct. 26, 2015). The economic impact was addressed in that rulemaking and there has been no identified change since that last amendment. The EIS is included with this document as Attachment 1.

R18-2-204. Carbon Monoxide

- 1. General and specific statutes authorizing statutes authorizing the rules, including any statute that authorizes the agency to make rules:**

A.R.S. §§ 49-401, 49-404, and 49-425(A).

- 2. Objective of the rule, including the purpose for the existence of the rule;**

The objective of this rule is to set forth the primary and secondary NAAQS for carbon monoxide.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached**

The rule is effective in achieving its objective. *See* 40 C.F.R. § 50.8.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact**

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

ADEQ submitted an EIS for R18-2-204 with its 2014 five-year rule review report for these Articles. In that EIS, ADEQ found that no additional costs had accrued to any class of person. Arizona has two former nonattainment areas for carbon monoxide that have maintenance plans for carbon monoxide: Phoenix and Tucson CO maintenance plans. At this time, ADEQ has not identified any changes in impacts since the section was last amended effective September 26, 1990 (Supp. 90-3).

R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-404, and 49-425(A).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to set forth the primary and secondary NAAQS for nitrogen dioxide.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective. *See* 40 C.F.R. § 50.11.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542), and was updated to include NO₂ standards promulgated in 2010. The impacts associated with this section generally have been consistent with what was indicated in the last EIS.

R18-2-206. Lead

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-404, and 49-425(A).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to set forth the primary and secondary NAAQS for lead.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective. *See* 40 C.F.R. § 50.12, 50.16.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542), and was updated to include lead standards promulgated in 2008. The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-207. Renumbered

Former Section R9-3-207 renumbered to R18-2-206 effective September 26, 1990 (Supp. 90-3).

R18-2-208. Reserved

R18-2-209. Reserved

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-401, 49-404, 49-405, and 49-425(A).

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to incorporate by reference the legal descriptions and designations in 40 C.F.R. § 81.303 as the federally designated attainment, nonattainment and unclassifiable areas of the state for total suspended particulates (TSP), sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone, and particulate matter into the state regulations.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective. *See* 40 C.F.R. § 81.303.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended by an exempt rulemaking authorized by HB 2208 (Fiftieth Legislature, First Regular Session, 2011), effective July 2, 2015 (21 A.A.R. 1156), and updated the rule through July 1, 2014. While no EIS was performed at the time of the 2015 exempt rulemaking, a previous EIS was performed in 2007.

As this section incorporates by reference EPA's designation of areas for air quality planning purposes, R18-2-210 does not generate costs by itself. Therefore, the impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-211. Reserved

R18-2-212. Reserved

R18-2-213. Reserved

R18-2-214. Reserved

R18-2-215. Ambient Air Quality Monitoring Methods and Procedures

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-404, 49-405, and 49-425(A).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to incorporate the standard methods and procedures to use in monitoring ambient air.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective. *See* Appendices to 40 C.F.R. Part 58.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the**

last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was amended effective September 26, 1990. Because this section contains generic statements about methods and procedures, it does not generate economic impacts per se. Therefore, no update of impacts is required for this particular section.

R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-404, 49-405, and 49-425(A).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide the requirements and references necessary to interpret all ambient air quality standards and evaluate air quality data.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended effective March 7, 2009 at 15 A.A.R. 281. There have been no identified changes in the impacts of this section since the last EIS was prepared in 1990. The 2009 rulemaking was determined to be exempt from preparing an EIS under A.R.S. § 41-1055(D)(3). In the 2009 rulemaking, Appendix 10 was repealed because it contained outdated monitoring protocols; Appendix 11 was repealed because it was not useful, since actual values would have to be calculated anyway using the equation included in the rule.

R18-2-217. Designation and Classification of Attainment Areas

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-404, 49-405, and 49-425(A).

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to define the attainment and unclassified areas in the state and provide procedures for changing classifications. This rule is an integral part of the State Implementation Plan developed to meet the NAAQS and is a key part of the Prevention of Significant Deterioration (PSD) Program.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was amended effective March 21, 2017 at 23 A.A.R. 333. The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-218. Limitation of Pollutants in Classified Attainment Areas

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-401, 49-404, 49-424, and 49-425(A).

2. Objective of the rule, including the purpose for the existence of the rule;

The objective of the rule is to define the maximum allowable increases in air pollutant concentrations for attainment areas.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was amended effective March 21, 2017 at 23 A.A.R. 333. The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-219. Repealed

Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-220. Emergency Episodes

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-401, 49-404, 49-424, and 49-425(A).

2. Objective of the rule, including the purpose for the existence of the rule;

The objective of the rule is to establish procedures to prevent and mitigate ambient air quality violations at various stages.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

As described above, ADEQ is in the process of amending A.A.C. R18-2-220. ADEQ received an exemption from the rulemaking moratorium (Executive Order 2017-02) on January 4, 2018. ADEQ submitted the Notice of Final Rulemaking to GRRC on January 15, 2019. GRRC approved this rule on March 5, 2019. ADEQ anticipates this rulemaking will be effective May 18, 2019.

The economic, small business, and consumer impact for this rule making is attached to this report. *See* Attachment 2. As the rule will not be effective until May 18, 2019, ADEQ is unable to provide a current comparison of the estimated economic, small business, and consumer impact of the rule to the actual impact as the rule is not yet

effective. However, ADEQ anticipates that the economic, small business, and consumer impact of the rule will be consistent with the EIS statement.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 3, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-425, 49-426. For other, more specific sections see below in Section B, *infra* p. 27.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
Title V of the Clean Air Act (42 U.S.C. §§ 7661-7661(f))	National ambient air quality standards
42 U.S.C. § 7410(a)(2)(C), (F)	State implementation plans for national primary and secondary ambient air quality standards
40 C.F.R. Parts 51 and 70	National and Secondary Ambient Air Quality Standards; and State Operating Permit Programs
A.R.S. §§ 49-422, 49-426, and 49-460 through 49-464	Rules; hearing; permits; Duties of director; exceptions; applications; objections; fees; Violations; productions of records; Violations; order of abatement; Violations; injunctive relief; Violations; civil penalties; Violation; classification; penalties; definition.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Unless otherwise stated in Part B, *infra*, all of the rules in Article 3 are enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule;

ADEQ has found no problems in clarity, conciseness, or understandability of these sections.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

On March 7, 2019, ADEQ received a public comment from Tucson Electric Power (TEP) regarding R18-2-302.01. The written summary of that comment will appear below, *infra* p. 28.

On March 11, 2019, ADEQ received a public comment from the Arizona Mining Association (AMA). AMA's comment identified the following rules it believes need revision to be consistent with federal regulations: R18-2-101, R18-2-306.02, R18-2-317 through R18-2-317.02, R18-2-319, and R18-2-320. AMA suggests there are either missing or inconsistent operating program elements required by 40 C.F.R. Part 70. AMA suggests these rules might need to be made consistent with 40 C.F.R. §§ 70.4(b)(4), 70.4(b)(12)(i, iii), 70.4(b)(14), 70.5(c), 70.7(e)(2). As discussed above, Article 3 rules were recently evaluated by the U.S. EPA and approved into the Arizona SIP without a requirement to make the changes the AMA has suggested. *See supra* p. 8.

As previously discussed, ADEQ received EPA's written criticism regarding previous versions of rules within Article 3. *See supra*, p. 8 for the summary EPA's written criticism of prior versions of ADEQ's NSR rules, including Article 3 rules.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis has been received by ADEQ.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In its prior five-year rule review report, ADEQ proposed to amend R18-2-306 and R18-2-311. ADEQ also proposed to update R18-2-326. ADEQ amended these three rules effective March 21, 2017 at 23 A.A.R. 333.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The probable benefits of the rules outweigh the probable costs of the rules. The rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirement of that federal law.

The rules are not more stringent than corresponding federal law. Federal NSR for Major Sources rules are set forth in the Clean Air Act, Part C of Title I. PSD requirements are set forth in the CAA, Part D of Title I. NSR for Minor Sources is required by Section 110(A)(2)(C) of the CAA. 42 U.S.C. § 7410(A)(2)(C). ADEQ's NSR for Major Sources rules mirror federal law, which is very specific about what is required. For NSR Minor Sources, ADEQ's program is written to correspond to the general federal requirements, and does not extend beyond federal guidelines.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

R18-2-301, -302, -302.01, -303, -304, -310.01, -317, -317.01, -317.02, -320, -321, -324, -327, -330, -334 issue and govern permits authorized by A.R.S. § 49-426 and were amended after July 29, 2010. These rules are in compliance with A.R.S. § 41-1037(A)(2), 6).

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ is considering amending the applicability of R18-2-327 from all permitted sources (Classes I and II) to only Class I permitted sources, unless requested by the Director, in order to ameliorate a regulatory burden on Class II sources. At the same time, ADEQ is considering amending the rule to require annual ozone precursor emission reporting questionnaires for all sources within ozone nonattainment areas in order to meet federal requirements. ADEQ anticipates submitting to GRRC by January 2020.

In response to TEP's March 7, 2019 written criticism of R18-2-302.01(F), ADEQ is considering the possibility of amending the rule to include selective catalytic reduction as an elective limit for operating permits under Title V of the Clean Air Act. ADEQ anticipates submitting an amendment to this rule to GRRC no later than May 2024.

At this time, ADEQ is not considering any other changes to the rules contained in Title 18, Chapter 2, Article 3.

B. Section by Section Analysis

R18-2-301. Definitions

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401.01, 49-425, and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to provide definitions that apply to Article 3, in addition to those contained in R18-2-101.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (See Attachment 1).

R18-2-302. Applicability; Registration; Classes of Permits

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-104(A)(1) and (A)(10); 49-425(A), and 49-426.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to define Class I and Class II permits and to which sources they apply.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the**

last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-302.01. Source Registration Requirements

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-104(A)(1, 10), 49-425(A), and 49-426.

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to streamline the application processing procedures for the registration program.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

As discussed *supra* p. 6, ADEQ received a written comment regarding adding SCR, for the reduction of NO_x, to the list of controls in R18-2-301.01(F). ADEQ agrees with TEP that the addition of SCR to the list contained in R18-2-302.01(F) could reduce or ameliorate a regulatory burden and still achieve the same regulatory objective. ADEQ proposes to complete this rulemaking no later than May 2024.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401.01, 49-104(A)(1, 10); 49-425(A), and 49-426.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the basic transition mechanism for the change from separate installation and operating permitting requirements for sources to a unitary permit system.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-304. Permit Application Processing Procedures

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-401, 49-425, and 49-426.

2. Objective of the rule, including the purpose for the existence of the rule.

The rule's objective is to set forth permit application procedures and application processing standards for ADEQ.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-305. Public Records; Confidentiality

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-425, 49-426, and 49-432(C - F).

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to establish specific procedures defining rights to source confidentiality while protecting the public's right to know what is in a permit.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The prior section was repealed and a new section was adopted effective November 15, 1993. The costs and benefits of this section were assessed and included in the 2014 five-year rule report pursuant to A.R.S. § 41-1056.

This section defines what constitutes a public record and when information would be considered confidential. As a result, the procedures established in 1993 are applicable today, and they do not generate economic impacts. Therefore, ADEQ has not identified any additional economic impact as a result of this rule.

R18-2-306. Permit Contents

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-404, 49-425, 49-426(C) and (I).

2. Objective of the rule, including the purpose for the existence of the rule.

The rule's objective is to define what must be in an air quality permit and to describe applicable conditions for optional provisions.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-401.01, 49-425, and 49-426(C).

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to provide procedures and requirements for those sources that wish to achieve status as a "synthetic" minor (Class II) sources by including voluntary conditions in their permit.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-306.02. Expired

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R18-2-307. Permit Review by the EPA and Affected States

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to establish a procedure for the review of proposed final Class I permits by EPA and affected states and for responding to their comments.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-308. Emissions Standards and Limitations

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§, 49-404, 49-425, and 49-426(I).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to require Class I and Class II permits to contain all applicable standards for the any item, even when multiple, different standards apply.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This rule does not generate an economic impact; it requires that all applicable emission standards or limitations apply to a source or item be included in the permit even if multiple, different standards apply. No change in the impact of this rule since the last amendment [effective November 15, 1993 (Supp. 93-4)] has been identified.

R18-2-309. Compliance Plan; Certification

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-104(A)(1, 10), 49-425(A), and 49-426.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to define permit compliance requirements and set deadlines for when compliance certifications must be submitted to ADEQ.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact**

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004. This section was amended to comply with federal requirements (40 C.F.R. Part 70). Class I sources have been required to certify that compliance with their permit provisions was continuous. Under the amended rules, both Class I and Class II sources would be required to certify continuous compliance with the terms and conditions of their permits. No additional costs have accrued since the last amendments were made by ADEQ. The costs and benefits associated with the last amendments have been consistent with what was identified in the previous EIS.

R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425, 49-426(C), 49-464, and 49-514.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to establish reporting requirements for sources to report excess emissions, and in some circumstances, provide for an affirmative defense for sources following an exceedance of an emission limit.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This rule was adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001. The adoption of this rule was necessary to meet requirements for SIP contents under EPA's 1999 guidance. The changes were intended to cause minimal economic impacts. The amendment requires the owners and/or operators of sources to maximize their planning efforts and to anticipate their responses whether the event will be regarded as a malfunction, startup, or shutdown. The costs and benefits associated with this rulemaking have been consistent with what was identified in the EIS. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-310.01 Reporting Requirements

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-404, 49-425, 49-426(C), 49-464, and 49-514.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to provide reporting requirements for sources that exceed an emission limitation. Additionally, sources may report excess emissions in accordance with this rule in order to qualify for the affirmative defense established by R18-2-310.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of ADEQ's NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542). The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-311. Test Methods and Procedures

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to specify test methods and procedures applicable throughout Article 3.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact**

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-312. Performance Tests

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish methods and requirements for acceptable performance tests.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-313. Existing Source Emission Monitoring

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-422(B-C), and 49-425.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to detail continuous emission monitoring requirements for certain sources not covered by New Source Performance Standards (NSPS).

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was amended by final rulemaking at 7 A.A.R. 1164, effective November 15, 2001. The technical amendments to this section did not generate any economic impacts. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-314. Quality Assurance

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to require certain permitted sources to submit a quality assurance plan to ADEQ.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was repealed, and a new section was adopted effective November 15, 1993. This section did not generate economic impacts from what already was required. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-315. Posting of Permit

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-430.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to require that the permit be posted on site, and that all equipment covered by the permit be marked with identifying numbers as to be clearly visible and accessible.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was repealed, and a new section was adopted effective November 15, 1993. This section did not generate economic impacts. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-316. Notice by Building Permit Agencies

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-431.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to assist sources in comply with the requirements to obtain air quality permits.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last**

making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was adopted effective May 14, 1979. The former section, R9-3-316, was renumbered without change as R18-2-316. This section requires agencies that issue building permits or approvals to determine, based on plans/specifications, if an air pollution permit is required. If a permit is required the agency must provide written notice to the applicant to contact ADEQ. Costs are expected to be minimal, and no additional costs have been identified since this section was adopted.

R18-2-317. Facility Changes Allowed Without Permit Revisions – Class I

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to describe the changes a Class I source may make at its facility that require notice but no permit revision, and the procedures that a source must follow when such changes are made.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542). The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-317.01. Facility Changes that Require a Permit Revision - Class II

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to list all changes at a Class II source that require a permit revision.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542). The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to list all changes at a Class II source that require either notice to ADEQ, or on-site logging.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact**

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542). The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-318. Administrative Permit Amendments

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide a simple, efficient mechanism for Class I and Class II sources to make administrative, non-controversial changes to permits.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was repealed, and a new section was adopted effective November 15, 1993. This section only generated very minor economic impacts. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-318.01. Annual Summary Permit Amendments for Class II Permits

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to allow annual amendments of permits to incorporate those changes made under R18-2-317.02 that can be incorporated into the permit.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

A new section was adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999. This section only generated very minor economic impacts. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-319. Minor Permit Revisions

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to list and describe changes at Class I and Class II sources that qualify for a minor permit revision, requiring no public notice or hearing.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the**

last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-320. Significant Permit Revisions

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.01.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to describe facility changes that require significant permit revisions.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to describe the circumstances under which a permit may be reopened prior to the expiration of the permit and when ADEQ may issue a termination of permit notice.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-322. Permit Renewal and Expiration

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide procedures for sources to renew their permits periodically.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was repealed, and a new section was adopted effective November 15, 1993. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional costs have been identified since the last amendments were made by ADEQ.

R18-2-323. Permit Transfers

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 41-1092.02, 49-422, 49-425, 49-426(H), 49-428, 49-429, and 49-443.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish criteria under which a permit may be transferred from one party to another.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007. Based on State Legislation, this section was amended by replacing “hearing board” with “Office of Administrative Hearings” (Laws 2000, Ch. 353, SB 1284). Therefore, this change did not generate economic impacts. No additional costs have been identified since the last change.

R18-2-324. Portable Sources

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425, 49-426(C), and 49-479.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is specify the permitting requirements for portable sources.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-325. Permit Shields

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426.02.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide that compliance with the permit is compliance with the law.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

A new section was adopted effective November 15, 1993 (Supp. 93-4). This section provided a shield to sources from enforcement actions, but only if certain conditions were met under the provisions of law as they existed at the time the permit was issued. ADEQ expected this section to generate additional time and resources to list all applicable requirements in each permit; however, the costs of permitting are off-set because sources are required to pay costs of developing and implementing the permit program. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional costs have been identified since the section was adopted in 1993.

R18-2-326. Fees Related to Individual Permits

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425, 49-426, and 49-455.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to set forth fees for individual permits.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-326.01. Expired

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 613, effective February 14, 2017 (Supp. 17-1).

R18-2-327. Annual Emissions Inventory Questionnaire

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-422, 49-424, 49-425(A), 49-426.03 through 49-426.08, and 49-432(A).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to require sources to quantify their emissions and submit an annual emissions inventory to the Director.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

- 14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

ADEQ is considering amending the applicability of R18-2-327 from all permitted sources (Classes I and II) to only Class I permitted sources, unless requested by the Director, in order to ameliorate a regulatory burden on Class II sources. At the same time, ADEQ is considering amending the rule to require annual ozone precursor emission reporting questionnaires for all sources within ozone nonattainment areas in order to meet federal requirements. ADEQ anticipates submitting to GRRC by January 2020.

R18-2-328. Conditional Orders

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425, 49-426(C), and 49-427 through 49-441.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide a procedure for applying for and granting temporary relief from any non-federal applicable requirements and a schedule for returning to compliance.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was adopted effective November 15, 1993. This section allows a facility to continue to operate under certain conditions even when it is operating in noncompliance. Although a fee is required, it provides a benefit to sources by allowing petitions to continue operations despite noncompliance with non-federally enforceable requirements. ADEQ has not identified any additional economic impacts since this rule was adopted in 1993.

R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to require that the terms of a federal compliance order or consent decree be incorporated into the permit of the subject source.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was adopted effective November 15, 1993. This requirement was expected to generate a very minimal economic impact. Although this section has not been amended since 1993, the impact has remained minimal. ADEQ has not identified any additional economic impacts as a result of this rule since it was adopted in 1993.

R18-2-330. Public Participation

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(D).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to require that public notice, an opportunity to comment, and a hearing take place for certain permit related actions.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-331. Material Permit Conditions

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425, 49-426, 49-464, and 49-514.

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to identify permit conditions, which if violated, may constitute a class 6 felony.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement**

was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007. The amendment only changed a reference. Also, the prior amendment in 1998 only made technical changes (4 A.A.R. 1469). Therefore, the amendments did not generate economic impacts, and no additional costs have been identified since this last amendment.

R18-2-332. Stack Height Limitation

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to prevent sources constructed after December 31, 1970 from using excessively tall stacks as a means of avoiding installation of air pollution controls. The rule also establishes good engineering practice stack height.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-333. Acid Rain

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to incorporate by reference the federal permitting requirements applicable to sulfur dioxide and oxides of nitrogen.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-334. Minor New Source Review

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. §§ 49-425 and 49-426(C).

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to describe which sources are subject to Minor New Source Review and defines reasonably available control technology (RACT).

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

A. Information that is identical for all rules in A.A.C. Title 18, Chapter 2, Article 4, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-425 and 49-426(C). Additionally, R18-2-401 is authorized by A.R.S. § 49-401.01, and R18-2-402 through R18-2-412 are authorized by A.R.S. § 49-402(A)(1).

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
Title I, Parts C and D of the Clean Air Act (CAA §§ 160-193, 42 U.S.C. §§ 7470-7515)	Part C—Prevention of Significant Deterioration of Air Quality; Part D—Plan Requirements for Nonattainment Areas
CAA § 110(a)(2)(C), (F) (42 U.S.C. § 110(a)(2)(C), (F))	State implementation plans for national primary and secondary ambient air quality standards.
40 C.F.R. Part 51	Requirements for preparation, adoption and submittal of implementation plans
A.R.S. § 49-426	Permits; duties of director; exceptions; applications; objections; fees

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Unless otherwise stated in Part B, *infra*, all of the rules in Article 4 are enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule;

The rules in Article 4 are clear, concise and understandable.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is

discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

As previously discussed, ADEQ received written criticism regarding previous versions of rules within Article 4. *See supra*, p. 8 for the summary EPA's written criticism of prior versions of ADEQ's NSR rules, including Article 4 rules. Aside from the EPA's criticism, ADEQ has not received any other written criticism of Article 4 in the previous 5 years.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis has been received by ADEQ.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In the previous five-year review report, ADEQ did not propose any changes to Article 4.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The probable benefits of the rules outweigh the probable costs of the rules within this state. 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.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirement of that federal law.

The rules are not more stringent than corresponding federal law. NSR for Major Sources are set forth in the Clean Air Act, Part C of Title I. PSD requirements are set forth in the CAA, Part D of Title I. NSR for Minor Sources is required by Section 110(A)(2)(C) of the CAA. 42 U.S.C. § 7410(A)(2)(C). NSR for Major Sources mirrors federal law, which is very specific about what is required. For NSR Minor Sources, ADEQ's program is written to correspond to the general federal requirements, and does not extend beyond federal guidelines.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

These rules issue permits authorized by A.R.S. § 49-426, and therefore are in compliance with A.R.S. § 41-1037(A)(2, 6).

- 14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

ADEQ does not intend to amend any of the rules in Article 4 at this time.

B. Section by Section Analysis

R18-2-401. Definitions

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide definitions for terms used in Article 4.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-402. General

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide general rules for New Source Review and Prevention of Significant Deterioration (NSR/PSD) permits. This section applies only to permits processed under Article 4.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact**

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-403. Permits for Sources Located in Nonattainment Areas

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to describe the permitting requirements for major sources in nonattainment areas wanting to construct or make modifications to existing equipment.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-404. Offset Standards

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to describe how sources can obtain and quantify emission offsets when considering construction of a new major source or a major modifications to an existing source.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to implement detailed provisions of the Clean Air Act relating to NSR at 42 U.S.C. § 7511a(c)(6-8).

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to provide permit requirements for major sources located in attainment and unclassifiable areas.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the**

last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to provide further details on the monitoring and analysis requirements of R18-2-406(A)(5).

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-408. Innovative Control Technology

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to allow sources to petition to use emission standards as an alternative to the best available control technology (BACT) requirements under certain circumstances.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-409. Air Quality Models

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The rule acknowledges that air quality modeling is often part of the NSR/PSD permitting process.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

A new section was adopted effective November 15, 1993. As part of the amendments to the entire Article 4. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. ADEQ has not identified any additional costs since the rule was adopted in 1993.

R18-2-410. Visibility and Air Quality Related Value Protection

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to comply with EPA's Regional Haze Rule pursuant to CAA §§ 169 - 169B by describing source-by-source visibility impact analysis requirements for NSR/PSD sources operating or desiring to operate in or near Class I areas.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the**

last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-411. Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of Any National Ambient Air Quality Standard

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to establish requirements for major sources or major modifications for any source that would be located in any attainment or unclassifiable area that would cause or contribute to a violation of any NAAQS.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

R18-2-412. PALs¹

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to provide general rules for New Source Review and Prevention of Significant Deterioration (NSR/PSD) permits. This section applies only to permits processed under Article 4.

¹ Plantwide applicability limitation (PAL) is defined as “an emission limitation that is based on the baseline actual emissions of all emissions units at the stationary source that emit or have the potential to emit the PAL pollutant, expressed in tons per year, for a pollutant at a major source, that is enforceable as a practical matter and established source-wide in accordance with this Section.” R18-2-401(16).

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See* Attachment 1).

ARTICLE 5. GENERAL PERMITS

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 5, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-425 and 49-426(H).

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
Title I, Parts C and D of the Clean Air Act (CAA §§160-193, 42 U.S.C. §§ 7470-7515)	Part C—Prevention of Significant Deterioration of Air Quality; Part D—Plan Requirements for Nonattainment Areas
CAA § 110(a)(2)(C), (F) (42 U.S.C. 110(a)(2)(C), (F))	State implementation plans for national primary and secondary ambient air quality standards.
40 C.F.R. Part 51	Requirements for preparation, adoption and submittal of implementation plans
A.R.S. § 49-426	Permits; duties of director; exceptions; applications; objections; fees

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Rules R18-2-507 and R18-2-508 were repealed at 23 A.A.R. 333 (effective March 21, 2017) and are no longer being enforced. The remaining rules in Article 5 are being enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule;

The rules in Article 5 are clear, concise and understandable.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

ADEQ not received any written criticism of the rules in Article 5 in the past five years.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

ADEQ has received no such analysis.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to conduct a workload analysis to assess if permit fees needed to be changed in order to offset the development and implementation of the permit program. In its 2014 report, ADEQ anticipated submitting a new rulemaking to GRRC by January 2018.

ADEQ has not completed a workload analysis or this rulemaking because it has determined that this rulemaking is not necessary at this time. However, ADEQ may need to amend this rule if a future workload analysis shows the need to adjust permit fee amounts.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The probable benefits of the rules outweigh the probable costs of the rules within this state. The rules impose the least burden and costs to persons regulated by these rules,

including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirement of that federal law.

These rules are not more stringent than a corresponding federal law. A.R.S. § 49-426(H) gives ADEQ the authority to issue permits based on the CAA. Permitting authority is required by CAA section 504(d) [42 U.S.C. § 7661c(d)] General permits. Section 504 generally sets forth permit requirements and conditions. These sources are exempted from the Clean Air Act's Title V operating permit program and are usually governed by emission standards and regulations in New Source Performance Standards (NSPS) and the National Emissions Standards for Hazardous Pollutants (NESHAPs). Both NSPS (CAA § 111; 42 U.S.C. § 7411) and NESHAPs (CAA § 112; 42 U.S.C. § 7412) are federal requirements and are incorporated by reference in Title 18, Chapter 2, Articles 9, 11, and Appendix 2.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

R18-2-502, -503, -505, -512, -513, -514, and -515 were amended after July 2010 and comply with A.R.S. § 41-1037 since these rules govern general permits issued by ADEQ. These rules set forth applicable procedures, renewal processes, and changes to facilities granted coverage under a general permit.

B. Section by Section Analysis

R18-2-501. Applicability

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to establish criteria for persons to petition the Director for the development of a general permit. The rule provides criteria for the development of a general permit.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

A new section was adopted effective November 15, 1993 (Supp. 93-4). The rule was later amended effective August 1, 1995. Benefits accrue to the owners and operators of

sources qualifying for a general permit, as they may avoid the extra costs associated with an individual permit; some permits costs still apply. Benefits accrue to ADEQ in the form of remitted permit fees, while costs arise from the administration and enforcement of permits. Health benefits accrue to the public through the regulation of sources of air pollution.

There have been no amendments to the rule since the last five-year rule review and no identified changes in the economic impact since the last amendment.

R18-2-502. General Permit Development

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to establish criteria for persons to petition the Director for the development of a general permit. The rule provides criteria for the development of a general permit.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-503. Application for Coverage under General Permit

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to provide requirements for sources in applying for authority to operate under a general permit, as well as requirements for ADEQ in processing general permits.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact

statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-504. Public Notice

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is set forth legally and practically enforceable general standards for particulate matter emissions from various activities related to or performed in open areas, vacant lots, dry washes, or river beds.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-505. General Permit Renewal

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to describe how the Director may renew general permits, and provides related information for sources.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The section was last amended as a part of the NSR rulemaking, effective August 7, 2012 (18 A.A.R. 1542). The impacts associated with this section generally have been consistent with what was predicted in the last EIS.

R18-2-506. Relationship to Individual Permits

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is set forth work practice standards for activities related to the handling of materials that are likely to result in airborne dust.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

A new section was adopted effective November 15, 1993. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No identified change in the impact of the rule has occurred since the last amendment.

R18-2-507. Repealed

Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1)

R18-2-508. Repealed

Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-509. General Permit Appeals

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The rule's objective is to allow for any person who comments on a proposed general permit to appeal the terms and conditions of the permit.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This rule was last amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007. Based on state legislation (Laws 2000, Ch. 353, SB1284), this section was amended by replacing the term “hearing board” with “Office of Administrative Hearings.” Therefore, this prior change did not generate any economic impact and no additional costs have accrued since the last change.

R18-2-510. Terminations of General Permits and Revocations of Authority to Operate under a General Permit.

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to describe circumstances under which a general permit can be terminated or coverage revoked for a source.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

A new section was adopted effective November 15 1993 (Supp. 93-4). The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No identified change in the impact of the rule has occurred since adoption.

R18-2-511. Fees Related to General Permits

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to set forth the fees for General Permits.

3. **Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007. This section was amended to change the fees charged for general permits. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional costs have accrued since the last amendments were made by ADEQ.

R18-2-512. Changes to Facilities Granted Coverage under General Permits

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish which changes at facilities granted coverage under general permits require authorization.

3. **Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-513. Portable Sources Covered under a General Permit

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to clarify the obligations of portable sources subject to a general permit.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-514. General Permit Compliance Certification

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to require that owners or operators of a stationary source covered by a general permit submit compliance certifications that meet certain requirements.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rule is effective in achieving its objective.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-515. Minor NSR in General Permits

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to establish that a general permit may, under certain circumstances, contain emission limitations designed to assure the permit will comply with minor NSR under R18-2-334(C).

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

This section was last amended as part of the NSR rulemaking, effective March 21, 2017 (23 A.A.R. 333). The impacts associated with this section generally have been consistent with what was predicted in the last EIS (*See Attachment 1*).

R18-2-515.01. Renumbered

Renumbered to R18-2-715.01 effective November 15, 1993 (Supp. 93-4).

R18-2-515.02. Renumbered

Renumbered to R18-2-715.02 effective November 15, 1993 (Supp. 93-4).

R18-2-516. Renumbered

Renumbered to R18-2-716 effective November 15, 1993 (Supp. 93-4).

R18-2-517. Renumbered

Renumbered to R18-2-717 effective November 15, 1993 (Supp. 93-4).

R18-2-518. Renumbered

Renumbered to R18-2-718 effective November 15, 1993 (Supp. 93-4).

R18-2-519. Renumbered

Renumbered to R18-2-719 effective November 15, 1993 (Supp. 93-4).

R18-2-520. Renumbered

Renumbered to R18-2-720 effective November 15, 1993 (Supp. 93-4).

R18-2-521. Renumbered

Renumbered to R18-2-721 effective November 15, 1993 (Supp. 93-4).

R18-2-522. Renumbered

Renumbered to R18-2-722 effective November 15, 1993 (Supp. 93-4).

R18-2-523. Renumbered

Renumbered to R18-2-723 effective November 15, 1993 (Supp. 93-4).

R18-2-524. Renumbered

Renumbered to R18-2-724 effective November 15, 1993 (Supp. 93-4).

R18-2-525. Renumbered

Renumbered to R18-2-725 effective November 15, 1993 (Supp. 93-4).

R18-2-526. Renumbered

Renumbered to R18-2-726 effective November 15, 1993 (Supp. 93-4).

R18-2-527. Renumbered

Renumbered to R18-2-727 effective November 15, 1993 (Supp. 93-4).

R18-2-528. Renumbered

Renumbered to R18-2-728 effective November 15, 1993 (Supp. 93-4).

R18-2-529. Renumbered

Renumbered to R18-2-729 effective November 15, 1993 (Supp. 93-4).

R18-2-530. Renumbered

Renumbered to R18-2-730 effective November 15, 1993 (Supp. 93-4).

CHAPTER APPENDICES

A. Information that Is Identical for Appendices 1, 2, 3, and 9 in A.A.C. Title 18, Chapter 2 unless otherwise stated:

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
Parts C and D of Title I of the Clean Air Act; Part A of Title I of the Clean Air Act.	Prevention of Significant Deterioration of Air Quality; Plan Requirements for Nonattainment Areas
42 U.S.C. § 110(a)(2)(C)	Minor New Source Review
40 C.F.R. Part 60	Standards of Performance for New Stationary Sources
40 C.F.R. Part 61	National Emission Standards for Hazardous Air Pollutants
40 C.F.R. Part 63	National Emission Standards for Hazardous Air Pollutants for Source Categories

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Unless otherwise stated in Part B below, all of the rules in Appendices 2, 3, and 9 are enforced and there are no problems with enforcement. As Appendix 1 was repealed in 2017, it is no longer being enforced.

6. Clarity, conciseness, and understandability of the rule;

Appendices 1, 2, 3, and 9 are clear, concise, and understandable.

7. Summary of the written criticism of the rule received by the agency within five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;

ADEQ has not received any written criticisms of Appendices 1, 2, 3, and 9 in the previous five years.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis has been received by ADEQ.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In the prior five-year review report, ADEQ's proposed course of action was to amend Appendix 1 to update the form and to submit it to GRRC by July. ADEQ also proposed to amend Appendix 2 by April 2016. ADEQ completed its proposed course of action by repealing Appendix 1 after determining that was this Appendix was unnecessarily complex, redundant, and it failed to reflect the scope of information ADEQ currently uses in the permitting process. 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Removing the form and related filing instructions from the rules provides ADEQ with flexibility to update them in response to program needs without the delays associated with the rulemaking process.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rules' benefits outweigh the costs of the rule and impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirement of that federal law.

These rules are not more stringent than a corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

None of these appendices were adopted after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ does not intend to amend Appendices 1-3, and 9 at this time.

B. Appendix by Appendix Analysis

Appendix 1. Repealed

Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

Appendix 2. Test Methods and Protocols

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-425 and 49-426.

2. Objective of the rule, including the purpose for the existence of the rule:

Appendix 2's objective is to locate all approved test methods and protocols into a single location and to supplement R18-2-311.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

Appendix 2 is effective in achieving its objective.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

Appendix 2 was last updated effective May 2, 2018 (24 A.A.R. 1564) by an expedited rulemaking. Pursuant to A.R.S. § 41-1055(D)(2), ADEQ is not required to prepare an EIS pursuant to Title 41, Chapter 6 of the Arizona Revised Statute for that expedited rulemaking. The last EIS was prepared in 2008 when Appendix 2 was amended by final rulemaking at 13 A.A.R. 4199 (effective January 5, 2008). As the amendment consisted of a technical change, this rulemaking did not create any economic impacts. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the 2008 EIS.

Appendix 3. Logging

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

A.R.S. §§ 49-425 and 49-426.

2. Objective of the rule, including the purpose for the existence of the rule:

Appendix 3's objective is to list requirements for log entries referenced in A.A.C. R18-2-317.01, R18-2-2-317.02, and R18-2-320.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached:

Appendix 3 is effective in achieving its objective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
Parts C and D of Title I of the Clean Air Act; of Part A of Title I	Prevention of Significant Deterioration of Air Quality; Plan Requirements for Nonattainment Areas
42 U.S.C. § 110(a)(2)(C)	Minor New Source Review
40 C.F.R. Part 60	Standards of Performance for New Stationary Sources
40 C.F.R. Part 61	National Emission Standards for Hazardous Air Pollutants
40 C.F.R. Part 63	National Emission Standards for Hazardous Air Pollutants for Source Categories

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

Appendix 3 was adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999. Since adoption, ADEQ has not amended Appendix 3. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional costs have accrued since this Appendix was adopted by ADEQ.

Appendix 9. Monitoring Requirements

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

A.R.S. § 49-426.

2. Objective of the rule, including the purpose for the existence of the rule:

Appendix 9's objective is to supplement various permitting rules, including A.A.C. R18-2-312 and R18-2-313, in detailing the steps that sources must take to conduct acceptable performance tests and continuous emission monitoring.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached:

Appendix 9 is effective in achieving its objective by detailing performance tests and continuous emission monitoring.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with applicable statutes, rules and enforcement policy.

Law	Title
42 U.S.C. § 7410(a)	State implementation plans for primary and secondary ambient air quality standards
40 C.F.R. Pat 51	Requirements for preparation, adoption, and submittal of implementation plans

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

There has been no identified change in impact since the last amendment effective June 15, 1995. The economic impact was addressed in the previous five-year rule review for this Appendix and there has been no identified change since that last amendment.



Appendix 1

Notice of Final Rulemaking:

23 A.A.R. 333 (Feb. 10, 2017)

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NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor’s Regulatory Review Council or the Attorney General’s Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

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

[R17-10]

PREAMBLE

<u>I. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R18-2-101	Amend
R18-2-102	Amend
R18-2-201	Amend
R18-2-203	Amend
R18-2-217	Amend
R18-2-218	Amend
R18-2-301	Amend
R18-2-302	Amend
R18-2-302.01	Amend
R18-2-303	Amend
R18-2-304	Amend
R18-2-306	Amend
R18-2-306.01	Amend
R18-2-307	Amend
R18-2-311	Amend
R18-2-312	Amend
R18-2-319	Amend
R18-2-320	Amend
R18-2-324	Amend
R18-2-326	Amend
R18-2-327	Amend
R18-2-330	Amend
R18-2-332	Amend
R18-2-334	Amend
R18-2-401	Amend
R18-2-402	Amend
R18-2-403	Amend
R18-2-404	Amend
R18-2-405	Amend
R18-2-406	Amend
R18-2-407	Amend
R18-2-408	Amend
R18-2-410	Amend
R18-2-411	New Section
R18-2-412	Amend
R18-2-502	Amend
R18-2-503	Amend
R18-2-504	Amend
R18-2-507	Repeal
R18-2-508	Repeal
R18-2-512	Amend
R18-2-513	Amend
R18-2-514	New Section
R18-2-515	New Section



R18-2-1205
Appendix 1

Amend
Repeal

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

Authorizing statutes: A.R.S. §§ 49-104(A)(1) and (A)(10); 49-425(A)
Implementing statutes: A.R.S. § 49-426

3. The effective date of the rules:

March 21, 2017

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 3173, December 11, 2015
Notice of Proposed Rulemaking: 22 A.A.R. 2431, September 9, 2016

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

Name: Steve Burr
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-4251 (This number may be reached in-state by dialing 1-800-234-5677 and entering the seven digit number.)
Fax: (602) 771-2366
E-mail: burr.steve@azdeq.gov

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

Summary.

The purpose of this rulemaking is to remedy deficiencies identified by the Environmental Protection Agency (EPA) in Arizona’s new source review (NSR) rules. This rulemaking action is required to secure approval of Arizona’s NSR rules into the state implementation plan (SIP) and avoid sanctions and imposition of a federal implementation plan (FIP) under the federal Clean Air Act (CAA).

On November 2, 2015 the EPA Region 9 Administrator published a notice of final rulemaking issuing limited approval/limited disapproval (LA/LD) of the October 29, 2012 Arizona SIP revision designed to update the rules included in the SIP and to bring the state’s NSR program into full compliance with federal requirements. The final LA/LD triggered a statutory deadline under the CAA to submit and obtain full approval of the state’s NSR program. The Arizona Department of Environmental Quality (ADEQ) has eighteen months to remedy the deficiencies relating to NSR for nonattainment areas to obtain full approval or face sanctions. If ADEQ fails to remedy all of the deficiencies within 24 months, EPA will be obligated to impose a FIP addressing any remaining deficiencies.

ADEQ is revising Arizona’s NSR rules to address the deficiencies and create a program that complies with federal requirements and protect the national ambient air quality standards (NAAQS).

Background.

Clean Air Act New Source Review Requirements

Under section 110(a)(1) of the Clean Air Act (Act or CAA) each state is obligated to submit a “plan which provides for implementation, maintenance and enforcement of” the NAAQS. The Act goes on to require SIPs to:

Include a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of [Title I of the CAA].

State and federal regulations adopted under this section are commonly referred to as “new source review” programs because they apply to newly constructed and modified, as opposed to existing, sources. The CAA divides NSR requirements into those that apply to attainment areas (Part C requirements) and those that apply to nonattainment areas (Part D requirements).

Part C of Title I of the CAA establishes the NSR requirements for major sources that are constructed or modified in areas that have attained the NAAQS for one or more criteria pollutants (ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, PM₁₀, PM_{2.5}, and lead). Sources that belong to the list of categories set forth in section 169(1) of the CAA (referred to as “categorical sources” in the ADEQ rules) are major if they emit or have the potential to emit 100 tons per year (tpy) or more of a regulated air pollutant. All other sources are major if they have the potential to emit 250 tpy or more of a regulated air pollutant.

The NSR program under Part C is known as “Prevention of Significant Deterioration” (PSD), because its purpose is to prevent air quality in attainment areas from deteriorating to the levels of the NAAQS. See CAA § 160. PSD establishes, or requires EPA to establish, maximum allowable increases, known as “increments,” over existing concentrations of criteria pollutants and requires permit applicants subject to PSD to demonstrate that a new source or modification’s emissions will not result in a violation of the increments or the NAAQS. In addition, PSD requires the installation of the best available control technology (BACT) when constructing or modifying a source.

Part D of Title I establishes NSR requirements for major sources and modifications in nonattainment areas and is known as “Nonattainment New Source Review” (NNSR). Under Subpart 1 of Part D, a major source is defined as any source that emits, or has the potential to emit, 100 tpy or more of a pollutant for which the area has been designated nonattainment. Subpart 2 of Part D estab-



lishes lower major source thresholds for certain ozone, carbon monoxide, PM₁₀, and PM_{2.5} nonattainment areas.

Permit applicants subject to NNSR requirements under Part D must demonstrate that a major source or modification will comply with the lowest achievable emission rate (LAER) and that reductions in emissions from the same source or other sources will offset any emissions increases from the new or modified source.

In addition to requiring compliance with the specific major NSR requirement of Parts C and D, section 110(a)(2)(C) requires “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.” (Emphasis added.) EPA refers to 110(a)(2)(C) programs that apply to non-major sources and to minor modifications as “minor NSR.” 76 FR 38748, 38752 (July 1, 2011).

EPA NSR Regulations

EPA has promulgated regulations establishing the elements a state program must contain to satisfy section 110(a)(2)(C) at 40 CFR 51, Subpart I, Sections 51.160-51.166. NNSR requirements are found in section 51.165 and PSD requirements are found in section 51.166. These rules are highly detailed and prescriptive. States seeking approval of major NSR programs (both NNSR and PSD) must either strictly conform to the requirements in the federal rules or demonstrate that any deviations are at least as stringent.

Both sections 51.165 and 51.166 limit the applicability of major NSR to the construction of new major source or a “major modification” of a major source. A major modification is defined as physical or operational change that will result in both a significant increase and a significant net increase in the emissions of a regulated NSR pollutant.

For criteria pollutants and their precursors, “significant” is defined as:

Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxides emissions; 40 tpy of volatile organic compound emissions in ozone nonattainment areas.

The Act and the implementing regulations at 40 CFR 51.160 through 51.164 provide states broad discretion to develop minor NSR programs designed to assure the NAAQS are achieved. EPA has noted that the “Federal regulations for minor source programs are considerably less detailed than the requirements for major sources.” 71 FR 48696, 48700 (August 21, 2006). Under the minor NSR regulations, a state program must contain “legally enforceable procedures” to prevent the construction or modification of a minor source if it will “result in a violation of applicable portions of the control strategy” for compliance with the NAAQS or “interfere with the attainment or maintenance of a [NAAQS].” 40 CFR 51.160.

A minor NSR program need not apply to all new and modified sources, but it must “identify types and sizes of facilities, buildings, structures, or installations which will be subject to” minor NSR and “discuss the basis for determining which facilities will be subject to review.” 40 CFR 51.161(e). As EPA has noted:

Applicability thresholds are proper in [a minor NSR program] provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS.

71 FR at 48701.

A minor NSR program must allow a minimum 30-day period to comment on the applicant’s application and the agency’s proposed decision. 40 CFR 51.161.

Arizona’s Previous NSR Rulemaking and SIP Revision

On July 6, 2012, ADEQ adopted comprehensive amendments (the “2012 NSR Amendments”) to its preconstruction review and permitting programs for stationary sources. On October 29, 2012, ADEQ submitted these amendments, existing rules not yet approved into the SIP and supporting materials as a SIP revision to EPA. The revision was intended to bring Arizona’s SIP into full compliance with PSD major NSR, major NNSR and minor NSR requirements.

On June 29, 2015, the Regional Administrator for EPA Region 9 signed a limited approval/limited disapproval (LA/LD) of the 2012 SIP Revision. EPA determined that the revisions generally strengthened the state’s NSR program by clarifying and enhancing requirements for major and minor stationary sources. However, EPA ultimately determined that the submittal did not satisfy all applicable CAA and NSR regulatory requirements. Shortly after signature of the LA/LD, ADEQ began working with EPA and stakeholders on amendments to the NSR rules that would remedy the identified deficiencies and create an approvable program.

The LA/LD was published in the Federal Register on November 2, 2015 with an effective date of December 2, 2015. Supporting materials for the LA/LD, including EPA’s March 2015 Technical Support Document (LA/LD TSD) providing a detailed analysis of Arizona’s submittal, can be found in the docket for the rulemaking at regulations.gov under docket number EPA-R09-OAR-2015-0187.

CAA Sanctions

Under the CAA and federal regulations, if EPA disapproves any element of a plan submitted under Title I, Part D of the CAA relating to nonattainment areas, and the plan deficiencies are not corrected within 18 months after the effective date of the disapproval,



major sources subject to NNSR will have to offset emissions increases at a ratio of 2 to 1. 42 USC §7509(a)(b)(2); 40 CFR § 52.31(d)(1). If the deficiencies remain uncorrected for an additional six months, the state loses federal highway funds. 42 USC § 7509(a), (b)(1); 40 CFR § 52.31(d)(1). If imposed, the sanctions will apply to nonattainment areas under ADEQ's jurisdiction and the pollutants covered by the plan and will remain in effect until EPA finds that a revised plan corrects the deficiencies. 40 CFR § 52.31(b)(3),(d)(2), (5).

NNSR is a required element of a Part D plan. The LA/LD identified some deficiencies in ADEQ's NNSR program. Thus, ADEQ must submit a revised plan and secure an EPA finding that the submission corrects the NNSR deficiencies by June 2, 2017 (18 months after December 2, 2015) in order to avoid sanctions.

In addition, EPA is required to adopt a federal implementation plan (FIP) within twenty-four months following the disapproval of *any* SIP if the deficiencies are not corrected and approved by the EPA. 42 U.S.C. § 7410(c). ADEQ therefore must correct *all* deficiencies identified in the LA/LD in order to avoid a FIP.

Changes to Address NSR Deficiencies

The primary purpose of this rulemaking is to cure the deficiencies identified in the LA/LD and otherwise ensure Arizona's NSR program conforms to federal requirements and qualifies for full approval by EPA. The following is a description of the most significant changes designed to accomplish those purposes:

New NAAQS and NAAQS Implementation Requirements

This rulemaking makes a number of changes related to the NAAQS and NAAQS implementation to conform to recent federal updates and existing federal requirements.

First, on January 15, 2013, EPA revised the PM_{2.5} NAAQS to reduce the annual primary standard from 15 µg/m³ to 12 µg/m³. Because this revision occurred after adoption of the 2012 NSR Amendments, it was not included in ADEQ's rules, and EPA identified the failure to incorporate the latest version of the NAAQS as a deficiency. ADEQ is therefore amending R18-2-201(B) to reflect the latest standard.

Second, on October 1, 2015, EPA reduced the 8-hour ozone standard from 75 to 70 parts per billion. Because this change occurred after the LA/LD was signed, the LA/LD did not identify the failure to incorporate the new standard as a deficiency. Nevertheless, in order to avoid the identification of a new deficiency in ADEQ's next NSR submittal, ADEQ is amending R18-2-203 to incorporate the new ozone standard.

Third, at the time of adoption of the 2012 NSR Amendments, EPA's rules did not require regulation of volatile organic compounds (VOCs) or ammonia as precursors of PM_{2.5} in NNSR programs for PM_{2.5} nonattainment areas. Consistent with EPA's regulations, Arizona's current NSR rules do not include VOCs or ammonia in the definition of PM_{2.5} precursors. *See* R18-2-101(121)(b). In 2013, however, the United States Court of Appeals for the D.C. Circuit held that Title I, Part D, Subpart 4, which imposes specific requirements for PM₁₀ nonattainment areas, applies to PM_{2.5} as well as PM₁₀ nonattainment areas. *NRDC v. EPA*, 706 F.3d 428 (D.C. Cir. 2013). In particular, the court noted that under section 189(e) of Part D, Subpart 4, control requirements must apply to major sources of *all* identified precursors of PM_{2.5} (sulfur dioxide, nitrogen oxides, volatile organic compounds and ammonia), *unless* EPA has determined that the sources of a precursor do not contribute to levels exceeding the NAAQS in a particular nonattainment area.

In the LA/LD TSD, EPA noted that Arizona's NSR SIP did not include VOCs or ammonia as precursors but failed to demonstrate that those pollutants do not contribute to levels exceeding the NAAQS in PM_{2.5} nonattainment areas, as required by section 189(e). At that time, EPA declined to identify the omission of PM_{2.5} precursors as a deficiency. On June 22, 2016, however, EPA published a final "limited disapproval of the ADEQ NSR SIP submittal for the Nogales and West Central Pinal PM_{2.5} nonattainment areas under section 189(e) of the Act related to PM_{2.5} precursors." 81 FR 40525, 40526. ADEQ is therefore adding VOCs and ammonia to the list of precursors of PM_{2.5} in PM_{2.5} nonattainment areas.

Fourth, as noted in the LA/LD, Arizona's existing minor NSR and PSD programs do not clearly require review for protection of the NAAQS in neighboring areas outside of the state's jurisdiction. ADEQ is adding this requirement to R18-2-302.01, R18-2-334 and R18-2-406.

Amendments Clarifying NSR Definitions and Applicability

EPA's NNSR and PSD rules are in separate sections of the CFR, 40 CFR 51.165 and 51.166, each of which has its own definitions. In some cases, these sections have different definitions for the same term. A particularly important example is the definition of "regulated NSR pollutant," which establishes the list of pollutants potentially subject to major NSR. In the NNSR rule, the term encompasses only criteria pollutants and their precursors, 40 CFR 51.165(a)(1)(xxxvii), while in the PSD rule, the term includes criteria pollutants, precursors, plus any other pollutants, other than hazardous air pollutants, subject to regulation under the CAA. 40 CFR 51.166(b)(49).

Arizona's major NSR requirements, on the other hand, are set forth in a single Article—Article 4 of Title 18, Chapter 2. A single set of definitions in R18-2-101 and R18-2-401 applies to both programs. As a result, the current version of the state NSR rules employs identical definitions in both programs. In the case of "regulated NSR pollutant," for example, the Arizona rules use the PSD definition for both PSD and NNSR.

The LA/LD identified as deficiencies instances where the use of the wrong definition made Arizona's program less stringent than the federal rules. ADEQ has identified a number of other instances where the discrepancies between the federal and state rules made the state rules more stringent. Because state rules can be no more stringent than their federal counterparts, *see* A.R.S. § 49-104(A)(17), ADEQ must eliminate both types of discrepancies.

ADEQ could attempt to do so by following the federal model and dividing the PSD and NNSR rules into separate parts or subparts



with separate definition sections. This approach, however, would involve a substantial reorganization of both Article 4 and the chapter-wide definitions in R18-2-101. Instead, ADEQ where necessary has modified each definition to reflect the differences between the PSD and NNSR programs. Specifically, ADEQ is adopting amendments to the definitions in (after renumbering) R18-2-101(74), (88), (124), and (131) and R18-2-401(13) with corresponding amendments to the substantive provisions where these definitions are employed.

The LA/LD also identified a number instances where ADEQ's NSR rules did not use consistent terminology when referring to key requirements of the NSR program, such as the NAAQS, increments, new source performance standards and national emission standards for hazardous air pollutants. ADEQ is adopting amendments to assure that the rules employ consistent, defined terminology for these requirements.

Finally, the LA/LD identified a few ADEQ definitions that did not match the corresponding federal definitions in 40 CFR 51.165(a)(1) and 51.166(b). ADEQ is amending those definitions to conform. See, for example, R18-2-101(2), (13) and (36).

Missing Federal Exemptions

The LA/LD pointed out that state rules did not include a number of exemptions from the federal PSD program. Although EPA did not identify these omissions as deficiencies, ADEQ is adding the missing exemptions to the state PSD requirements in R18-2-406 in order to comply with A.R.S. § 49-104(A)(17).

Public Participation

Under the existing rules, a source subject to minor NSR is eligible to apply for a minor permit revision, and thus avoid public notice and comment, if one of two conditions are met: (1) all emissions units subject to reasonably available control technology (RACT) qualify for the RACT safe harbor provision in R18-2-334(D)(2) or (2) expected ambient concentrations resulting from the source's emissions as predicted by a screening model are less than 75 percent of the NAAQS. The LA/LD concluded that this exception to the public participation requirements is inconsistent with 40 CFR 51.161(a). ADEQ is therefore removing the exception.

The LA/LD identified a number of other technical deficiencies with the Arizona NSR rules' public participation requirements, and ADEQ is adopting amendments to address these as well.

Registration Contents

EPA expressed concern that the state's source registration program isn't adequate to ensure that construction of a source would not result in a violation of applicable portions of the control strategy. This rulemaking addresses the issue in R18-2-302.01 by specifically requiring enforceable emission limitations and standards that ensure compliance with all applicable SIP requirements at the time of a registration's issuance.

Technical Changes

In addition to the issues identified above, the LA/LD identified a number of technical issues that ADEQ had to address in order to secure full approval of the NSR program. These issues are discussed in detail in EPA's "Technical Support Document for Revisions to Air Plan; Arizona; Stationary Sources; New Source Review" and "Evaluation of Arizona NSR Rules and 40 CFR 51.160-166 – Excel Spreadsheet," both of which are available in the electronic docket for the LA/LD at <http://www.regulations.gov/#!document-Detail:D=EPA-R09-OAR-2015-0187-0004>.

Emissions Bank Offset Deduction

In a change related to NSR but not raised in the LA/LD, ADEQ is amending R18-2-1205 of the emission banking regulation to remove the requirement that credits deposited in the bank be reduced by 10 percent and permanently retired.

The primary purpose of the emissions bank is to provide a method for making offsets readily available in nonattainment areas in order to allow compliance with NNSR. The 10 percent reduction requirement is inconsistent with this purpose. Depositing credits for emissions reductions in the bank is not required in order to establish valid offsets under state or federal NNSR rules. *See, generally*, R18-2-404. Thus, the reduction requirement creates a significant disincentive to use the bank for its intended purpose. In addition, the reduction requirement is not authorized by the emissions bank statute, R18-2-410, nor is it required by federal NNSR rules.

Revisions to General Permit Rules

Under A.R.S. § 49-426(H), ADEQ is authorized to issue a general permit for "a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions." The issuance of a general permit is subject to the same public participation requirements as permits for individual sources. Once a general permit is issued, any source that is a member of the class of facilities covered by the permit may apply for and receive authority to operate without going through a separate public notice and comment process.

ADEQ is adopting two types of NSR-related amendments to Article 5.

First, ADEQ is amending Article 5 to clarify how minor NSR applies to the issuance of general permits. Since before the adoption of R18-2-334, ADEQ's practice has been to establish general permit conditions and application procedures which assure that a covered source's emissions will not endanger the NAAQS. Thus, general permits previously issued by ADEQ assure that the purpose of minor NSR, preventing the construction of sources or modification that could interfere with attainment of the NAAQS. Section R18-2-515 codifies this practice and also allows for the imposition of RACT in general permits.

Second, ADEQ has established web portal known as "MyDEQ," which, among other things, allows certain facilities covered by general permits to conduct all general-permit related transactions, including applying for and obtaining coverage, online. The MyDEQ procedures are consistent with existing Article 5 requirements, but ADEQ is adopting amendments to reflect the availability of the portal. Among other things, the portal allows online processing of applications for facilities subject to, or potentially subject to, minor NSR. As noted above, existing general permits assure compliance with minor NSR requirements, and new R18-



2-515 assures that future general permits will continue to do so.

Revisions to Streamline Permitting

This rulemaking includes three revisions that improve and streamline the permitting process for both new and modified sources subject to NSR and existing sources.

The first streamlining action repeals Appendix 1, which contains the standard permit application form and filing instructions that were developed nearly two decades ago. The form was unnecessarily complex, redundant, and failed to reflect the scope of information ADEQ currently uses in the permitting process. This rulemaking amends R18-2-304(B) (Permit Application Processing Procedures) to require applicants to complete forms provided by the Director when applying for a permit. The rule identifies certain minimum elements that each application form developed by the Director must include to ensure the appropriate information is included and all permits conform to federal requirements. Repealing Appendix 1 and amending the rule is necessary to allow ADEQ to periodically update and revise the permit forms when appropriate without the burden of rulemaking.

The second permit streamlining amendment tailors deviation reporting obligations for permittees to avoid duplicative and unnecessary reporting. Sources subject to those requirements previously encountered issues when interpreting the language of R18-2-306(A)(5)(b) because the key term “prompt” was undefined but dictated when reporting should occur. This action revises the rule to more clearly define the timeframe for satisfying deviation reporting requirements.

The third permit streamlining revision extends the deadline for performance testing when events occur that are beyond a source’s control. EPA’s new source performance standards and national emissions standards for hazardous air pollutants program both allow sources to request an extension of a performance test under such circumstances. ADEQ has added a similar provision to R18-2-312 to afford similar relief in certain circumstances.

Section by Section Explanation of Amended Rules:

- R18-2-101 Add and amend definitions used in major and minor NSR programs, as well as definitions used in related permit rules. Add definitions identifying federal terms and programs referenced in the rules.
- R18-2-102 Add information on the publication and location of the Code of Federal Regulations.
- R18-2-201 Amend to reflect 2012 PM_{2.5} NAAQS.
- R18-2-203 Amend to reflect 2015 Ozone NAAQS.
- R18-2-217 Amend the language to conform to federal requirements for designating and classifying attainment areas.
- R18-2-218 Amend language to include baseline date and area information to conform to federal requirements. Add PM_{2.5} consideration when determining concentrations of particulate matter for purposes of maximum allowable increases.
- R18-2-301 Add and amend definitions to provide greater clarify for terms used in registration and permit rules.
- R18-2-302 Amend by removing reference to unenforceable state hazardous air pollutant program, correct cross references, and update language.
- R18-2-302.01 Add new notice requirements for minor NSR registration, as well as general update to language and cross references. Amend elective limits to address EPA’s concern with enforceability.
- R18-2-303 Update applicability to include only new sources or modifications that occur after the effective date of EPA’s 2015 limited approval limited disapproval.
- R18-2-304 Amend to streamline the permit application process by requiring applicants to complete a standard application form and detailing the minimum information ADEQ must include in those forms. Amend to address EPA objection to the exclusion of insignificant activities from determinations of NSR applicability.
- R18-2-306 Amend to streamline permit contents by providing a more definitive timeframe for deviation reporting.
- R18-2-306.01 Update cross reference.
- R18-2-306.02 Amend language to conform to defined terms and remove unnecessary cross reference.
- R18-2-307 Amend to update cross references.
- R18-2-311 Amend to allow use of approved alternative methods to determine opacity.
- R18-2-312 Amended to allow extension of deadline to conduct performance tests on occurrence of force majeure events.
- R18-2-319 Amend to require public notice for all minor NSR modifications by removing the exception that those subject to R18-2-334(G) could comply under the minor permit revision procedures.
- R18-2-320 Amend to remove public notice exemption for any significant permit revision as required by the EPA and replace ambiguous language with defined terms.
- R18-2-324 Repeal requirement for lessors of portable equipment to obtain a permit.
- R18-2-326 Update cross reference and replace cross reference with explanatory language.
- R18-2-327 Update cross reference.
- R18-2-330 Amend public notice rules to comply with federal requirements and update cross reference.
- R18-2-332 Reorganize for better rule formatting and update cross references.
- R18-2-334 Update language to comply with federal requirements and removed portion disapproved by the EPA.



R18-2-401	Amend and add definitions to comply with federal requirements
R18-2-402	Amend permit issuing procedures to reflect federal requirements and address EPA objections. Update cross references.
R18-2-403	Amend to comply with federal requirements providing for EPA oversight in permitting activities.
R18-2-404	Amend to comply with federal requirements and allow for the emissions of NOx and VOC to offset Ozone.
R18-2-405	Amend to comply with the federal requirements.
R18-2-406	Amend to comply with federal requirements. Reorganize to better distinguish the differences in NSR requirements for attainment and nonattainment areas.
R18-2-407	Amend to comply with federal requirements.
R18-2-408	Amend to comply with federal requirements and update references.
R18-2-410	Amend to comply with federal requirements. Reorganize where and relocate all visibility requirements previously in other locations to this section.
R18-2-411	Add new section with federal requirements addressing sources located in an attainment area's impact on NAAQS violations in another area.
R18-2-412	Amend to comply with federal requirements.
R18-2-502	Amend to eliminate outdated minor NSR provision.
R18-2-503	Amend to reflect MyDEQ procedures.
R18-2-504	Amend to add minor NSR public participation requirements.
R18-2-507	Repeal to reflect unenforceability of referenced Article 17.
R18-2-508	Repeal outdated permit shield provision.
R18-2-512	Amend to reflect MyDEQ procedures.
R18-2-513	Amend to reflect MyDEQ procedures.
R18-2-514	Added to reflect MyDEQ procedures.
R18-2-515	Added to clarify minor NSR procedures for general permits.
R18-2-1205	Amend to remove deduction of ten percent of emissions reductions deposited in emissions bank.

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

Not applicable

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

Not applicable

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

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement (ESBCIS) under A.R.S. § 41-1055.

An identification of the rule making.

The rulemaking addressed by this ESBCIS is the adoption of amendments designed to bring ADEQ's new source review (NSR) rules into conformance with federal requirements. This rulemaking will remedy the deficiencies identified by EPA in the LA/LD and generally bring Arizona's NSR program into conformity with federal requirements. The changes are described in greater detail in section 5 of the preamble.

There are two updates to the national ambient air quality standards that EPA has adopted since ADEQ last amended Article 2 that are included in this rulemaking and may need to be addressed in NSR applications and permitting decisions. The first is the PM_{2.5} primary ambient air quality standard, which was amended by EPA in 2012 and appears at R18-2-201. The second is the ozone eight-hour average primary and secondary ambient air quality standard and the removal of the ozone one-hour standard, which was amended by EPA in 2015 and appears at R18-2-203. These changes may result in increased compliance cost for sources and increased administrative costs for ADEQ.

The remainder of the changes are procedural or technical in nature and should have at most a trivial economic impact on the agency, businesses or consumers.

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

The persons that will be directly affected by and bear the costs of the rulemaking will be businesses that construct or modify stationary sources that are subject to major or minor NSR.

The types of Arizona business operations subject to major NSR typically include Portland cement plants, iron and steel mills, primary copper smelters, hard-rock mining operations, petroleum refineries, lime plants, fiberglass production facilities, wood furniture manufacturers, paper mills and fossil-fuel power plants. Major sources tend to be large facilities operated by publicly owned corporations and employing hundreds or thousands of employees.



Major sources may also be subject to minor NSR. Minor NSR may apply to smaller business operations or operations that, although substantial in scale, tend to have emissions below the major source thresholds. These include rock quarrying and crushing operations, concrete batch plants, asphalt plants, semiconductor manufacturers, aircraft engine and parts manufacturers, landfills and petroleum bulk stations and terminals.

The above list is not exhaustive. Any business that engages in pollutant emitting activities is potentially subject to NSR. Typically pollutant-emitting activities include fuel combustion to produce energy or as part of a process, the use of solvents, the application of surface coatings (such as paints and varnishes), the storage of fuels and other organic liquids and the handling of materials likely to give rise to airborne dust. Tailpipe emissions from mobile sources are not considered in determining NSR applicability.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rule making.

ADEQ’s cost of implementing the amended NSR requirements will likely be minimal. One component of the major NSR amendments that could potentially impact ADEQ’s cost of administering the air quality permit program is the inclusion of the new national ambient air quality standards: the 2012 PM_{2.5} standard and the 2015 eight-hour primary and secondary ozone standard. However, the standards constitute an increase in the stringency of existing standards and likely will not result in any modeling or review time beyond that which is already required.

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

The costs to political subdivisions subject to permitting under ADEQ’s rules from these proposed amendments should be minimal. In general, the types of sources operated by political subdivisions are very unlikely to be subject to major NSR. The costs of the procedural and technical changes to minor NSR and the registration program proposed in this rulemaking are likely to be minimal. ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect.

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

As discussed in section 5 of the Preamble, the amendments to ADEQ’s major NSR rules are necessary to comply with federal requirements for the program. If ADEQ failed to adopt these amendments, they would ultimately apply to sources in Arizona either through the adoption of a federal implementation plan (FIP) or the application of 40 CFR Part 51, Appendix S (in the case of nonattainment NSR). In addition, Title I, Part D of the Clean Air Act imposes a limited time from for ADEQ to adopt the major NSR amendments. Failure to meet the statutory timeframe will result in sanctions by the federal government, as described above.

Thus, failure to adopt these amendments would not in the long run result in the avoidance of any costs of compliance, but would result in a substantial negative impact on the state’s economy.

In any case, the only substantial cost to businesses that could result from this rulemaking would be the cost to new or modified major sources of complying with the updated ozone and PM_{2.5} NAAQS. As noted in the 2012 rulemaking, these costs are impossible to quantify but unlikely to be incurred:

[W]hen modeling demonstrates an ambient impact resulting in non-compliance with an ambient standard (NAAQS or increments), mitigation beyond the level of control technology already required by major NSR is necessary. The cost of mitigation can be substantial but is highly dependent on the nature of the particular project and cannot be reliably estimated for purposes of the ESBCIS. Moreover, because major NSR automatically requires a very stringent level of control (BACT or LAER), mitigation is rarely necessary. Mitigation necessary to address non-compliance with any of the new standards imposed in the major NSR amendments will be an even rarer occurrence. Thus, the major NSR amendments are unlikely to result in additional mitigation costs.

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

ADEQ does not believe that the additional costs to businesses subject to the amended NSR requirements, as described above, will be substantial enough to deter the construction or expansion of business operations. Accordingly, there should be no impact on private employment or on the employment of any political subdivision subject to NSR.

A statement of the probable impact of the rule making on small businesses.

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

Under A.R.S. § 41-1001(21):

“Small business” means a concern, including its affiliates, which is [1] *independently owned and operated*, which is [2] *not dominant in its field* and which [3] *employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.* (Emphasis added.)

Most registration sources will likely qualify as small businesses, as will many sources subject to minor NSR. It is unlikely that any major sources would qualify.

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

ADEQ anticipates that small businesses will incur little to no additional costs as a result of the procedural and technical changes to minor NSR and the registration program proposed in these amendments.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

(i) Establishing less costly compliance requirements in the rule making for small businesses.



Not applicable.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rule making.

Not applicable.

(iii) Exempting small businesses from any or all requirements of the rule making.

Not applicable.

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

Some businesses may pass some of the additional costs estimated on to consumers. ADEQ anticipates the impact will be negligible because the amendments will not substantially increase existing air quality compliance costs.

A statement of the probable effect on state revenues.

Since the costs of the amendments will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

As discussed above in section 5, ADEQ is adopting amendments that the Department believes to be the minimum necessary to comply with federal NSR requirements. No less intrusive or costly alternatives are available.

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

ADEQ is making only minor clarifying changes to the proposal, as described in detail in the responses to comments 1-4, 8, 10, 12 and 17.

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

Comment 1: R18-2-101.131: For purposes of clarification, the reference to “under R18-2-302(B)(2)” (applicability provisions for Class II permits based on “significant” emission rates) might be better placed after “in reference to a significant increase” rather than after “a stationary source’s maximum to emit with elective limits.” (Arizona Mining Association [AMA])

Response: ADEQ appreciates the suggestion, but “under R18-2-302(B)(2)” does not modify “significant emissions increase.” The definition in R18-2-101(131) is intended to specify the four different contexts to which the significance thresholds in the definition apply: (1) determining whether an emissions increase is significant for purposes major NSR, (2) determining whether a net emissions increase is significant for purposes of major NSR, (3) determining whether a stationary source’s potential to emit a particular pollutant is significant for purposes of determining major NSR applicability to the pollutant, and (4) determining whether a stationary source’s maximum capacity to emit with elective limits is significant for purposes of determining Class II permit applicability. The phrase “under R18-2-302(B)(2)” can only apply to the last item. In an attempt to make this definition clearer, however, ADEQ is substituting “as defined in R18-2-301(13)” for “under R18-2-302(B)(2).”

Comment 2: R18-2-301.13: Because “maximum capacity to emit with elective limits” as it is used in revised applicability provisions could be construed as applicable only to the situation where elective limits were included in a source’s registration under R18-2-302.01(F), there could be confusion in evaluating applicability (e.g., a source subject to a Class II permit that never had a registration or a source that previously had a registration, but it did not contained elective limits). Although clarification can be found in the term’s definition, perhaps some of the potential confusion could be avoided by replacing “maximum capacity to emit with elective limits” with “maximum capacity to emit with any elective limits.” This change would help clarify that applicability is based on maximum capacity to emit, including elective limits if they were established. Of course, such references would then need to be revised throughout the revised rules. (AMA)

Response: ADEQ agrees with this comment and has made this change in the final rule.

Comment 3: R18-2-302.01(A)(6): This provision requires identification of the method used to determine “maximum capacity to emit” specified under R18-2-302(B)(3)(a) or (d) or subsection (G)(1)(a) of this Section, but Subsection (G)(1)(a) refers to “maximum capacity to emit with elective limits.” The AMA recommends inserting “maximum capacity to emit with elective limits specified under” before “subsection (G)(1)(a) of this Section.” (AMA)

Response: ADEQ agrees with this comment and has made this change together with some additional revisions to improve the clarity of this provision.

Comment 4: R18-2-302.01(B)(4): Because this is a registration provision, it appears that “permit or permit revision” should be replaced with “registration or registration revision.” (AMA)

Response: ADEQ agrees with this comment and has made this change in the final rule.

Comment 5: R18-2-302.01(C)(4): As explained in more detail below, the “performance of the screening model pursuant to subsection (C)(3)” should not be the sole basis for the Director’s determination resulting in denial of an application. The federal requirements for minor NSR programs at 40 C.F.R. § 51.160 do not expressly require modeling or mandate that it be the sole criteria for determining whether a source would “interfere with attainment or maintenance” of a NAAQS. Furthermore, a conservative screening model does not necessarily demonstrate that a source’s emissions will interfere with attainment or maintenance of a NAAQS. The AMA therefore requests removal of “based on performance of the screening model pursuant to subsection (C)(3).” (AMA)

Response: Under R18-2-302.01(C)(4), the screening model run is not used to “demonstrate” that a source will interfere with attainment or maintenance of a NAAQS. Rather, it is used to determine whether a source will be required to obtain a Class II permit rather than a registration. ADEQ believes this is appropriate. If screening model results indicate that a source’s emissions will interfere, the source will have two alternatives: First, the source can implement additional control measures to reduce its projected impact, in which case enforceable emission limits reflecting those controls will need to be imposed. See R18-2-334(C)(2)(c). Second, the source can perform a more refined modeling analysis to demonstrate that the interference projected by the screening



model will not in fact occur. See R18-2-334(C)(2)(b). In either case, the process for approving the source's construction will have reached a level of complexity inappropriate for the registration program. See also response to Comment 14.

Comment 6: R18-2-302.01(E). The AMA understands that the proposed revisions to R18-2-302.01(E) are intended to address an EPA comment taking the position that the prior language was not adequate to ensure that construction of a source will not result in violation of applicable portions of a control strategy. Given that the federal minor NSR program provisions at 40 C.F.R. § 51.160 require that ADEQ's program have enforceable procedures that enable ADEQ to determine whether the construction or modification of a source would violate applicable portions of the control strategy (including a means by which ADEQ will prevent such construction or modification), the basis for EPA's comment and ADEQ's proposed response is unclear. That is, requiring a registration to include enforceable emission limitations and restrictions (as ADEQ's proposed revisions would require) does not appear related to the minor NSR program requirement for enforceable procedures that enable ADEQ to identify and prevent the construction or modification of a source that would violate applicable portions of the control strategy.

In any event, the AMA is concerned that the proposed revisions are contrary to intent of the streamlined registration portion of ADEQ's minor NSR program to reduce regulatory burdens on small sources. By requiring registrations to include "[e]nforceable emission limitations and standards, including operational requirements and emission limitations that ensure compliance with all applicable SIP requirements at the time of issuance and any testing, monitoring, recordkeeping and reporting obligations imposed by the applicable requirement or by R18-2-312," a registration would be nearly indistinguishable from a Class II permit. The AMA does not believe that EPA's comment must be addressed in this manner. Under 40 C.F.R. § 51.160(d), minor NSR program "procedures must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy." A source's responsibility to comply with any applicable portions of a control strategy is set forth in ADEQ's rules that make up that control strategy. Including those already applicable requirements in a registration (or permit) is not necessary to make those requirements enforceable. The AMA therefore requests that ADEQ replace the proposed revisions with a registration content requirement for identification of applicable requirements (as R18-2-302.01(E)(1) previously provided) and a statement that approval of the source's construction or modification via the registration does not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. (AMA)

Response: A number of former Class II permitted sources have taken advantage of the rule provisions allowing them to transition to the registration program. The conditions sections of the registrations for these sources have been at least 50 percent shorter than the conditions sections of their former permits and often much shorter than that. For the reasons given below, ADEQ anticipates that this will continue to be the case after the amendment to R18-2-302.01(E) takes effect.

EPA's basis for concluding that R18-2-302.01 is not adequate to assure that sources subject to minor NSR will comply with applicable provisions of the control strategy is provided in the Technical Support Document (TSD) for EPA's proposed LA/LD (available at <https://www.regulations.gov/document?D=EPA-R09-OAR-2015-0187-0004>) at page 20:

For sources subject to ADEQ's registration program at R18-2-302.01, ADEQ has not demonstrated that its NSR program meets the requirement to ensure that sources subject to NSR review comply with the applicable portions of the control strategy as required by 40 CFR 51.160(b)(1). This requirement is nearly met by R18-2-302.01(E), except that the provision lacks sufficient language to "ensure compliance" with applicable requirements, *similar to language in R18-2-306(A)(2)*. To obtain full approval ADEQ must ensure that sources subject to R18-2-302.01 will comply with the applicable portions of the control strategy.

(Emphasis added.) Thus, EPA specifically identified language similar to R18-2-306(A)(2), which is applicable to Class I and II permits, as being sufficient to cure this deficiency. Section R18-2-306(A)(2) establishes the requirement that Class I and II permits contain emission limitations reflecting *all applicable requirements* and that those limitations be enforceable. ADEQ has not proposed to adopt identical language for R18-2-306.01 but instead adapted that language in two ways to minimize the imposition on registered sources.

First, the enforceable emission limitation requirement applies solely to "applicable SIP requirements," rather than "all applicable requirements." Since the "control strategy" consists of SIP requirements, the inclusion of the SIP requirements applicable to a particular source is sufficient to insure it will not violate the control strategy. For the most part, applicable SIP requirements consist of existing source performance standard in Article 7 of Title 18, Chapter 2. Enforceable emission limitations reflecting these requirements in Class I and II permits tend to be short and straightforward and impose minimal monitoring and reporting obligations. The more complicated conditions in Class I and II permits tend to be those reflecting NSPS and NESHAPS, which are not "applicable SIP requirements," and therefore will not need to be included in registrations.

Second, R18-2-302.01 is only being amended to include the basic enforceability requirement. The additional requirements in R18-2-306(A)(2)(a)-(d) are not included. Nor are any of the other rules designed to enhance the enforceability of Class I and II permits, such as R18-2-306(A)(3)-(5) and (8) and R18-2-309.

Comment 7: R18-2-302.01(F)(2)(b): Maintaining a log or business records of production rate "through the preceding operating day" and updates "once per operating day" may not be feasible for certain small businesses where production rate may not be reasonably ascertainable on a daily basis (e.g., production based on inventory). The information necessary to demonstrate compliance with the annual production limit contemplated here is the total production for each rolling 12-month period. To determine total production for each rolling 12-month period, a source would need to ascertain and record production levels for each month. Ascertaining and maintaining records of monthly production does not inherently require that values be measured and recorded daily. However, as R18-2-302.01(F)(2) is currently drafted, a registration source may be precluded from obtaining an elective limit unless the source can implement a daily production monitoring and recordkeeping approach. Such an approach may be costly, burdensome, or otherwise infeasible for small businesses and appears unnecessary to provide a reasonable assurance of compliance with a 12-month rolling limit. Accordingly, because ADEQ's registration program was intended to streamline and reduce the regulatory burdens of small sources, the AMA requests that ADEQ remove these prescriptive provisions and allow recordkeeping determinations to be made on a case-by-case basis, considering the circumstances and what provides a reasonable assurance of



compliance with the requested limit.

Response: On the basis of EPA guidance, the LA/LD specified that at least daily recordkeeping was required for enforceable limits designed, as the elective limits are, to allow a source to avoid minor NSR. TSD at 29. Although this guidance is not binding, it represents EPA's interpretation of its own rules and thus would be afforded considerable deference in any court challenge. ADEQ therefore believes the proposed changes are necessary to address this deficiency and secure full approval of the minor NSR program.

Moreover, a number of registrations issued so far have included elective limits on production that included daily recordkeeping requirements, and this has not proved to be a problem for registrants.

It is possible that some small businesses will not be able to adopt elective limits as result of this requirement. Fortunately, because of the role that elective limits play in the registration and permitting programs, the impact on any such sources will be minimal.

There are two categories of sources that would have a reason to adopt elective limits.

First, sources can adopt elective limits in order to keep their "maximum capacity to emit with any elective limits" below the significance threshold in order to avoid Class II permitting requirements. These are sources that would have required a Class II permit before the registration program went into effect. It is unlikely that these sources would have difficulty complying with a daily recordkeeping requirement. Even if they do, and therefore cannot assume elective limits, the only consequence is that they remain subject to the requirement to obtain a Class II permit.

Second, sources can adopt elective limits in order to keep their "maximum capacity to emit with any elective limits" below the permitting exemption thresholds. If they are unable to do so, the only consequences are that registration issuance will require public notice, R18-2-302.01(B)(3), and that they will be subject to mandatory, rather than discretionary, screening for possible interference with the NAAQS, R18-2-302.01(C), (D).

Comment 8: R18-2-302.01(F)(4)(a): The "pounds per month" requirement may be overly stringent for some registration sources and is ambiguous in how compliance is demonstrated. The AMA requests that the limit be expressed as a 12-month rolling period similar to R18-2-302.01(F)(1) and (2). (AMA)

Response: ADEQ agrees and is making this change to the proposed rule language.

Comment 9: R18-2-302.01(F)(4)(b): Similar to the comments above, updating material usage spreadsheet or database "at least once per operating day" may not be feasible for certain small businesses where material usage may not be reasonably ascertainable on a daily basis (e.g., material usage based on inventory). During prior stakeholder meetings, representatives from the Maricopa County Air Quality Department (MCAQD) articulated similar concerns based on their experience. The AMA requests that ADEQ remove this prescriptive provision and allow recordkeeping requirement determinations to be made on a case-by-case basis, considering the circumstances and what provides a reasonable assurance of compliance with the requested limit. (AMA)

Response: See response to Comment 7.

Comment 10: R18-2-304: The AMA supports the revisions to R18-2-304 to help streamline applications. However, the reference to "RIS-2-306.02" in R18-2-304(B)(7) should be "R18-2-306.02."

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule. ADEQ has corrected the typographical error identified in the comment.

Comment 11: R18-2-306(A)(5): The AMA supports the revisions to R18-2-306.A.5 to help streamline reporting requirements. (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule.

Comment 12: R18-2-312: The AMA supports the revisions to R18-2-312 to allow the extension of performance testing deadlines due to events beyond a source's control (consistent with federal rules). However, the reference to "subsection (I)" in the first sentence of R18-2-312(A) should be "subsection (J)." (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule. ADEQ has corrected the erroneous cross-reference identified in the comment.

Comment 13: R18-2-334(C)(2)(b): The AMA supports the replacement of the "cause or exacerbate" language (that previously was undefined and inconsistent with the federal requirements for a minor NSR program under 40 C.F.R. § 51.160) with the "interfere with attainment or maintenance" language. (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule.

Comment 14: R18-2-334(C)(2): As drafted, the air quality assessment to determine that a new source or minor NSR modification will not interfere with attainment or maintenance of a NAAQS could be interpreted as allowing only source-specific modeling to make this determination. While source-specific modeling is arguably the preferred and most common approach, the federal requirements for minor NSR programs at 40 C.F.R. § 51.160 do not expressly mandate source-specific modeling. The AMA requests that the provision be revised to clarify that an acceptable alternative could also be used to make this determination (possibly regional scale modeling, risk-based monitoring, etc.). The AMA agrees that source-specific modeling demonstrating either of the items in R18-2-334(C)(2)(b) should be allowed to provide a "bright-line" basis for determining that a new source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS. However, a source-specific modeling analysis that is unable to make either of the R18-2-334(C)(2)(b) demonstrations (e.g., due to high background concentrations and ambient impacts above significance levels), does not necessarily mean that the new source or minor NSR modification will interfere with attainment or maintenance of the NAAQS. This distinction is important because R18-2-334(F) (as currently drafted) requires that the Director deny an application if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with the NAAQS. Accordingly, clarification that source-specific modeling is not the only means to determine whether a source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS is necessary to



avoid the untenable situation where applications must be denied solely because source-specific modeling is unable to make either of the R18-2-334(C)(2)(b) demonstrations. (AMA)

Response: In the final LA/LD, EPA made it clear that authority to deny a minor NSR application for modeled interference with the NAAQS is a mandatory component of a minor NSR program. Removing this authority from R18-2-334 would result in full disapproval of the state’s minor NSR program.

Comment 15: R18-2-334(F): See comments above regarding the denial of applications based solely on the inability of a source-specific modeling analysis to make either of the R18-2-334(C)(2)(b) demonstrations. While the R18-2-334(C)(2)(b) demonstrations should support the determination that a source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS, the inability to make the R18-2-334(C)(2)(b) demonstrations does not conclusively require a determination that a source or minor NSR modification will interfere with attainment or maintenance of the NAAQS. (AMA)

Response: See response to Comment 14.

Comment 16: R18-2-503(E), R18-2-513(C)(3), R18-2-514(B): While the AMA supports ADEQ’s development of web tools such as MyDEQ, the revisions inappropriately mandate the filing of applications and conducting all transactions through a web portal when available and upon notice by the Director. ADEQ should recommend using the web portal as it helps educate the regulated community, but still allow sources (especially small sources typically subject to general permits) to obtain permits and conduct transactions as is traditionally done. (AMA)

Response: In developing MyDEQ, ADEQ has evaluated whether use of the portal will pose a problem for the sources potentially subject to it and has concluded that for all of these sources use of the portal will be substantially easier and faster than the traditional method of processing general permit transactions.

Comment 17: For simplicity, I propose the following as the clarification to the text in R18-2-311 page 106.

Except as otherwise provided in this subsection (the) opacity of visible emissions shall be determined by EPA Alternative Method 082 or EPA Reference Method 9 of the Arizona Testing Manual. A permit may specify an alternate method, for determining the opacity of emissions from a particular emissions unit, if the method has been approved by the Administrator.

This language would make it clearer that EPA Alternative Method 082 is used in AZ. Further, the county rules reference the AAC, so the request from them is to make the AAC directly reference EPA ALT 082, so they do not have to change their rules. For instance, the Kinder Morgan permit in Pima county says visible emissions are to be measured using the methods specified in AAC 18-2-311 and the AZ Testing Manual. The AZ Testing manual only allows Method 9 or 40CFR60 Appendix A methods. So the decision was facilities in Pima county cannot use EPA Alternative Method 082. As worded in this modification package, one could argue that only via a specifically requested and approved permit change could EPA ALT 082 be used. This permit change is what the counties do not want, e.g. a lot of work they are not staffed to perform. The proposed clarification would make EPA ALT 082 part of AAC 18-2-311, thus all exiting permits in Pima county would not need to be changed as they currently reference AAC 18-2-311 as the governing document. When I commented on Maricopa county permits to include EPA ALT 082 I was told by that group to get AzDEQ to change AAC 18-2-311 to directly include EPA ALT 082 like it does Method 9, because too much work to include specific methods in each permit, too easy to make a mistake and leave it out.

Please accept this as a request for clarification in the final promulgation, objective is to clarifying the use of the EPA Alternative Method 082 is allowed. Do not want to mandate its use, or mandate a change to exiting process, or including a method that is more stringent. EPA ALT 082 is the same as Method 9, stated can be used “in Lieu of Method 9” in the CFR.

I attached the EPA's documents on this topic and you can see why its not as clear on that end as we would like it ether. But I am told by Jason and all of his bosses that the only way 40CFR60 Appendix A is going to be updated is if the courts require the EPA to update it. The methodology is letter approval, (site specific), to CFR publication (broadly applicable), to incorporation into rules (Ferro Alloy NESHAP), is the way OAQPS plans to bring all new technology/methods into use. Jason Dewees, OAQPS, (919) 541-9724.

Response: ADEQ agrees and has made this change.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

The rule requires permits as described in section 5 above. A general permit may be used to satisfy minor NSR requirements established by this rule. Federal law does not allow the enforcement of major NSR requirements through the issuance of general permits, because major NSR requires a case-by-case, facility-specific determination.

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

The federal Clean Air Act and implementing regulations adopted by EPA apply to the subject of this rule, as described in section 5 above. This rulemaking is no more stringent than required by federal law.

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

No such analysis was submitted.

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

There are no incorporations by reference added to the rules in this action.



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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section

- R18-2-101. Definitions
R18-2-102. Incorporated Materials

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

- R18-2-201. Particulate Matter: PM₁₀ and PM_{2.5}
R18-2-203. ~~Ozone: One-hour Standard and Eight-hour Average Standard~~
R18-2-217. Designation and Classification of Attainment Areas
R18-2-218. Limitation of Pollutants in Classified Attainment Areas

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

- R18-2-301. Definitions
R18-2-302. Applicability; Registration; Classes of Permits
R18-2-302.01. Source Registration Requirements
R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition
R18-2-304. Permit Application Processing Procedures
R18-2-306. Permit Contents
R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards
R18-2-307. Permit Review by the EPA and Affected States
R18-2-311. Test Methods and Procedures
R18-2-312. Performance Tests
R18-2-319. Minor Permit Revisions
R18-2-320. Significant Permit Revisions
R18-2-324. Portable Sources
R18-2-326. Fees Related to Individual Permits
R18-2-327. Annual Emissions Inventory Questionnaire
R18-2-330. Public Participation
R18-2-332. Stack Height Limitation
R18-2-334. Minor New Source Review

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

Section

- R18-2-401. Definitions
R18-2-402. General
R18-2-403. Permits for Sources Located in Nonattainment Areas
R18-2-404. Offset Standards
R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe
R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas
R18-2-407. Air Quality Impact Analysis and Monitoring Requirements
R18-2-408. Innovative Control Technology
R18-2-410. Visibility and Air Quality Related Value Protection
R18-2-411. Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of Any National Ambient Air Quality Standard.
R18-2-412. PALs



ARTICLE 5. GENERAL PERMITS

- Section
- R18-2-502. General Permit Development
- R18-2-503. Application for Coverage under General Permit
- R18-2-504. Public Notice
- R18-2-507. ~~General Permit Variances Repealed~~
- R18-2-508. ~~General Permit Shield Repealed~~
- R18-2-512. Changes to Facilities Granted Coverage under General Permits
- R18-2-513. Portable Sources Covered under a General Permit
- R18-2-514. General Permit Compliance Certification
- R18-2-515. Minor NSR in General Permits

ARTICLE 12. EMISSIONS BANK

- Section
- R18-2-1205. Credit Certification

~~APPENDIX 1. STANDARD PERMIT APPLICATION FORM AND FILING INSTRUCTIONS REPEALED~~

ARTICLE 1. GENERAL

R18-2-101. Definitions

The following definitions apply to this Chapter. Where the same term is defined in this Section and in the definitions Section for an Article of this Chapter, the Article-specific definition shall apply.

1. "Act" means the Clean Air Act of 1963 (P.L. 88-206; 42 U.S.C. 7401 through 7671q) as amended through December 31, 2011 (and no future editions).
2. "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in subsections (2)(a) through (e), except that this definition shall not apply for calculating whether a significant emissions increase as defined in R18-2-401 has occurred, or for establishing a plantwide applicability limitation as defined in R18-2-401. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
 - a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.
 - b. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
 - c. For any emissions unit that is or will be located at a source with a Class I permit source that and has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit on that date.
 - d. For any emissions unit that is or will be located at a source with a Class II permit source that and has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.
 - e. This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
3. "Administrator" means the Administrator of the United States Environmental Protection Agency.
4. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.
5. "Affected source" means a source that includes one or more units which are subject to emission reduction requirements or limitations under Title IV of the Act.
6. "Affected state" means any state whose air quality may be affected by a source applying for a permit, permit revision, or permit renewal and that is contiguous to Arizona or that is within 50 miles of the permitted source.
7. "Afterburner" means an incinerator installed in the secondary combustion chamber or stack for the purpose of incinerating smoke, fumes, gases, unburned carbon, and other combustible material not consumed during primary combustion.
8. "Air contaminants" means smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.
9. "Air curtain destructor" means an incineration device designed and used to secure, by means of a fan-generated air curtain, controlled combustion of only wood waste and slash materials in an earthen trench or refractory-lined pit or bin.
10. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director. A.R.S. § 49-421(2).
11. "Air pollution control equipment" means equipment used to eliminate, reduce or control the emission of air pollutants into the ambient air.



Appendix 2

Notice of Final Rulemaking

25 A.A.R. 888 (Apr. 12, 2019)

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Secretary
of State

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An air pollution Stage II *warning* will be declared in the event that air pollution warning levels occur and are expected to continue or recur within 24 hours. ADEQ will also declare a warning stage if air pollution alert levels persist for 48 hours with no improvement in air quality. For automotive related pollutants, ADEQ will request that schools, industry, businesses, and government facilities restrict motor vehicle traffic as much as possible. For other pollutants, ADEQ will request that applicable sources further reduce emissions of the pollutant that is subject to the warning. Delegated authorities will make a similar request for sources under their jurisdiction.

For Stage III, if exceedances at the emergency air pollution level occur and are expected to continue or recur within 24 hours, or if warning levels persist for 48 hours and conditions are not expected to improve, an air pollution *emergency* will be declared. At the emergency air pollution level, ADEQ will notify the Governor's Office. The Governor may request that all industrial, construction, commercial, governmental, and institutional facilities be closed. The use of motor vehicles may be prohibited except for emergency situations that have been approved by law enforcement.

This rule incorporates by reference the August 2018 Final Procedures Manual titled "Procedures for Prevention of Emergency Episodes", which is on file at ADEQ. The procedures manual is being revised as part of this rulemaking; however, the manual is not included in the rule language. The procedures manual contains the processes that ADEQ must follow in the event of an air pollution emergency episode. These processes outline the preparations and response techniques for public notification and informing emission sources of relevant information regarding the pollutant of a given air pollution emergency episode. These preplanned strategies are designed to minimize the cost and effort required of regulated entities, while simultaneously curtailing emissions. Successful implementation of the strategies according to the episode stages outlined in the rule expedite emission curtailment and prevent pollution concentrations from reaching levels that may cause significant harm to public health.

Background.

Fine particulate matter (PM_{2.5}) is able to travel deep into the respiratory tract, reaching the lungs. Exposure to PM_{2.5} can cause short-term health effects such as eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Exposure can also affect lung function and worsen medical conditions such as asthma and heart disease. Scientific studies have linked increases in daily PM_{2.5} exposure with increased respiratory and cardiovascular hospital admissions, emergency department visits and deaths. Studies suggest that long-term exposure to fine particulate matter may be associated with increased rates of chronic bronchitis, reduced lung function and increased mortality from lung cancer and heart disease. People with breathing and heart problems, children and the elderly may be particularly sensitive to PM_{2.5}. To protect human health, EPA sets National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, including PM.

In July 1997 EPA promulgated revisions to the PM NAAQS by adding a new standard for PM_{2.5}. Due to the potential health effects associated with long- and short-term exposure to PM_{2.5}, EPA set an annual and a 24-hour PM_{2.5} standard. The 1997 primary annual PM_{2.5} standard was set as the annual arithmetic mean, averaged over 3 years, at 15 micrograms per cubic meter (µg/m³). The primary 24-hour standard was set at 65 µg/m³, the annual 98th percentile of daily (24-hour) values, averaged over three years (62 FR 38652, July 18, 1997).

In 2006 EPA revised the PM_{2.5} NAAQS and lowered the 24-hour average standard from 65 to 35 µg/m³ and retained the level of the annual primary standard (71 FR 61144, October 17, 2006).

On January 15, 2013 EPA again revised the NAAQS for PM_{2.5}, this time lowering the annual standard to 12.0 µg/m³ in order to provide increased protection against health effects associated with long- and short-term exposures (78 FR 3086, January 15, 2013). EPA retained the 24-hour PM_{2.5} standard at a level of 35 µg/m³.

Within three years following the promulgation of new or revised NAAQS, Clean Air Act (CAA) Section 110(a)(1) requires states to submit State Implementation Plans (SIPs) that provide for implementation, maintenance, and enforcement of the standards. These SIPs, also called infrastructure SIPs (I-SIP), must address certain basic elements of its air quality management programs under CAA Section 110(a)(2). These elements, detailed in CAA Sections 110(a)(2)(A) through (M), include provisions for monitoring, emissions inventories, and modeling designed to ensure attainment and maintenance of the NAAQS.

On December 11, 2015 ADEQ submitted the 2012 PM_{2.5} NAAQS I-SIP to EPA to satisfy requirements for CAA Sections 110(a)(1) and 110(a)(2). The SIP fulfills most of the requirements; however, EPA indicated that CAA Section 110(a)(2)(G) was not approvable. CAA Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs, which are contained in A.A.C. R18-2-220.

Currently, A.A.C. R18-2-220 does not contain the averaging time and emergency episode concentrations for PM_{2.5}. If ADEQ does not revise A.A.C. R18-2-220 to include PM_{2.5}, EPA will take formal action to disapprove those portions of the I-SIP, which can lead to the promulgation of a federal implementation plan (FIP) by the EPA under CAA Section 110(c)(1). A FIP contains requirements that are dictated and enforced by EPA, which can include prohibition of highway funds and emission offset requirements for certain emission sources.

Section by Section Explanation of Proposed Rules:

This proposed rulemaking will amend A.A.C. R18-2-220, Air Pollution Emergency Episodes, to update the State rule to include the air pollution emergency episode levels for PM_{2.5}. This rulemaking will bring Arizona's standards into conformity with federal rules and is required under Section 110(a)(2) of the Clean Air Act (CAA).

R18-2-220(A) This section provides the requirement for procedures to be implemented by the ADEQ Director that will



prevent the occurrence of levels of pollution that would cause significant harm to the public. It provides the incorporation by reference to ADEQ's "Procedures for Prevention of Emergency Episodes." The change revises the date of the Procedures Manual to incorporate by reference the revised manual.

R18-2-220(B)(4) This subsection provides the summary of the emergency episode and significant harm levels (in tabular format) for the pollutants subject to this rule. The changes add PM_{2.5} to the table, which includes the averaging time as well as the concentrations for the alert, warning, emergency, and significant harm levels.

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

Not applicable

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

Not applicable

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

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement (ESBCIS) under A.R.S. § 41-1055.

An identification of the rulemaking.

The rulemaking addressed by this ESBCIS amends A.A.C. R18-2-220, Air Pollution Emergency Episodes. This rulemaking will adopt language identifying the pollutant, averaging time, as well as the emergency episode and significant harm levels for fine particulate matter, as revised and adopted by EPA.

An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking.

The persons who will be directly affected by and bear the costs of this rulemaking are the governmental agencies responsible for the declaration and public and industry notification of air pollution episodes. Companies and/or activities that emit pollutants subject to A.A.C. R18-2-220 would also be affected by this rulemaking. These include (but may not be limited to): burn permits, power plants, smelters, manufacturing facilities, building construction, and highway construction.

The persons who will benefit from this rulemaking are the residents of Arizona as a result of the notifications that would occur in the event of an air quality emergency episode and receive critical information regarding actions to take in order to limit their exposure to air pollution.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

ADEQ estimates that the current number of full-time employees assigned in the Air Quality Division at ADEQ are adequate to implement and enforce the notifications, air quality monitoring, and forecasting for air pollution emergency episodes. The cost of the rule to the implementing agency will therefore be minimal.

ADEQ has jurisdiction for air quality planning, permitting, monitoring and forecasting in most areas of Arizona. Maricopa County will be revising its emergency episodes rule and will conduct rulemakings to incorporate the new standards for PM_{2.5}. The costs and benefits will be similar for Maricopa County as for ADEQ.

Pima and Pinal Counties are delegated air quality planning authorities for areas within their jurisdictions. The West Central Pinal Moderate PM_{2.5} Nonattainment Area was designated under the 2006 PM_{2.5} NAAQS but was designated as unclassifiable/attainment for the 2012 PM_{2.5} NAAQS along with the rest of the state.

Air quality monitoring in Pima and Pinal Counties shows that there have been no exceedances of the 2012 PM_{2.5} NAAQS. At this time, EPA is not requiring Pima and Pinal Counties to revise their emergency episodes rules to comply with infrastructure requirements for the 2012 PM_{2.5} NAAQS. However, EPA has recommended that the counties revise their emergency episodes rules to align with the 2012 PM_{2.5} NAAQS.

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

In the event of an air pollution emergency episode, ADEQ expects overall costs to vary by the air pollution episode stage due to the level of preparation for each of the stage and the specific political subdivisions affected, which includes counties with air pollution control programs (as noted in previous section). Political subdivisions that may be affected include (but are not limited to) metropolitan planning organizations, irrigation districts, and school districts. Any costs borne by these entities would likely result from implementation of emission reduction strategies. It is unlikely that any of these entities are primary sources of any of the gaseous (i.e. sulfur dioxide, VOCs) precursors to PM_{2.5} pollution. As a result they may implement minor yet effective strategies, such as reducing vehicular traffic from their operations or through alternative modes of travel for employees. As a result, the costs borne by these entities would be minimal.

This rulemaking will provide public health protection from temporary high levels of PM_{2.5} pollution. Additionally, this rulemaking prevents the State from being susceptible to a FIP enforced by EPA under the CAA.

(c) The probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect

**on the revenues or payroll expenditures of employers who are subject to the rulemaking.**

The rules being amended are necessary to comply with federal requirements under Section 110(a)(2) of the CAA. These revisions are necessary to avoid disapproval of the Infrastructure State Implementation Plan (I-SIP) for the 2012 PM_{2.5} NAAQS. Disapproval of the I-SIP will result in the issuance of a FIP by the EPA under Section 110(c)(1) of the CAA, which can include prohibition of highway funds and emission offset requirements for certain emission sources.

Pollutants currently regulated by A.A.C. R18-2-220 include carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), coarse particulate matter (PM₁₀), and sulfur dioxide (SO₂). Businesses that emit these pollutants that are already subject to this rule may include (but are not limited to) coal- and oil-fired electric and steam power generating facilities, primary and secondary metals, petroleum refining, chemical processing, mineral processing, and glass processing. This rulemaking incorporates PM_{2.5} to the air pollution emergency episodes rule; subsequently, businesses that emit PM_{2.5} will be subject to the rule.

Potential costs will vary according to the level of the pollution episode and the pollutant. Any costs incurred by a business (such as reducing or prohibiting vehicular traffic, reducing production, or closing facilities) would be temporary and extend only through the duration of the episode.

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

ADEQ anticipates that employment impacts will be minor. Because the low potential for an air pollution emergency to occur, ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this rulemaking. No sources are expected to close from the implementation of this rulemaking. Any reductions in production would occur only during the term of the air pollution emergency episode.

A statement of the probable impact of the rulemaking on small businesses.**(a) An identification of the small businesses subject to the rulemaking.**

Under A.R.S. § 41-1001(21): “Small business” means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

Only businesses emitting pollutants subject to this rule would be directly affected by the declaration of an air pollution emergency episode. It is unlikely that small businesses would emit enough pollutants to contribute to a PM_{2.5} emergency episode and therefore will likely not be requested to limit or cease production.

(b) The administrative and other costs required for compliance with the rulemaking.

Not applicable.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.**(i) Establishing less costly compliance requirements in the rulemaking for small businesses.**

Not applicable.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rulemaking.

Not applicable.

(iii) Exempting small businesses from any or all requirements of the rulemaking.

Not applicable.

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

Any costs that would be borne by private persons and consumers (i.e. the general public) would be potentially the result of an employer limiting production to reduce emissions or shutting down during the term of the air pollution emergency episode. Because of the extreme unlikelihood of the declaration of an air pollution episode, it is unlikely that the general public will be affected.

The general public will benefit from this rulemaking through the avoidance of or reductions in air pollution resulting from a declared air pollution emergency episode. Air quality regulations that lower concentrations of pollutants have the potential to reduce adverse health effects ranging from missed school and work days to premature mortality. Persons with compromised health (physiological, morphological, and biochemical) are more susceptible to the harmful effects of air pollutants. In the event that an air pollution episode is declared, the public will be notified and will be informed of the episode level and information will be provided actions to take that will minimize exposure to the pollutant that is subject to the episode.

A statement of the probable effect on state revenues.

Due to the low probability for an air pollution emergency episode to be declared, ADEQ does not expect any effects on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking, which is compliance with the federal requirements for Sections 110(a)(1) and (2) of the CAA and federal Guidance for SIP Elements under the aforementioned CAA Sections. As a result, the amendments to A.A.C. R18-2-220 are required as a part of Arizona's PM_{2.5} Infrastructure State Implementation Plan.



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

Not applicable.

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

No changes were made to the rules between the proposed rulemaking and the final rulemaking.

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

No oral or written comments were received.

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

There are no matters prescribed by Arizona statute applicable specifically to ADEQ or this specific rulemaking.

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

The rule does not inherently require a permit. Any facility subject to a permit is already covered under Title V of the Clean Air Act and ADEQ's permitting program.

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

This rule allows Arizona to comply with CAA Sections 110(a)(1) and (2). The rule incorporates federal regulations but is not more stringent than federal law. The revisions are necessary in order for Arizona to avoid disapproval of the 2012 PM2.5 I-SIP and imposition of a FIP.

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

No person submitted an analysis to ADEQ.

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

Not applicable

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

Not applicable

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-220. ~~Air pollution~~ **Pollution** ~~emergency~~ **Emergency** ~~episodes~~ **Episodes**

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-220. ~~Air pollution~~ **Pollution ~~emergency~~ **Emergency** ~~episodes~~ **Episodes****

A. Procedures shall be implemented by the Director in order to prevent the occurrence of ambient air pollutant concentrations which would cause significant harm to the health of persons, as specified in subsection (B)(4). The procedures and actions required for each stage are described in the Department's "Procedures for Prevention of Emergency Episodes," amended as of ~~October 18, 1988~~ **August 2018** (and no future edition), which is incorporated herein by reference and on file with the ~~Office of the Secretary of State~~ **Department**.

B. No change

1. No change
2. No change
3. No change
4. Summary of emergency episode and significant harm levels:



Pollutant	Averaging Time	Alert	Warning	Emergency	Significant Harm
Carbon monoxide (mg/m ³)	1-hr	--	--	--	144
	4-hr	--	--	--	86.3
	8-hr	17	34	46	57.5
Nitrogen dioxide (µg/m ³)	1-hr	1,130	2,260	3,000	3,750
	24-hr	282	565	750	938
Ozone (ppm)	1-hr	.2	.4	.5	.6
<u>PM_{2.5} (µg/m³)</u>	<u>24-hr</u>	<u>140.5</u>	<u>210.5</u>	<u>280.5</u>	<u>350.5</u>
PM ₁₀ (µg/m ³)	24-hr	350	420	500	600
Sulfur dioxide (µg/m ³)	24-hr	800	1,600	2,100	2,620

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

R18-2-101. Definitions

The following definitions apply to this Chapter. Where the same term is defined in this Section and in the definitions Section for an Article of this Chapter, the Article-specific definition shall apply.

1. "Act" means the Clean Air Act of 1963 (P.L. 88-206; 42 U.S.C. 7401 through 7671q) as amended through December 31, 2011 (and no future editions).
2. "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in subsections (2)(a) through (e), except that this definition shall not apply for calculating whether a significant emissions increase as defined in R18-2-401 has occurred, or for establishing a plantwide applicability limitation as defined in R18-2-401. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
 - a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.
 - b. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
 - c. For any emissions unit that is or will be located at a source with a Class I permit and has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit on that date.
 - d. For any emissions unit that is or will be located at a source with a Class II permit and has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.
 - e. This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
3. "Administrator" means the Administrator of the United States Environmental Protection Agency.
4. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.
5. "Affected source" means a source that includes one or more units which are subject to emission reduction requirements or limitations under Title IV of the Act.
6. "Affected state" means any state whose air quality may be affected by a source applying for a permit, permit revision, or permit renewal and that is contiguous to Arizona or that is within 50 miles of the permitted source.
7. "Afterburner" means an incinerator installed in the secondary combustion chamber or stack for the purpose of incinerating smoke, fumes, gases, unburned carbon, and other combustible material not consumed during primary combustion.
8. "Air contaminants" means smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.
9. "Air curtain destructor" means an incineration device designed and used to secure, by means of a fan-generated air curtain, controlled combustion of only wood waste and slash materials in an earthen trench or refractory-lined pit or bin.
10. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director. A.R.S. § 49-421(2).
11. "Air pollution control equipment" means equipment used to eliminate, reduce or control the emission of air pollutants into the ambient air.
12. "Air quality control region" (AQCR) means an area so designated by the Administrator pursuant to Section 107 of the Act and includes the following regions in Arizona:
 - a. Maricopa Intrastate Air Quality Control Region which is comprised of the County of Maricopa.
 - b. Pima Intrastate Air Quality Control Region which is comprised of the County of Pima.
 - c. Northern Arizona Intrastate Air Quality Control Region which encompasses the counties of Apache, Coconino, Navajo, and Yavapai.
 - d. Mohave-Yuma Intrastate Air Quality Control Region which encompasses the counties of La Paz, Mohave, and Yuma.
 - e. Central Arizona Intrastate Air Quality Control Region which encompasses the counties of Gila and Pinal.
 - f. Southeast Arizona Intrastate Air Quality Control Region which encompasses the counties of Cochise, Graham, Greenlee, and Santa Cruz.
13. "Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:
 - a. The applicable standards as set forth in 40 CFR 60, 61 and 63;
 - b. The applicable emissions limitations approved into the state implementation plan, including those with a future compliance date; or,
 - c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
14. "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
15. "Applicable implementation plan" means those provisions of the state implementation plan approved by the Administrator or a federal implementation plan promulgated for Arizona or any portion of Arizona in accordance with Title I of the Act.
16. "Applicable requirement" means any of the following:
 - a. Any federal applicable requirement.

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- b. Any other requirement established pursuant to this Chapter or A.R.S. Title 49, Chapter 3.
17. "Arizona Testing Manual" means sections 1 and 7 of the Arizona Testing Manual for Air Pollutant Emissions amended as of March 1992 (and no future editions).
18. "ASTM" means the American Society for Testing and Materials.
19. "Attainment area" means any area that has been identified in regulations promulgated by the Administrator as being in compliance with national ambient air quality standards.
20. "Begin actual construction" means, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. With respect to a change in method of operation this term refers to those onsite activities, other than preparatory activities, which mark the initiation of the change.
- a. For purposes of title I, parts C and D and section 112 of the clean air act, and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures but do not include any of the following, subject to subsection (20)(c):
- i. Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.
 - ii. Installation of access roads, driveways and parking lots.
 - iii. Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.
 - iv. Ordering and onsite storage of materials and equipment.
- b. For purposes other than those identified in subsection (20)(a), these activities do not include any of the following, subject to subsection (20)(c):
- i. Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.
 - ii. Installation of access roads, parking lots, driveways and storage areas.
 - iii. Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impacts the design of any emissions unit or associated air pollution control equipment.
 - iv. Ordering and onsite storage of materials and equipment.
 - v. Installation of underground pipework, including water, sewer, electric and telecommunications utilities.
 - vi. Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impacts the design of any emissions unit or associated air pollution control equipment.
- c. An applicant's performance of any activities that are excluded from the definition of "begin actual construction" under subsection (20)(a) or (b) shall be at the applicant's risk and shall not reduce the applicant's obligations under this Chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under subsection (20)(a) or (b) had not occurred. A.R.S. § 49-401.01(7).
21. "Best available control technology" (BACT) means an emission limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major source or major modification, taking into account energy, environmental, and economic impact and other costs, determined by the Director in accordance with R18-2-406(A)(4) to be achievable for such source or modification.
22. "Btu" means British thermal unit, which is the quantity of heat required to raise the temperature of one pound of water 1°F.
23. "Categorical sources" means the following classes of sources:
- a. Coal cleaning plants with thermal dryers;
 - b. Kraft pulp mills;
 - c. Portland cement plants;
 - d. Primary zinc smelters;
 - e. Iron and steel mills;
 - f. Primary aluminum ore reduction plants;
 - g. Primary copper smelters;
 - h. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - i. Hydrofluoric, sulfuric, or nitric acid plants;
 - j. Petroleum refineries;
 - k. Lime plants;
 - l. Phosphate rock processing plants;
 - m. Coke oven batteries;
 - n. Sulfur recovery plants;
 - o. Carbon black plants using the furnace process;
 - p. Primary lead smelters;
 - q. Fuel conversion plants;
 - r. Sintering plants;
 - s. Secondary metal production plants;
 - t. Chemical process plants, which shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System codes 325193 or 312140;
 - u. Fossil-fuel boilers, combinations thereof, totaling more than 250 million Btus per hour heat input;
 - v. Petroleum storage and transfer units with a total storage capacity more than 300,000 barrels;
 - w. Taconite ore processing plants;
 - x. Glass fiber processing plants;
 - y. Charcoal production plants;
 - z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btus per hour heat input.
24. "Categorically exempt activities" means any of the following:
- a. Any combination of diesel-, natural gas- or gasoline-fired engines with cumulative power equal to or less than 145 horsepower.
 - b. Natural gas-fired engines with cumulative power equal to or less than 155 horsepower.

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- c. Gasoline-fired engines with cumulative power equal to or less than 200 horsepower.
- d. Any of the following emergency or stand-by engines used for less than 500 hours in each calendar year, provided the permittee keeps records documenting the hours of operation of the engines:
- i. Any combination of diesel-, natural gas- or gasoline-fired emergency engines with cumulative power equal to or less than 2,500 horsepower.
 - ii. Natural gas-fired emergency engines with cumulative power equal to or less than 2,700 horsepower.
 - iii. Gasoline-fired emergency engines with cumulative power equal to or less than 3,700 horsepower.
- e. Any combination of boilers with a cumulative maximum design heat input capacity of less than 10 million Btu/hr.
25. "CFR" means the Code of Federal Regulations, amended as of July 1, 2011, (and no future editions), with standard references in this Chapter by Title and Part, so that "40 CFR 51" means Title 40 of the Code of Federal Regulations, Part 51.
26. "Charge" means the addition of metal bearing materials, scrap, or fluxes to a furnace, converter or refining vessel.
27. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, that was not in widespread use as of November 15, 1990.
28. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy - Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.
29. "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D-388-91, (Classification of Coals by Rank).
30. "Combustion" means the burning of matter.
31. "Commence" means, as applied to construction of a source, or a major modification as defined in Article 4 of this Chapter, that the owner or operator has all necessary preconstruction approvals or permits and either has:
- a. Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or
 - b. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
32. "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, which would result in a change in emissions.
33. "Continuous monitoring system" means a CEMS, CERMS, or CPMS.
34. "Continuous emissions monitoring system" or "CEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and provide, on a continuous basis, a permanent record of emissions.
35. "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
36. "Continuous parameter monitoring system" or "CPMS" means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process or control device operational parameters (for example, control device secondary voltages and electric currents) or other information (for example, gas flow rate, O₂ or CO₂ concentrations) and to provide, on a continuous basis, a permanent record of monitored values.
37. "Controlled atmosphere incinerator" means one or more refractory-lined chambers in which complete combustion is promoted by recirculation of gases by mechanical means.
38. "*Conventional air pollutant*" means any pollutant for which the Administrator has promulgated a primary or secondary national ambient air quality standard. A.R.S. § 49-401.01(12).
39. "*Department*" means the Department of Environmental Quality. A.R.S. § 49-101(2)
40. "*Director*" means the director of environmental quality who is also the director of the department. A.R.S. § 49-101(3)
41. "Discharge" means the release or escape of an effluent from a source into the atmosphere.
42. "Dust" means finely divided solid particulate matter occurring naturally or created by mechanical processing, handling or storage of materials in the solid state.
43. "Dust suppressant" means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.
44. "Effluent" means any air contaminant which is emitted and subsequently escapes into the atmosphere.
45. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
46. "Emission" means an air contaminant or gas stream, or the act of discharging an air contaminant or a gas stream, visible or invisible.
47. "Emission standard" or "emission limitation" means a requirement established by the state, a local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
48. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant and includes an electric steam generating unit.
49. "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demon-

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- strated under R18-2-311(D) to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
50. "Excess emissions" means emissions of an air pollutant in excess of an emission standard as measured by the compliance test method applicable to such emission standard.
51. "Federal applicable requirement" means any of the following (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):
- a. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52.
 - b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act.
 - c. Any standard or other requirement under section 111 of the Act, including 111(d).
 - d. Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act.
 - e. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder and incorporated pursuant to R18-2-333.
 - f. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act.
 - g. Any standard or other requirement governing solid waste incineration, under section 129 of the Act.
 - h. Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act.
 - i. Any standard or other requirement for tank vessels under section 183(f) of the Act.
 - j. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act.
 - k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit.
 - l. Any national ambient air quality standard or maximum increase allowed under R18-2-218 or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.
52. "Federal Land Manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.
53. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator under the Act, including all of the following:
- a. The requirements of the new source performance standards and national emission standards for hazardous air pollutants.
 - b. The requirements of such other state or county rules or regulations approved by the Administrator, including the requirements of state and county operating and new source review permit and registration programs that have been approved by the Administrator. Notwithstanding this subsection, the condition of any permit or registration designated as being enforceable only by the state is not federally enforceable.
 - c. The requirements of any applicable implementation plan.
 - d. Emissions limitations, controls, and other requirements, and any associated monitoring, recordkeeping, and reporting requirements that are included in a permit pursuant to R18-2-306.01 or R18-2-306.02.
54. "Federally listed hazardous air pollutant" means a pollutant listed pursuant to R18-2-1701(9).
55. "Final permit" means the version of a permit issued by the Department after completion of all review required by this Chapter.
56. "Fixed capital cost" means the capital needed to provide all the depreciable components.
57. "Fuel" means any material which is burned for the purpose of producing energy.
58. "Fuel burning equipment" means any machine, equipment, incinerator, device or other article, except stationary rotating machinery, in which combustion takes place.
59. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
60. "Fume" means solid particulate matter resulting from the condensation and subsequent solidification of vapors of melted solid materials.
61. "Fume incinerator" means a device similar to an afterburner installed for the purpose of incinerating fumes, gases and other finely divided combustible particulate matter not previously burned.
62. "Good engineering practice (GEP) stack height" means a stack height meeting the requirements described in R18-2-332.
63. "Hazardous air pollutant" means any federally listed hazardous air pollutant.
64. "Heat input" means the quantity of heat in terms of Btus generated by fuels fed into the fuel burning equipment under conditions of complete combustion.
65. "Incinerator" means any equipment, machine, device, contrivance or other article, and all appurtenances thereof, used for the combustion of refuse, salvage materials or any other combustible material except fossil fuels, for the purpose of reducing the volume of material.
66. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.
67. "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.
68. "Insignificant activity" means any of the following activities:
- a. Liquid Storage and Piping
 - i. Petroleum product storage tanks containing the following substances, provided the applicant lists and identifies the contents of each tank with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such tank: diesel fuels and fuel oil in storage tanks with capacity of 40,000 gallons or less, lubricating oil, transformer oil, and used oil.

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- ii. Gasoline storage tanks with capacity of 10,000 gallons or less.
 - iii. Storage and piping of natural gas, butane, propane, or liquified petroleum gas, provided the applicant lists and identifies the contents of each stationary storage vessel with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such vessel.
 - iv. Piping of fuel oils, used oil and transformer oil, provided the applicant includes a system description.
 - v. Storage and handling of drums or other transportable containers where the containers are sealed during storage, and covered during loading and unloading, including containers of waste and used oil regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992(k). Permit applicants must provide a description of material in the containers and the approximate amount stored.
 - vi. Storage tanks of any size containing exclusively soaps, detergents, waxes, greases, aqueous salt solutions, aqueous solutions of acids that are not regulated air pollutants, or aqueous caustic solutions, provided the permit applicant specifies the contents of each storage tank with a volume of 350 gallons or more.
 - vii. Electrical transformer oil pumping, cleaning, filtering, drying and the re-installation of oil back into transformers.
- b. Internal combustion engine-driven compressors, internal combustion engine-driven electrical generator sets, and internal combustion engine-driven water pumps used for less than 500 hours per calendar year for emergency replacement or standby service, provided the permittee keeps records documenting the hours of operation of this equipment.
- c. Low Emitting Processes
- i. Batch mixers with rated capacity of 5 cubic feet or less.
 - ii. Wet sand and gravel production facilities that obtain material from subterranean and subaqueous beds, whose production rate is 200 tons/hour or less, and whose permanent in-plant roads are paved and cleaned to control dust. This does not include activities in emissions units which are used to crush or grind any non-metallic minerals.
 - iii. Powder coating operations.
 - iv. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
 - v. Blast-cleaning equipment using a suspension of abrasive in water and any exhaust system or collector serving them exclusively.
 - vi. Plastic pipe welding.
- d. Site Maintenance
- i. Housekeeping activities and associated products used for cleaning purposes, including collecting spilled and accumulated materials at the source, including operation of fixed vacuum cleaning systems specifically for such purposes.
 - ii. Sanding of streets and roads to abate traffic hazards caused by ice and snow.
 - iii. Street and parking lot striping.
 - iv. Architectural painting and associated surface preparation for maintenance purposes at industrial or commercial facilities.
- e. Sampling and Testing
- i. Noncommercial (in-house) experimental, analytical laboratory equipment which is bench scale in nature, including quality control/quality assurance laboratories supporting a stationary source and research and development laboratories.
 - ii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units.
- f. Ancillary Non-Industrial Activities
- i. General office activities, such as paper shredding, copying, photographic activities, and blueprinting, but not to include incineration.
 - ii. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use.
 - iii. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.
- g. Miscellaneous Activities
- i. Installation and operation of potable, process and waste water observation wells, including drilling, pumping, filtering apparatus.
 - ii. Transformer vents.
69. "Kraft pulp mill" means any stationary source which produces pulp from wood by cooking or digesting wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.
70. "Lead" means elemental lead or alloys in which the predominant component is lead.
71. "Lime hydrator" means a unit used to produce hydrated lime product.
72. "Lime plant" includes any plant which produces a lime product from limestone by calcination. Hydration of the lime product is also considered to be part of the source.
73. "Lime product" means any product produced by the calcination of limestone.
74. "Major modification" is defined as follows:
- a. A major modification is any physical change in or change in the method of operation of a major source that would result in both a significant emissions increase of any regulated NSR pollutant and a significant net emissions increase of that pollutant from the stationary source.
 - b. Any emissions increase or net emissions increase that is significant for nitrogen oxides or volatile organic compounds is significant for ozone.
 - c. For the purposes of this definition, none of the following is a physical change or change in the method of operation:
 - i. Routine maintenance, repair, and replacement;
 - ii. Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act.

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- dination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 - 825r;
- iii. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
 - iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - v. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, any of the following:
 - (1) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976 under 40 CFR 52.21 or under Articles 3 or 4 of this Chapter; or
 - (2) Use of an alternative fuel or raw material by a stationary source that the source is approved to use under any permit issued under R18-2-403;
 - (3) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 21, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - vi. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, any of the following:
 - (1) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition established after January 6, 1975 under 40 CFR 52.21 or under Articles 3 or 4 of this Chapter;
 - (2) Use of an alternative fuel or raw material by a stationary source that the source is approved to use under any permit issued under 40 CFR 52.21, or under R18-2-406; or
 - (3) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after January 6, 1975, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - vii. Any change in ownership at a stationary source;
 - viii. [Reserved.]
 - ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
 - (1) The SIP, and
 - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
 - x. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis; and
 - xi. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
- d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major source is complying with the requirements of R18-2-412 for a PAL for that regulated NSR pollutant. Instead, the definition of PAL major modification in R18-2-401(20) shall apply.
75. "Major source" means:
- a. A major source as defined in R18-2-401.
 - b. A major source under section 112 of the Act:
 - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emission 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
 - ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
 - c. A major stationary source, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to a section 302(j) category.
76. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment or a process to operate in a normal and usual manner, but does not include failures that are caused by poor maintenance, careless operation or any other upset condition or equipment breakdown which could have been prevented by the exercise of reasonable care.
77. "Minor source" means a source of air pollution which is not a major source for the purposes of Article 4 of this Chapter and over which the Director, acting pursuant to A.R.S. § 49-402(B), has asserted jurisdiction.
78. "Minor source baseline area" means the air quality control region in which the source is located.

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79. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest. A.R.S. § 49-401.01(23).
80. "Modification" or "modify" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:
- A physical or operational change does not include routine maintenance, repair or replacement.
 - An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any permit condition that is legally and practically enforceable by the department.
 - A change in ownership at a source is not considered a modification. A.R.S. § 49-401.01(24).
81. "Monitoring device" means the total equipment, required under the applicable provisions of this Chapter, used to measure and record, if applicable, process parameters.
82. "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on public highways.
83. "Multiple chamber incinerator" means three or more refractory-lined combustion chambers in series, physically separated by refractory walls and interconnected by gas passage ports or ducts.
84. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.
85. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the Administrator pursuant to section 109 of the Act. A.R.S. § 49-401.01(25).
86. "National emission standards for hazardous air pollutants" or "NESHAP" means standards adopted by the Administrator under section 112 of the Act.
87. "Necessary preconstruction approvals or permits" means those permits or approvals required under the Act and those air quality control laws and rules which are part of the SIP.
88. "Net emissions increase" means:
- The amount by which the sum of subsections (88)(a)(i) and (ii) exceeds zero:
 - The increase in emissions of a regulated NSR pollutant from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to R18-2-402(D); and
 - Any other increases and decreases in actual emissions of the regulated NSR pollutant at the source that are contemporaneous with the particular change and are otherwise creditable.
 - For purposes of calculating increases and decreases in actual emissions under subsection (88)(a)(ii), baseline actual emissions shall be determined as provided in the definition of baseline actual emissions in R18-2-401(2), except that R18-2-401(2)(a)(iii) and (b)(iv) shall not apply.
 - An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - The date five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction of the particular change begins, whichever occurs earlier, and
 - The date that the increase from the particular change occurs.
 - For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, an increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit or permit revision under R18-2-403, which permit is in effect when the increase in actual emissions from the particular change occurs. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, an increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit under R18-2-406, which permit is in effect when the increase in actual emissions from the particular change occurs.
 - An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, PM₁₀, or PM_{2.5} which occurs before the applicable minor source baseline date, as defined in R18-2-218, is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
 - An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
 - A decrease in actual emissions is creditable only to the extent that it satisfies all of the following conditions:
 - The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
 - It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
 - It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
 - The emissions unit was actually operated and emitted the specific pollutant.
 - For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, the Director has not relied on it in issuing any permit, permit revision, or registration under Article 4, R18-2-302.01, or R18-2-334, and the state has not relied on it in demonstrating attainment or reasonable further progress.
 - An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit, as defined in R18-2-401(24), that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
 - Subsection (2)(a) shall not apply for determining creditable increases and decreases.

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- 89. "New source" means any stationary source of air pollution which is subject to a new source performance standard.
- 90. "New source performance standards" or "NSPS" means standards adopted by the Administrator under section 111(b) of the Act.
- 91. "Nitric acid plant" means any facility producing nitric acid 30% to 70% in strength by either the pressure or atmospheric pressure process.
- 92. "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in the Appendices to 40 CFR 60.
- 93. "Nonattainment area" means an area so designated by the Administrator acting pursuant to section 107 of the Act as exceeding national primary or secondary ambient air standards for a particular pollutant or pollutants.
- 94. "Nonpoint source" means a source of air contaminants which lacks an identifiable plume or emission point.
- 95. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
- 96. "Operation" means any physical or chemical action resulting in the change in location, form, physical properties, or chemical character of a material.
- 97. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source.
- 98. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.
- 99. "Particulate matter emissions" means all finely divided solid or liquid materials other than uncombined water, emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
- 100. "Permitting authority" means the department or a county department, agency or air pollution control district that is charged with enforcing a permit program adopted pursuant to A.R.S. § 49-480(A). A.R.S. § 49-401.01(28).
- 101. "Permitting exemption thresholds" for a regulated minor NSR pollutant means the following:

Regulated Air Pollutant	Emission Rate in tons per year (TPY)
PM _{2.5} (primary emissions only; levels for precursors are set below)	5
PM ₁₀	7.5
SO ₂	20
NO _x	20
VOC	20
CO	50
Pb	0.3
- 104. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53.
- 105. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53.
- 106. "PM₁₀ emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
- 107. "Plume" means visible effluent.
- 108. "Pollutant" means an air contaminant the emission or ambient concentration of which is regulated pursuant to this Chapter.
- 109. "Portable source" means any stationary source that is capable of being operated at more than one location.
- 110. "Potential to emit" or "potential emission rate" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is legally and practically enforceable by the Department or a county under A.R.S. Title 49, Chapter 3; any rule, ordinance, order or permit adopted or issued under A.R.S. Title 49, Chapter 3 or the state implementation plan.
- 111. "Predictive Emissions Monitoring System" or "PEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.
- 112. "Primary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary, with an adequate margin of safety, to protect the public health, as specified in Article 2 of this Chapter.
- 113. "Process" means one or more operations, including equipment and technology, used in the production of goods or services or the control of by-products or waste.
- 114. "Project" means a physical change in, or change in the method of operation of, an existing major source.
- 115. "Proposed final permit" means the version of a Class I permit or Class I permit revision that the Department proposes to issue and forwards to the Administrator for review in compliance with R18-2-307(A). A proposed final permit constitutes a final and enforceable authorization to begin actual construction of, but not to operate, a new Class I source or a modification to a Class I source.
- 116. "Proposed permit" means the version of a permit for which the Director offers public participation under R18-2-330 or affected state review under R18-2-307(D).
- 117. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with com-

- 102. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.
- 103. "Planning agency" means an organization designated by the governor pursuant to 42 U.S.C. 7504. A.R.S. § 49-401.01(29).

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- mencing commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
- a. Has not been in operation for the two-year period before enactment of the Clean Air Act Amendments of 1990, and the emissions from the unit continue to be carried in the Director's emissions inventory at the time of enactment;
 - b. Was equipped before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
 - c. Is equipped with low-NO_x burners before commencement of operations following reactivation; and
 - d. Is otherwise in compliance with the Act.
118. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.
119. "Reasonably available control technology" (RACT) means devices, systems, process modifications, work practices or other apparatus or techniques that are determined by the Director to be reasonably available taking into account:
- a. The necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;
 - b. The social, environmental, energy and economic impact of the controls;
 - c. Control technology in use by similar sources; and
 - d. The capital and operating costs and technical feasibility of the controls.
120. "Reclaiming machinery" means any machine, equipment device or other article used for picking up stored granular material and either depositing this material on a conveyor or reintroducing this material into the process.
121. "Reference method" means the methods of sampling and analyzing for an air pollutant as described in the Arizona Testing Manual; 40 CFR 50, Appendices A through K; 40 CFR 51, Appendix M; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C, as incorporated by reference in 18 A.A.C. 2, Appendix 2.
122. "Regulated air pollutant" means any of the following:
- a. Any conventional air pollutant.
 - b. Nitrogen oxides and volatile organic compounds.
 - c. Any pollutant that is subject to a new source performance standard.
 - d. Any pollutant that is subject to a national emission standard for hazardous air pollutants or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r), including the following:
 - i. Any pollutant subject to requirements under section 112(j) of the act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
 - ii. Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement.
 - e. Any Class I or II substance subject to a standard promulgated under title VI of the Act.
123. "Regulated minor NSR pollutant" means any pollutant for which a national ambient air quality standard has been promulgated and the following precursors for such pollutants:
- a. VOC and nitrogen oxides as precursors to ozone.
 - b. Nitrogen oxides and sulfur dioxide as precursors to PM_{2.5}.
124. "Regulated NSR pollutant" is defined as follows:
- a. For purposes of determining the applicability of R18-2-403 through R18-2-405 and R18-2-411, regulated NSR pollutant means any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this subsection as a constituent of or precursor to such pollutant, provided that such constituent or precursor pollutant may only be regulated under NSR as part of the regulation of the general pollutant. Precursors for purposes of NSR are the following:
 - i. Volatile organic compounds and nitrogen oxides are precursors to ozone in all areas.
 - ii. Sulfur dioxide is a precursor to PM_{2.5} in all areas.
 - iii. Nitrogen oxides are precursors to PM_{2.5} in all areas.
 - iv. VOC and ammonia are precursors to PM_{2.5} in PM_{2.5} nonattainment areas.
 - b. For all other purposes, regulated NSR pollutant means the pollutants identified in subsection (a) and the following:
 - i. Any pollutant that is subject to any new source performance standard except greenhouse gases as defined in 40 CFR 86.1818-12(a).
 - ii. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act as of July 1, 2011.
 - iii. Any pollutant that is otherwise subject to regulation under the Act, except greenhouse gases as defined in 40 CFR 86.1818-12(a).
 - c. Notwithstanding subsections (124)(a) and (b), the term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.
 - d. PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On and after January 1, 2011, condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under Article 4.
125. "Repowering" means:
- a. Replacing an existing coal-fired boiler with one of the following clean coal technologies:
 - i. Atmospheric or pressurized fluidized bed combustion;
 - ii. Integrated gasification combined cycle;
 - iii. Magnetohydrodynamics;
 - iv. Direct and indirect coal-fired turbines;

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- v. Integrated gasification fuel cells; or
 - vi. As determined by the Administrator, in consultation with the United States Secretary of Energy, a derivative of one or more of the above technologies; and
 - vii. Any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
- b. Repowering also includes any oil, gas, or oil and gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States Department of Energy.
- c. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection (and) is granted an extension under section 409 of the Act.
126. "Run" means the net period of time during which an emission sample is collected, which may be, unless otherwise specified, either intermittent or continuous within the limits of good engineering practice.
127. "Secondary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant, as specified in Article 2 of this Chapter.
128. "Secondary emissions" means emissions which are specific, well defined, quantifiable, occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
129. "Section 302(j) category" means:
- a. Any of the classes of sources listed in the definition of categorical source in subsection (23); or
 - b. Any category of affected facility which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
130. "Shutdown" means the cessation of operation of any air pollution control equipment or process equipment for any purpose, except routine phasing out of process equipment.
131. "Significant" means, in reference to a significant emissions increase, a net emissions increase, a stationary source's potential to emit or a stationary source's maximum capacity to emit with any elective limits as defined in R18-2-301(13):
- a. A rate of emissions of conventional pollutants that would equal or exceed any of the following:

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy

- PM₁₀ 15 tpy
 - PM_{2.5} 10 tpy of direct PM_{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions.
 - Ozone 40 tpy of VOC or nitrogen oxides
 - Lead 0.6 tpy
- b. For purposes of determining the applicability of R18-2-302(B)(2) or R18-2-406, in addition to the rates specified in subsection (131)(a), a rate of emissions of non-conventional pollutants that would equal or exceed any of the following:

Pollutant	Emissions Rate
Particulate matter	25 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tpy
Any regulated NSR pollutant not specifically listed in this subsection (or) subsection (131)(a).	Any emission rate

- c. In ozone nonattainment areas classified as serious or severe, the emission rate for nitrogen oxides or VOC determined under R18-2-405.
- d. In a carbon monoxide nonattainment area classified as serious, a rate of emissions that would equal or exceed 50 tons per year, if the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
- e. In PM_{2.5} nonattainment areas, 40 tons per year of VOC as a precursor of PM_{2.5}.
- f. Notwithstanding the emission rates listed in subsection (131)(a) or (b), for purposes of determining the applicability of R18-2-406, any emissions rate or

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- any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than $1 \mu\text{g}/\text{m}^3$ (24-hour average).
132. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in this Section for that pollutant.
133. "Smoke" means particulate matter resulting from incomplete combustion.
134. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution. A.R.S. § 49-401.01(23).
135. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.
136. "Stack in existence" means that the owner or operator had either:
- Begun, or caused to begin, a continuous program of physical onsite construction of the stack;
 - Entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.
137. "Start-up" means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.
138. "State implementation plan" or "SIP" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to and approved by the Administrator pursuant to 42 U.S.C. 7410.
139. "Stationary rotating machinery" means any gas engine, diesel engine, gas turbine, or oil fired turbine operated from a stationary mounting and used for the production of electric power or for the direct drive of other equipment.
140. "Stationary source" means any building, structure, facility or installation which emits or may emit any regulated NSR pollutant, any regulated air pollutant or any pollutant listed under section 112(b) of the act. "Building," "structure," "facility," or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" as described in the "Standard Industrial Classification Manual, 1987."
141. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Act, or a nationally-applicable regulation codified by the administrator in 40 CFR chapter I, subchapter C, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.
142. "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized as a means of preventing emissions of sulfur dioxide or other sulfur compounds to the atmosphere.
143. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.
144. "Temporary source" means a source which is portable, as defined in A.R.S. § 49-401.01(23) and which is not an affected source.
145. "Total reduced sulfur" (TRS) means the sum of the sulfur compounds, primarily hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during kraft pulping and other operations and measured by Method 16 in 40 CFR 60, Appendix A.
146. "Trivial activities" means activities and emissions units, such as the following, that may be omitted from a permit or registration application. Certain of the following listed activities include qualifying statements intended to exclude similar activities:
- Low-Emitting Combustion
 - Combustion emissions from propulsion of mobile sources;
 - Emergency or backup electrical generators at residential locations;
 - Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means capable of being moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device;
 - Low- Or Non-Emitting Industrial Activities
 - Blacksmith forges;
 - Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling, sawing, grinding, turning, routing or machining of ceramic art work, precision parts, leather, metals, plastics, fiberboard, masonry, carbon, glass, or wood;
 - Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are insignificant activities based on size or production level thresholds. Brazing, soldering, and welding equipment, and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this definition;
 - Drop hammers or hydraulic presses for forging or metalworking;
 - Air compressors and pneumatically operated equipment, including hand tools;
 - Batteries and battery charging stations, except at battery manufacturing plants;
 - Drop hammers or hydraulic presses for forging or metalworking;
 - Equipment used exclusively to slaughter animals, not including other equipment at slaughterhouses, such as rendering cookers, boilers,

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- heating plants, incinerators, and electrical power generating equipment;
- ix. Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;
- x. Equipment used for surface coating, painting, dipping, or spraying operations, except those that will emit VOC or HAP;
- xi. CO₂ lasers used only on metals and other materials that do not emit HAP in the process;
- xii. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
- xiii. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
- xiv. Laser trimmers using dust collection to prevent fugitive emissions;
- xv. Process water filtration systems and demineralizers;
- xvi. Demineralized water tanks and demineralizer vents;
- xvii. Oxygen scavenging or de-aeration of water;
- xviii. Ozone generators;
- xix. Steam vents and safety relief valves;
- xx. Steam leaks; and
- xxi. Steam cleaning operations and steam sterilizers;
- xxii. Use of vacuum trucks and high pressure washer/cleaning equipment within the stationary source boundaries for cleanup and in-source transfer of liquids and slurried solids to waste water treatment units or conveyances;
- xxiii. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
- xxiv. Electric motors.
- c. Building and Site Maintenance Activities
 - i. Plant and building maintenance and upkeep activities, including grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots, if these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit revision. Cleaning and painting activities qualify as trivial activities if they are not subject to VOC or hazardous air pollutant control requirements;
 - ii. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating, de-greasing, or solvent metal cleaning activities, and not otherwise triggering a permit revision;
 - iii. Janitorial services and consumer use of janitorial products;
 - iv. Landscaping activities;
 - v. Routine calibration and maintenance of laboratory equipment or other analytical instruments;
 - vi. Sanding of streets and roads to abate traffic hazards caused by ice and snow;
 - vii. Street and parking lot striping;
 - viii. Caulking operations which are not part of a production process.
- d. Incidental, Non-Industrial Activities
 - i. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act;
 - ii. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing, industrial or commercial process;
 - iii. Tobacco smoking rooms and areas;
 - iv. Non-commercial food preparation;
 - v. General office activities, such as paper shredding, copying, photographic activities, pencil sharpening and blueprinting, but not including incineration;
 - vi. Laundry activities, except for dry-cleaning and steam boilers;
 - vii. Bathroom and toilet vent emissions;
 - viii. Fugitive emissions related to movement of passenger vehicles, if the emissions are not counted for applicability purposes under subsection (146)(c) of the definition of major source in this Section and any required fugitive dust control plan or its equivalent is submitted with the application;
 - ix. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use;
 - x. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition;
 - xi. Circuit breakers;
 - xii. Adhesive use which is not related to production.
- e. Storage, Piping and Packaging
 - i. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP;
 - ii. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
 - iii. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
 - iv. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
 - v. Storage cabinets for flammable products;
 - vi. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
 - vii. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
- f. Sampling and Testing
 - i. Vents from continuous emissions monitors and other analyzers;

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- ii. Bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents;
 - iii. Equipment used for quality control, quality assurance, or inspection purposes, including sampling equipment used to withdraw materials for analysis;
 - iv. Hydraulic and hydrostatic testing equipment;
 - v. Environmental chambers not using HAP gases;
 - vi. Soil gas sampling;
 - vii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units;
- g. Safety Activities
- i. Fire suppression systems;
 - ii. Emergency road flares;
- h. Miscellaneous Activities
- i. Shock chambers;
 - ii. Humidity chambers;
 - iii. Solar simulators;
 - iv. Cathodic protection systems;
 - v. High voltage induced corona; and
 - vi. Filter draining.
147. "Unclassified area" means an area which the Administrator, because of a lack of adequate data, is unable to classify as an attainment or nonattainment area for a specific pollutant, and which, for purposes of this Chapter, is treated as an attainment area.
148. "Uncombined water" means condensed water containing analytical trace amounts of other chemical elements or compounds.
149. "Urban or suburban open area" means an unsubdivided tract of land surrounding a substantial urban development of a residential, industrial, or commercial nature and which, though near or within the limits of a city or town, may be uncultivated, used for agriculture, or lie fallow.
150. "Vacant lot" means a subdivided residential or commercial lot which contains no buildings or structures of a temporary or permanent nature.
151. "Vapor" means the gaseous form of a substance normally occurring in a liquid or solid state.
152. "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.
153. "Visible emissions" means any emissions which are visually detectable without the aid of instruments and which contain particulate matter.
154. "Volatile organic compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
- a. Methane;
 - b. Ethane;
 - c. Methylene chloride (dichloromethane);
 - d. 1,1,1-trichloroethane (methyl chloroform);
 - e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
 - f. Trichlorofluoromethane (CFC-11);
 - g. Dichlorodifluoromethane (CFC-12);
 - h. Chlorodifluoromethane (HCFC-22);
 - i. Trifluoromethane (HFC-23);
 - j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
 - k. Chloropentafluoroethane (CFC-115);
 - l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
 - m. 1,1,1,2-tetrafluoroethane (HFC-134(a));
 - n. 1,1-dichloro 1-fluoroethane (HCFC-141(b));
 - o. 1-chloro 1,1-difluoroethane (HCFC-142(b));
 - p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
 - q. Pentafluoroethane (HFC-125);
 - r. 1,1,2,2-tetrafluoroethane (HFC-134);
 - s. 1,1,1-trifluoroethane (HFC-143(a));
 - t. 1,1-difluoroethane (HFC-152(a));
 - u. Parachlorobenzotrifluoride (PCBTF);
 - v. Cyclic, branched, or linear completely methylated siloxanes;
 - w. Acetone;
 - x. Perchloroethylene (tetrachloroethylene);
 - y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225(ca));
 - z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225(cb));
 - aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
 - bb. Difluoromethane (HFC-32);
 - cc. Ethylfluoride (HFC-161);
 - dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236(fa));
 - ee. 1,1,2,2,3-pentafluoropropane (HFC-245(ca));
 - ff. 1,1,2,3,3-pentafluoropropane (HFC-245(ea));
 - gg. 1,1,1,2,3-pentafluoropropane (HFC-245(eb));
 - hh. 1,1,1,3,3-pentafluoropropane (HFC-245(fa));
 - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236(ea));
 - jj. 1,1,1,3,3-pentafluorobutane (HFC-365(mfc));
 - kk. Chlorofluoromethane (HCFC-31);
 - ll. 1-chloro-1-fluoroethane (HCFC-151(a));
 - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123(a));
 - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);
 - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃);
 - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);
 - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅);
 - rr. Methyl acetate; and
 - ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C₃F₇OCH₃, HFE—7000);
 - tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE – 7500);
 - uu. 1,1,1,2,3,3,3-hentafluoropropane (HFC 227ea);
 - vv. Methyl formate (HCOOCH₃); and
 - ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
 - xx. Propylene carbonate;
 - yy. Dimethyl carbonate; and
 - zz. Trans -1,3,3,3-tetrafluoropropene;
 - aaa. HCF₂OCF₂H (HFE-134);
 - bbb. HCF₂OCF₂OCF₂H (HFE-236(cal2));
 - ccc. HCF₂OCF₂CF₂OCF₂H (HFE-338(pcc13));
 - ddd. HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));
 - eee. Trans 1-chloro-3,3,3-trifluoroprop-1-ene;
 - fff. 2,3,3,3-tetrafluoropropene;
 - ggg. 2-amino-2-methyl-1-propanol; and
 - hhh. Perfluorocarbon compounds that fall into these classes:
 - i. Cyclic, branched, or linear, completely fluorinated alkanes.
 - ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.

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- iii. Cycle, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
 - iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
 - iii. The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but is not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.
155. "Wood waste burner" means an incinerator designed and used exclusively for the burning of wood wastes consisting of wood slabs, scraps, shavings, barks, sawdust or other wood material, including those that generate steam as a by-product.

Historical Note

Former Section R9-3-101 repealed, new Section R9-3-101 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, paragraph (133) (Supp. 80-1). Editorial correction, paragraph (58) (Supp. 80-2). Amended effective July 9, 1980. Amended by adding new paragraphs (24), (55), (102), and (115) and renumbering accordingly, effective August 29, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended paragraph (133), added paragraph (156) and renumbered accordingly effective September 28, 1984 (Supp. 84-5). Amended paragraph (29) by deleting (aa) and (bb) effective August 9, 1985 (Supp. 85-4). Former Section R9-3-101 renumbered without change as R18-2-101 (Supp. 87-3). Amended paragraph (98) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective October 7, 1994 (Supp. 94-4). Amended effective February 28, 1995 (Supp. 95-1). Amended effective August 1, 1995 (Supp. 95-3). Amended effective January 31, 1997; filed with the Office of Secretary of State January 10, 1997 (Supp. 97-1). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-102. Incorporated Materials

- A. The following documents are incorporated by reference and are on file with the Office of the Secretary of State (1700 W. Washington St., Suite 103, Phoenix, AZ 85007) and the Department (1110 W. Washington St., Phoenix, AZ 85007):
1. Sections 1 and 7 of the Department's "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992 (and no future editions).

2. All ASTM test methods referenced in this Chapter as of the year specified in the reference (and no future amendments). They are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103-1187.
 3. The U.S. Government Printing Office's "Standard Industrial Classification Manual, 1987" (and no future editions).
- B. The Code of Federal Regulations is published by the United States Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st_12=AZ&flag=searchp). It is also available online at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-103. Applicable Implementation Plan; Savings

No rule adopted in this Chapter shall preempt or nullify any applicable requirement or emission standard in an applicable implementation plan unless the Director revises the applicable implementation plan in conformance with the requirements of 40 CFR 51, Subpart F, and the Administrator approves the revision.

Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**R18-2-201. Particulate Matter: PM₁₀ and PM_{2.5}**

- A. PM₁₀ Standards
1. The level of the primary and secondary ambient air quality standards for PM₁₀ is 150 micrograms per cubic meter of PM₁₀ – 24-hour average concentration.
 2. To determine attainment of the primary and secondary standards, a person shall measure PM₁₀ in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix J, and designated according to 40 CFR 53; or
 - b. An equivalent method designated according to 40 CFR 53.
 3. The primary and secondary 24-hour ambient air quality standards for PM₁₀ are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, determined according to 40 CFR 50, Appendix K, is less than or equal to one.
- B. PM_{2.5} Standards
1. The primary ambient air quality standards for PM_{2.5} are:
 - a. 12 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.

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- b. 35 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.
2. The secondary ambient air quality standards for PM_{2.5} are:
 - a. 15 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.
 - b. 35 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.
3. To determine attainment of the primary and secondary standards, a person shall measure PM_{2.5} in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix L, and designated according to 40 CFR 53; or
 - b. An equivalent method designated according to 40 CFR 53.
4. The primary annual ambient air quality standard for PM_{2.5} is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 12 micrograms per cubic meter.
5. The secondary annual ambient air quality standard for PM_{2.5} is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 15 micrograms per cubic meter.
6. The primary and secondary 24-hour ambient air quality standards for PM_{2.5} are met when the 98th percentile 24-hour concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-201 repealed, new Section R9-3-201 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (E) (Supp. 80-2). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection(B)(1) and deleted subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-201 renumbered without change as Section R18-2-201 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Section corrected to include subsection (B), which was inadvertently omitted in Supp. 05-3 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-202. Sulfur Oxides (Sulfur Dioxide)

- A. The primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide, are:
 1. 0.03 parts per million (ppm) (80 µg/m³) -- annual arithmetic mean.
 2. 0.14 parts per million (ppm) (365 µg/m³) – maximum 24-hour concentration not to be exceeded more than once per calendar year.
 3. 75 parts per billion (ppb) – maximum one-hour concentration. The one-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 parts per billion, as determined according to 40 CFR 50, Appendix T.
- B. The secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide, is 0.5 parts per million (ppm)

(1300 µg/m³) -- maximum three-hour concentration not to be exceeded more than once per year.

- C. The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix A or A-1, or by a Federal Equivalent Method designated according to 40 CFR 53.
- D. The standards in subsections (A)(1) and (2) shall apply:
 1. In an area designated nonattainment for a standard in subsection (A)(1) or (2) as of August 23, 2011, and areas not meeting a state implementation plan call for a standard in subsection (A)(1) or (2), until the state submits pursuant to section 191 of the Act, and the Administrator approves, a state implementation plan providing for attainment the standard in subsection (A)(3) in that area.
 2. In areas other than those identified in subsection (D)(1), until the effective date of the designation of that area, pursuant to section 107 of the act, for the standard in subsection (A)(3).

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-202 repealed, new Section R9-3-202 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended by deleting subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-202 renumbered without change as Section R18-2-202 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-203. Ozone

- A. The eight-hour average primary ambient air quality standard for ozone is 0.070 ppm.
- B. The eight-hour average secondary ambient air quality standard for ozone is 0.070 ppm.
- C. To determine attainment of the primary and secondary standards, a person shall measure ozone in the ambient air by:
 1. A reference method based on 40 CFR 50, Appendix D, and designated according to 40 CFR 53; or
 2. An equivalent method designated according to 40 CFR 53.
- D. The eight-hour average primary ambient air quality standard for ozone is met at an ambient air quality monitoring site when the three-year average of the annual fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 0.070 ppm, determined according to 40 CFR 50, Appendix U.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-204 repealed, new Section R9-3-204 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-204 renumbered without change as Section R18-2-204 (Supp. 87-3). Section R18-2-103 renumbered from R18-2-204 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23

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A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-204. Carbon monoxide

- A. The primary ambient air quality standards for carbon monoxide are:
1. 9 parts per million (10 milligrams per cubic meter) -- maximum eight-hour concentration not to be exceeded more than once per year.
 2. 35 parts per million (40 milligrams per cubic meter) -- maximum one-hour concentration not to be exceeded more than once per year.
- B. An eight-hour average shall be considered valid if at least 75% of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using 6 or 7 as the divisor.
- C. When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5).
Former Section R9-3-205 repealed, new Section R9-3-205 adopted effective May 14, 1979 (Supp. 79-1).
Amended effective October 2, 1979 (Supp. 79-5).
Amended effective August 29, 1980 (Supp. 80-4).
Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-205 renumbered without change as Section R18-2-205 (Supp. 87-3). Former Section R18-2-204 renumbered to R18-2-203, new Section R18-2-204 renumbered from R18-2-205 and amended effective September 26, 1990 (Supp. 90-3).

R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)

- A. The primary ambient air quality standards for oxides of nitrogen, measured in the ambient air as nitrogen dioxide, are:
1. 53 parts per billion – annual average concentration.
 2. 100 parts per billion – one-hour average concentration.
- B. The secondary ambient air quality standard for nitrogen dioxide is 0.053 (parts per million (100 micrograms per cubic meter) -- annual arithmetic mean.
- C. The levels of the standards shall be measured by a reference method based on 40 CFR 50, Appendix F or a federal equivalent method designated in accordance with 40 CFR 53.
- D. The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with 40 CFR, Appendix S for the annual standard.
- E. The one-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 parts per billion, as determined in accordance with 40 CFR 50, Appendix S.
- F. The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places, with fractional parts equal to or greater than 0.0005 ppm rounded up. To demonstrate attainment, an annual mean shall be based upon hourly data that is at least 75% complete or upon data derived from the manual methods, that is at least 75% complete for the scheduled sampling days in each calendar quarter.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5).
Former Section R9-3-206 repealed, new Section R9-3-

206 adopted effective May 14, 1979 (Supp. 79-1).
Amended effective October 2, 1979 (Supp. 79-5).
Amended effective August 29, 1980 (Supp. 80-4).
Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-206 renumbered without change as Section R18-2-206 (Supp. 87-3). Former Section R18-2-205 renumbered to R18-2-204, new Section R18-2-205 renumbered from R18-2-206 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-206. Lead

- A. The primary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter – maximum arithmetic mean averaged over a three-month period.
- B. The secondary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter – maximum arithmetic mean averaged over a three-month period.
- C. The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix G and designated in accordance with 40 CFR 53, or by an equivalent designated in accordance with part 53 of this chapter.
- D. The national primary and secondary ambient air quality standards for lead are met when the maximum arithmetic three-month mean concentration for a three-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.
- E. The former primary and secondary ambient air quality standards for lead of 1.5 micrograms per cubic meter averaged over a calendar quarter shall apply to an area until one year after the effective date of the designation of that area, pursuant to section 107 of the Act, for the standards in subsections (A) and (B).

Historical Note

Former Section R9-3-207 repealed effective May 14, 1979 (Supp. 79-1). New Section R9-3-207 adopted effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-207 renumbered without change as Section R18-2-207 (Supp. 87-3). Former Section R18-2-206 renumbered to R18-2-205, new Section R18-2-206 renumbered from R18-2-207 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-207. Renumbered**Historical Note**

Former Section R9-3-207 renumbered to R18-2-206 effective September 26, 1990 (Supp. 90-3).

R18-2-208. Reserved**R18-2-209. Reserved****R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations**

40 CFR 81.303 as amended as of July 1, 2014 (and no future amendments or editions) is incorporated by reference as an applicable requirement and on file with the Department of Environmental Quality. 40 CFR 81.303 is available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

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Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-211. Reserved

R18-2-212. Reserved

R18-2-213. Reserved

R18-2-214. Reserved

R18-2-215. Ambient air quality monitoring methods and procedures

- A. Only those methods which have been either designated by the Administrator as reference or equivalent methods or approved by the Director shall be used to monitor ambient air.
- B. Quality assurance, monitor siting, and sample probe installation procedures shall be in accordance with procedures described in the Appendices to 40 CFR 58.
- C. The Director may approve other procedures upon a finding that the proposed procedures are substantially equivalent or superior to procedures in the Appendices to 40 CFR 58.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-215 renumbered without change as Section R18-2-215 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3).

R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data

Unless otherwise specified, interpretation of all ambient air quality standards contained in this Article shall be in accordance with 40 CFR 50, incorporated by reference in Appendix 2 of this Chapter.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-216 repealed, new Section R9-3-216 adopted effective August 29, 1980 (Supp. 80-4). Former Section R9-3-216 renumbered without change as Section R18-2-216 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-217. Designation and Classification of Attainment Areas

- A. All areas shall be classified as either Class I, Class II or Class III.
- B. All of the following areas which were in existence on August 7, 1977 shall be Class I areas irrespective of attainment status and shall not be redesignated:
 1. International parks;
 2. National wilderness areas which exceed 5,000 acres in size;
 3. National memorial parks which exceed 5,000 acres in size; and
 4. National parks which exceed 6,000 acres in size.

- C. Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Section.
- D. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Section.
- E. The following areas shall be designated only as Class I or II:
 1. An area which as of August 7, 1977, exceeds 10,000 acres in size and is one of the following:
 - a. A national monument,
 - b. A national primitive area,
 - c. A national preserve,
 - d. A national recreational area,
 - e. A national wild and scenic river,
 - f. A national wildlife refuge,
 - g. A national lakeshore or seashore.
 2. A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.
- F. Except as otherwise provided in subsections (B) to (E), the Governor may redesignate areas of the state as Class I or Class II, provided that the following requirements are fulfilled:
 1. At least one public hearing is held in or near the area affected in accordance with 40 CFR 51.102;
 2. Other states, Indian governing bodies and Federal Land Managers, whose land may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing.
 3. A discussion document of the reasons for the proposed redesignation including a description and analysis of health, environmental, economic, social and energy effects of the proposed redesignation is prepared by the Governor or the Governor's designee. The discussion document shall be made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing shall contain appropriate notification of the availability of such discussion document.
 4. Prior to the issuance of notice respecting the redesignation of an area which includes any federal lands, the Governor or the Governor's designee has provided written notice to the appropriate Federal Land Manager and afforded the Federal Land Manager adequate opportunity, not in excess of 60 days, to confer with the state respecting the redesignation and to submit written comments and recommendations. The Governor or the Governor's designee shall publish a list of any inconsistency between such redesignation and such recommendations, together with the reasons for making such redesignation against the recommendation of the Federal Land Manager, if any Federal Land Manager has submitted written comments and recommendations.
 5. The redesignation is proposed after consultation with the elected leadership of local governments in the area covered by the proposed redesignation.
 6. The redesignation is submitted to the Administrator as a revision to the SIP.
- G. Except as otherwise provided in subsections (B) to (E), the Governor may redesignate areas of the state as Class III if all of the following criteria are met:
 1. Such redesignation meets the requirements of subsection (F);
 2. Such redesignation has been approved after consultation with the appropriate committee of the legislature if it is in session or with the leadership of the legislature if it is not in session.

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- 3. The general purpose units of local government representing a majority of the residents of the area to be redesignated concur in the redesignation;
 - 4. Such redesignation shall not cause, or contribute to, a concentration of any air pollutant which exceeds any national ambient air quality standard or any maximum increase allowed under R18-2-218;
 - 5. For any new major source as defined in R18-2-401 or a major modification of such source which may be permitted to be constructed and operated only if the area in question is redesignated as Class III, any permit application and materials submitted as part of the application shall be available for public inspection prior to any public hearing on the redesignation of the area as Class III.
 - 6. The redesignation is submitted to the Administrator as a revision to the SIP.
- H.** A redesignation shall not be effective until approved by the Administrator as part of an applicable implementation plan. If the Administrator disapproves the redesignation, the classification of the area shall be that which was in effect before the disapproved redesignation.
- I.** Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Amended and subsection (B) renumbered to Section R18-2-218 effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-218. Limitation of Pollutants in Classified Attainment Areas

- A.** Areas designated as Class I, II, or III shall be limited to the following increases in air pollutant concentrations occurring over the baseline concentration; provided that for any period other than an annual period, the applicable maximum allowable increase may be exceeded once per year at any one location:

CLASS I	
Maximum Allowable Increase (Micrograms per cubic meter)	
Particulate matter: PM _{2.5}	
Annual arithmetic mean	1
24-hr maximum	2
Particulate matter: PM ₁₀	
Annual arithmetic mean	4
24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

CLASS II

Particulate matter: PM _{2.5}	
Annual arithmetic mean	4
24-hr maximum	9
Particulate matter: PM ₁₀	
Annual arithmetic mean	17
24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

CLASS III

Particulate matter: PM _{2.5}	
Annual arithmetic mean	8
24-hr maximum	18
Particulate matter: PM ₁₀	
Annual arithmetic mean	34
24-hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

- B.** The baseline concentration is that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline data.
1. The major source baseline date is:
 - a. January 6, 1975, for sulfur dioxide and PM₁₀.
 - b. February 8, 1988, for nitrogen dioxide.
 - c. October 20, 2010, for PM_{2.5}.
 2. The minor source baseline date shall be the earliest date after the trigger date on which a major source as defined in R18-2-401 or major modification subject to 40 CFR 52.21 or R18-2-406 submits a complete application under the relevant regulations.
 - a. The trigger date is:
 - i. August 7, 1977, for PM₁₀ and sulfur dioxide.
 - ii. February 8, 1988, for nitrogen dioxide.
 - iii. October 20, 2011, for PM_{2.5}.
 - b. Any minor source baseline date established originally for total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.
 3. A baseline concentration shall be determined for each pollutant for which there is a minor source baseline date and shall include both:

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- a. The actual emissions representative of sources in existence on the minor source baseline date, except as provided in subsection (B)(4); and
 - b. The allowable emissions of major sources as defined in R18-2-401 which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.
4. The following shall not be included in the baseline concentration and shall affect the applicable maximum allowable increase:
 - a. Actual emissions from any major source as defined in R18-2-401 on which construction commenced after the major source baseline date; and
 - b. Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.
- C.** The baseline date shall be established for each pollutant for which maximum allowable increases or other equivalent measures have been established if both:
1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R18-2-406; and
 2. In the case of a major source as defined in R18-2-401, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.
- D.** The baseline area shall be the AQCR that contains the area, designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act, in which the major source as defined in R18-2-401 or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the minor source baseline date is established, as follows: greater than or equal to 1 microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide or PM₁₀; or greater than or equal to 0.3 microgram per cubic meter (annual average) for PM_{2.5}.
1. Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act that would redesignate a baseline area may not intersect or be smaller than the area of impact of any new major source as defined in R18-2-401 or a major modification which either:
 - a. Establishes a minor source baseline date, or
 - b. Is subject to either 40 CFR 52.21 or R18-2-406 and would be constructed in Arizona.
 2. Any baseline area established originally for total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with subsection (B)(2)(b).
- E.** The maximum allowable concentration of any air pollutant in any area to which subsection (A) applies shall not exceed a concentration for each pollutant equal to the concentration permitted under the national ambient air quality standards.
- F.** For purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:
1. Concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of a natural gas curtailment order which is in effect under the provisions of sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, over the emissions from such sources before the effective date of such order;
2. The concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from using gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, 16 U.S.C. 792 - 825r, over the emissions from such sources before the effective date of the natural gas curtailment plan;
 3. Concentrations of PM₁₀ or PM_{2.5} attributable to the increase in emissions from construction or other temporary emission related activities of a new or modified source;
 4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and
 5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides, PM_{2.5}, or PM₁₀ from major sources as defined in R18-2-401 when the following conditions are met:
 - a. The permits issued to such sources specify the time period during which the temporary emissions increase of sulfur dioxide, nitrogen oxides, PM_{2.5} or PM₁₀ would occur. Such time period shall not be renewable and shall not exceed two years.
 - b. The temporary emissions increase will not:
 - i. Impact any Class I area or any area where a maximum increase allowed by subsection (A) is known to be violated; or
 - ii. Cause or contribute to the violation of a national ambient air quality standard.
 - c. The operating permit issued to such sources specifies that, at the end of the time period described in subsection (F)(5)(a), the emissions levels from the sources would not exceed the levels occurring before the temporary emissions increase was approved.
 6. The exception granted by subsections (F)(1) and (2) with respect to maximum increases allowed under subsection (A) shall not apply more than five years after the effective date of the order or natural gas curtailment plan on which the exception is based.
- G.** If the Director or the Administrator determines that the SIP is substantially inadequate to prevent significant deterioration or that an applicable maximum allowable increase as specified in subsection (A) is being violated, the SIP shall be revised to correct the inadequacy or the violation. The SIP shall be revised within 60 days of such a finding by the Director or within 60 days following notification by the Administrator, or by such later date as prescribed by the Administrator after consultation with the Director.
- H.** The Director shall review the adequacy of the SIP on a periodic basis and within 60 days of such time as information becomes available that an applicable maximum allowable increase is being violated.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Former Section R18-2-218 renumbered to R18-2-219, new Section

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R18-2-218 renumbered from R18-2- 217(B) and amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

same pollutant exceeding the emergency level during the subsequent 24-hour period.

4. Summary of emergency episode and significant harm levels:

R18-2-219. Repealed

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-218 repealed, new Section R9-3-218 adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-218 renumbered without change as Section R18-2-218 (Supp. 87-3). Former Section R18-2-219 renumbered to R18-2-220, new Section R18-2-219 renumbered from R18-2-218 and amended effective September 26, 1990 (Supp. 90-3). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

Pollutant	Averaging Time	Alert	Warning	Emergency	Significant Harm
Carbon monoxide (mg/m ³)	1-hr	--	--	--	144
	4-hr	--	--	--	86.3
	8-hr	17	34	46	57.5
Nitrogen dioxide (ug/m ³)	1-hr	1,130	2,260	3,000	3,750
	24-hr	282	565	750	938
Ozone (ppm)	1-hr	.2	.4	.5	.6
PM ₁₀ (ug/m ³)	24-hr	350	420	500	600
Sulfur dioxide (ug/m ³)	24-hr	800	1,600	2,100	2,620

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B), paragraph (2) (Supp. 80-1). Editorial correction, subsection (A) (Supp. 80-2). Former Section R9-3-219 repealed, new Section R9-3-219 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-219 renumbered without change as Section R18-2-219 (Supp. 87-3). Section R18-2-220 renumbered from R18-2-219 and amended effective September 26, 1990 (Supp. 90-3).

R18-2-220. Air pollution emergency episodes

- A. Procedures shall be implemented by the Director in order to prevent the occurrence of ambient air pollutant concentrations which would cause significant harm to the health of persons, as specified in subsection (B)(4). The procedures and actions required for each stage are described in the Department’s “Procedures for Prevention of Emergency Episodes,” amended as of October 18, 1988 (and no future edition), which is incorporated herein by reference and on file with the Office of the Secretary of State.
- B. The following stages are identified by air quality criteria in order to provide for sequential emissions reductions, public notification and increased Department monitoring and forecast responsibilities. The declaration of any stage, and the area of the state affected, shall be based on air quality measurements and meteorological analysis and forecast.
 1. A Stage I air pollution alert shall be declared when any of the alert level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of alert level concentrations for the same pollutant during the subsequent 24-hour period. If, 48 hours after an alert has been initially declared, air pollution concentrations and meteorological conditions do not improve, the warning stage control actions shall be implemented but no warning shall be declared, unless air quality has deteriorated to the extent described in subsection (B)(2).
 2. A Stage II air pollution warning shall be declared when any of the warning level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the warning level during the subsequent 24-hour period. If, 48 hours after a warning has been initially declared, air pollution concentrations and meteorological conditions do not improve, the emergency stage shall be declared and its control actions implemented.
 3. A Stage III air pollution emergency shall be declared when any of the emergency level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-301. Definitions

The following definitions apply to this Article:

1. “Alternative method” means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to produce results adequate for the Director’s determination of compliance in accordance with R18-2-311(D).
2. “Billable permit action” means the issuance or denial of a new permit, significant permit revision, or minor permit revision, or the renewal of an existing permit.
3. “Capacity factor” means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.
4. “CEM” means a continuous emission monitoring system as defined in R18-2-101.
5. “Complete” means, in reference to an application for a permit, permit revision or registration, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of a permit, permit revisions or registration processing does not preclude the Director from requesting or accepting any additional information.
6. “Dispersion technique” means any technique which attempts to affect the concentration of a pollutant in the ambient air by any of the following:
 - a. Using that portion of a stack which exceeds good engineering practice stack height;
 - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust

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- gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall not include any of the following:
- i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
 - ii. The merging of exhaust gas streams under any of the following conditions:
 - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;
 - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
 - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.
 - iii. Smoke management in agricultural or silvicultural prescribed burning programs.
 - iv. Episodic restrictions on residential woodburning and open burning.
 - v. Techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
7. "Emissions allowable under the permit" means a permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
 8. "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.
 9. "Fuel oil" means Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D-2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specification for Diesel Fuel Oils).
 10. "Itemized bill" means a breakdown of the permit processing time into the categories of pre-application activities, completeness review, substantive review, and public involvement activities, and within each category, a further breakdown by employee name.
 11. "Major source threshold" means the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under the definition of major source in R18-2-101.
 12. "Maximum capacity to emit" means the maximum amount a source is capable of emitting under its physical and operational design without taking any limitations on operations or air pollution controls into account.
 13. "Maximum capacity to emit with any elective limits" means the maximum amount a source is capable of emitting under its physical and operational design taking into account the effect on emissions of any elective limits included in the source's registration under R18-2-302.01(F).
 14. "Minor NSR Modification" means any of the following changes that do not qualify as a major source or major modification:
 - a. Any physical change in or change in the method of operation of an emission unit or a stationary source that either:
 - i. Increases the potential to emit of a regulated minor NSR pollutant by an amount greater than or equal to the permitting exemption thresholds, or
 - ii. Results in emissions of a regulated minor NSR pollutant not previously emitted by such emission unit or stationary source in an amount greater than or equal to the permitting exemption thresholds.
 - b. Construction of one or more new emissions units that have the potential to emit regulated minor NSR pollutants at an amount greater than or equal to the permitting exemption threshold.
 - c. A change covered by subsection (12)(a) or (b) of this Section constitutes a minor NSR modification regardless of whether there will be a net decrease in total source emissions or a net increase in total source emissions that is less than the permitting exemption threshold as a result of decreases in the potential to emit of other emission units at the same stationary source.
 - d. For the purposes of this subsection (the) following do not constitute a physical change or change in the method of operation:
 - i. A change consisting solely of the construction of, or changes to, a combination of emissions units qualifying as a categorically exempt activity.
 - ii. For a stationary source that is required to obtain a Class II permit under R18-2-302 and that is subject to source-wide emissions caps under R18-2-306.01 or R18-2-306.02, a change that will not result in the violation of the existing emissions cap for that regulated minor NSR pollutant.
 - iii. Replacement of an emission unit by a unit with a potential to emit regulated minor NSR pollutants that is less than or equal to the potential to emit of the existing unit, provided the replace-

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- ment does not cause an increase in emissions at other emission units at the stationary source. A unit installed under this provision is subject to any limits applicable to the unit it replaced.
- iv. Routine maintenance, repair, and replacement.
 - v. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 to 825r.
 - vi. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
 - vii. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
 - viii. Use of an alternative fuel or raw material by a stationary source that either:
 - (1) The source was capable of accommodating before December 12, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter; or
 - (2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - ix. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - x. Any change in ownership at a stationary source
 - xi. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
 - (1) The SIP, and
 - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
 - xii. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis.
 - xiii. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
 - e. For purposes of this subsection:
 - i. "Potential to emit" means the lower of a source's or emission unit's potential to emit or its allowable emissions.
 - ii. In determining potential to emit, the fugitive emissions of a stationary source shall not be considered unless the source belongs to a section 302(j) category.
 - iii. All of the roadways located at a stationary source constitute a single emissions unit.
15. "NAICS" means the five- or six-digit North American Industry Classification System-United States, 1997, number for industries used by the U.S. Department of Commerce.
 16. "Permit processing time" means all time spent by Air Quality Division staff or consultants on tasks specifically related to the processing of an application for the issuance or renewal of a particular permit or permit revision, including time spent processing an application that is denied.
 17. "Quantifiable" means, with respect to emissions, including the emissions involved in equivalent emission limits and emission trades, capable of being measured or otherwise determined in terms of quantity and assessed in terms of character. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, materials used in a process or production, modeling, or other reasonable measurement practices.
 18. "Registration" means a registration under R18-2-302.01.
 19. "Replicable" means, with respect to methods or procedures, sufficiently unambiguous that the same or equivalent results would be obtained by the application of the method or procedure by different users.
 20. "Responsible official" means one of the following:
 - a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - ii. The delegation of authority to such representatives is approved in advance by the permitting authority;
 - b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
 - c. For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this Article, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
 - d. For affected sources:
 - i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
 - ii. The designated representative for any other purposes under 40 CFR 70.
 21. "Screening model" means air dispersion modeling performed with screening techniques in accordance with 40 CFR 51 Appendix W.
 22. "Small source" means a source with a potential to emit, without controls, less than the rate defined as permitting

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exemption thresholds in R18-2-101, but required to obtain a permit solely because it is subject to a standard under 40 CFR 63.

23. "Startup" means the setting in operation of a source for any purpose.
24. "Synthetic minor" means a source with a permit that contains voluntarily accepted emissions limitations, controls, or other requirements (for example, a cap on production rates or hours of operation, or limits on the type of fuel) under R18-2-306.01 to reduce the potential to emit to a level below the major source threshold.

Historical Note

Former Section R18-2-301 renumbered to R18-2-302, new Section R18-2-301 adopted effective September 26, 1990 (Supp. 90-3). Correction to table in subsection (A)(13) (Supp. 93-1). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-302. Applicability; Registration; Classes of Permits

- A. Except as otherwise provided in this Article, no person shall begin actual construction of, operate, or make a modification to any stationary source subject to regulation under this Article, without obtaining a registration, permit or permit revision from the Director.
- B. Class I and II permits and registrations shall be required as follows:
 1. A Class I permit shall be required for a person to begin actual construction of or operate any of the following:
 - a. Any major source,
 - b. Any solid waste incineration unit required to obtain a permit pursuant to Section 129(e) of the Act,
 - c. Any affected source, or
 - d. Any stationary source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
 2. Unless a Class I permit is required, a Class II permit shall be required for:
 - a. A person to begin actual construction of or operate any stationary source that emits, or has the maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
 - b. A person to make a physical or operational change to a stationary source that would cause the source to emit, or have the maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
 - c. A person to begin actual construction of or modify a stationary source that otherwise would be subject to registration but that the Director has determined requires a permit under R18-2-302.01(C)(4) or (D).
 3. Unless a Class I or II permit is required, registration shall be required for:
 - a. A person to begin actual construction of or operate any stationary source that emits or has the maximum capacity to emit any regulated minor NSR pollutant in an amount greater than or equal to a permitting exemption threshold.
- C. Notwithstanding subsections (A) and (B), the following stationary sources do not require a permit or registration unless the source is a major source, or unless operation without a permit would result in a violation of the Act:
 1. A stationary source that consists solely of a single categorically exempt activity plus any combination of trivial activities.
 2. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations" does not include equipment classified as a source that requires a permit under Title V of the Act, or that is subject to a standard under 40 CFR 60, 61 or 63.
- D. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Director determines that maximum achievable control technology emission limitation (MACT) for new sources under Section 112 of the Act will be met. If MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meaning prescribed in 40 CFR 63.41.
- E. Elective limits or controls adopted under R18-2-302.01(F) shall not be considered in determining whether a source

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requires registration or a Class I permit but shall be considered in determining any of the following:

1. Whether the registration is subject to the public participation requirements of R18-2-330, as provided in R18-2-302.01(B)(3).
 2. Whether review for possible interference with attainment or maintenance of ambient standards is required under R18-2-302.01(C).
 3. Whether the source requires a Class II permit, as provided in subsection (B)(2)(a) or (b).
- F.** The fugitive emissions of a stationary source shall not be considered in determining whether the source requires a Class II permit under subsection (B)(2)(a) or (b) or a registration under subsection (B)(3)(a) or (d), unless the source belongs to a section 302(j) category. If a permit is required for a stationary source, the fugitive emissions of the source shall be subject to all of the requirements of this Article.
- G.** Notwithstanding subsections (A) and (B) of this Section, a person may begin actual construction, but not operation, of a source requiring a Class I permit or Class I permit revision upon the Director's issuance of the proposed final permit or proposed final permit revision.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1).
 Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Amended effective April 12, 1977 (Supp. 77-2).
 Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-301 repealed, new Section R9-3-301 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended subsections (B) and (C) effective September 22, 1983 (Supp. 83-5). Amended subsection (B), paragraph (3) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-301 renumbered without change as Section R18-2-301 (Supp. 87-3). Former Section R18-2-302 renumbered to R18-2-302.01, new Section R18-2-302 renumbered from R18-2-301 and amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-302.01. Source Registration Requirements

- A.** Application. An application for registration shall be submitted on the form specified by the Director and shall include the following information:
1. The name of the applicant.
 2. The physical location of the source, including the street address, city, county, zip code and latitude and longitude coordinates.
 3. The source's maximum capacity to emit with any elective limits each regulated minor NSR pollutant.
 4. Identification of any elective limits or controls adopted under subsection (F).
 5. In the case of a modification, each increase in the source's maximum capacity to emit with any elective limits that exceeds the applicable threshold in subsection (G)(1)(a).
 6. Identification of the method used to determine the maximum capacity to emit under R18-2-302(B)(3)(a), a

change in the maximum capacity to emit under R18-2-302(B)(3)(d), or the maximum capacity to emit with any elective limits under subsection (G)(1)(a) of this Section.

7. Process information for the source, including a list of emission units, design capacity, operations schedule, and identification of emissions control devices.
- B.** Registration Processing Procedures.
1. The Department shall complete a review of a registration application for administrative completeness within 30 calendar days, calculated in accordance with A.A.C. R18-1-503, after its receipt.
 2. The Department shall complete a substantive review and take final action on a registration application within 60 calendar days if no hearing is requested, and 90 calendar days if a hearing is requested, calculated in accordance with A.A.C. R18-1-504, after the application is administratively complete.
 3. Except as provided in subsection (B)(5), a registration for construction of a source shall be subject to the public notice and participation requirements of R18-2-330. The materials relevant to the registration decision made available to the public under R18-2-330(D) shall include any determination made or modeling conducted by the Director under subsection (C).
 4. The Department shall also send a copy of the notice required by subsection (B)(3) to the administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the registration will be located. The notice shall also be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, I.
 5. A registration for construction of a source shall not be subject to subsection (B)(3) or (4), if the source's maximum capacity to emit with any elective limits each regulated minor NSR pollutant is less than the applicable permitting exemption threshold.
- C.** Review for National Ambient Air Quality Standards Compliance; Requirement to Obtain a Permit.
1. The Director shall review each application for registration of a source with the maximum capacity to emit with any elective limits any regulated minor NSR pollutant in an amount equal to or greater than the permitting exemption threshold. The purpose of the review shall be to determine whether the new or modified source may interfere with attainment or maintenance of a national ambient air quality standard in Arizona or any affected state or Indian reservation. In making the determination required by this subsection, the Director shall take into account the following factors:
 - a. The source's emission rates, including fugitive emission rates, taking into account any elective limits or controls adopted under subsection (F).
 - b. The location of emission units within the facility and their proximity to the ambient air.
 - c. The terrain in which the source is or will be located.
 - d. The source type.
 - e. The location and emissions of nearby sources.
 - f. Background concentrations of regulated minor NSR pollutants.
 2. The Director may undertake the review specified in subsection (C)(1) for a source with the maximum capacity to emit with any elective limits regulated minor NSR pollutants in an amount less than the permitting exemption threshold.

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3. If the Director determines under subsection (C)(1) or (C)(2) that a source's emissions may interfere with attainment or maintenance of a national ambient air quality standard, the Director shall perform a screening model run for each regulated minor NSR pollutant for which that determination has been made.
 4. If the Director determines, based on performance of the screening model pursuant to subsection (C)(3), that a source's emissions, taking into account any elective limits or controls adopted under subsection (F), will interfere with attainment or maintenance of a national ambient air quality standard, the Director shall deny the application for registration. Notwithstanding R18-2-302(B)(3), the owner or operator of the source shall be required to obtain a permit under R18-2-302 and shall comply with R18-2-334 before beginning actual construction of the source or modification.
- D. Requirement to Obtain a Permit.** Notwithstanding R18-2-302(B)(3)(b) and (c), the Director shall deny an application for registration for a source subject to a standard under section 111 or 112 of the Act and require the owner or operator to obtain a permit under R18-2-302, if the Director determines based on the following factors that the requirement to obtain a permit is warranted:
1. The size and complexity of the source.
 2. The complexity of the section 111 or 112 standard applicable to the source.
 3. The public health or environmental risks posed by the pollutants subject to regulation under the section 111 or 112 standard.
- E. Registration Contents.** A registration shall contain the following elements:
1. Enforceable emission limitations and standards, including operational requirements and limitations, that ensure compliance with all applicable SIP requirements at the time of issuance and any testing, monitoring, recordkeeping and reporting obligations imposed by the applicable requirement or by R18-2-312.
 2. Any elective limits or controls and associated operating, maintenance, monitoring and recordkeeping requirements adopted pursuant to subsection (F).
 3. A requirement to retain any records required by the registration at the source for at least three years in a form that is suitable for expeditious inspection and review.
 4. For any source that has adopted elective limits or controls under subsection (F), a requirement to submit an annual compliance report on the form provided by the Director in the registration.
- F. Elective Limits or Controls.** The owner or operator of a source requiring registration may elect to include any of the following emission limitations in the registration, provided the Department approves the limitation and the registration also includes the operating, maintenance, monitoring, and recordkeeping requirements specified below for the limitation.
1. A limitation on the hours of operation of any process or combination of processes.
 - a. The registration shall express the limitation in terms of hours per rolling 12-month period and shall specify the process or combination of processes subject to the limitation.
 - b. The owner or operator shall maintain a log or readily available business records showing actual operating hours through the preceding operating day for the process or processes subject to the limitation.
 2. A limitation on the production rate for any process or combination of processes.
 - a. The registration shall express the limitation in terms of an appropriate unit of mass or production per rolling 12-month period and shall specify the process or combination of processes subject to the limitation.
 - b. The owner or operator shall maintain a log or readily available business records showing the actual production rate through the preceding operating day for the process or processes subject to the limitation. The owner or operator shall update the log or business records at least once per operating day.
3. A requirement to operate a fabric filter for the control of particulate matter emissions.
- a. The owner or operator shall operate the fabric filter at all times that the emission unit controlled by the fabric filter is operated.
 - b. The owner or operator shall inspect the fabric filter at least once per month for tears and leaks and shall promptly repair any tears or leaks identified. If the fabric filter is subject to a limit on the opacity of emissions, the inspection shall include an opacity observation in accordance with the applicable reference method.
 - c. The owner or operator shall operate and maintain the fabric filter in substantial compliance with the manufacturer's operation and maintenance recommendations.
 - d. The owner or operator shall keep a log or readily available business records of the inspections required by subsection (F)(3)(b) and the maintenance activities required by subsection (F)(3)(c). The owner or operator shall update the log or business records within 24 hours after an inspection or maintenance activity is performed.
 - e. The registration shall identify the fabric filters and processes subject to this requirement.
4. Limitations on the total amount of VOC or hazardous air pollutants in solvents, coatings or other process materials used at the registered source.
- a. The registration shall identify the pollutants and processes covered by the limitations and shall express the limitations in terms of pounds per rolling 12-month period.
 - b. The owner or operator shall maintain a log or readily available business records showing the concentration of each covered VOC or hazardous air pollutant in each VOC or hazardous air pollutant containing material used at the source. The owner or operator shall update the records whenever the concentration in any material changes or a new material is used. The presence at the source of a current material safety data sheet for a material used without dilution or other alteration satisfies this requirement.
 - c. The owner or operator shall maintain a spreadsheet or database to record the amount of each material containing a covered VOC or hazardous air pollutant used. The spreadsheet or database shall calculate the total pounds of the VOC or hazardous air pollutant used by multiplying the concentration of VOC or hazardous air pollutant in a material by the amount of material used and shall employ appropriate units of measurement and conversion factors. The owner or operator shall update the spreadsheet or database at least once per operating day.
- G. Revised Registrations.**
1. Unless a Class II permit is required under R18-2-302(B)(2)(b), the owner or operator of a registered source

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shall file a revised registration on the occurrence of any of the following:

- a. A modification to the source that would result in an increase in the source's maximum capacity to emit with any elective limits exceeding any of the following amounts:
 - i. 2.5 tons per year for NO_x, SO₂, PM₁₀, PM_{2.5}, VOC or CO.
 - ii. 0.3 tons per year for lead.
 - b. Relocation of a portable source.
 - c. The transfer of the source to a new owner.
2. The requirements of subsection (B) shall not apply to a revised registration. The owner or operator may begin actual construction and operation of the modified, relocated or transferred source on filing the revised registration.

H. Registration Term.

1. A source's registration shall expire five years after the date of issuance of the last registration for the source or any modification to the source.
2. A source shall submit an application for renewal of a registration not later than six months before expiration of the registration's term.
3. If a source submits a timely and complete application for renewal of a registration, the source's authorization to operate under its existing registration shall continue until the Director takes final action on the application.
4. The Director may terminate a registration under R18-2-321(C). If the Director terminates a registration under R18-2-321(C)(3), the owner or operator shall be required to apply for a permit for the source under R18-2-302.

- I. Issuance of a registration shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1); Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective October 2, 1979 (Supp. 79-5). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-302 renumbered without change as Section R18-2-302 (Supp. 87-3). Section R18-2-302.01 renumbered from Section R18-2-302 and amended effective September 26, 1990 (Supp. 90-3). Section repealed effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition

- A. An installation or operating permit issued before September 1, 1993, and the authority to operate, as provided in Laws 1992, Ch. 299, § 65, continues in effect until the installation or operating permit is terminated, or until the Director issues or denies a Class I or Class II permit to the source, whichever is earlier.
- B. The terms and conditions of installation permits issued before September 1, 1993, or in permits or permit revisions issued under R18-2-302 and authorizing the construction or modification of a stationary source, remain federal applicable requirements unless modified or revoked by the Director.

- C. All sources in existence on September 1, 2012, requiring a registration shall provide notice to the Director by no later than December 1, 2012, on a form provided by the Director.
- D. All sources requiring a registration that are in existence on the date R18-2-302.01 becomes effective under R18-2-302.01(I) may submit applications for registration at any time after R18-2-302.01 is effective and shall submit an application no later than 180 days after receipt of written notice from the Director that an application is required.
- E. Sources in existence on December 2, 2015 are not subject to R18-2-334, unless the source undertakes a minor NSR modification after that date. Notwithstanding any other provision of this Chapter, R18-2-334 shall apply only to applications for permits or permit revisions filed after December 2, 2015.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended subsection (D), paragraph (1) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-303 renumbered without change as Section R18-2-303 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-304. Permit Application Processing Procedures

- A. Unless otherwise noted, this Section applies to each source requiring a Class I or II permit or permit revision.
- B. Standard Application Form and Required Information. To apply for a permit required by this Chapter, applicants shall complete the applicable standard application form provided by the Director and supply all information required by the form's filing instructions. The application forms and filing instructions for Class I Permits shall at a minimum require submission of the following elements:
 1. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.
 2. A description of the source's processes and products (by Standard Industrial Classification (SIC) Code), including those associated with any proposed alternative operating scenarios (AOS) identified by the source.
 3. The following emission-related information:
 - a. All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except as otherwise provided in R18-2-304(F)(8). The Director shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under R18-2-326.
 - b. Identification and description of all points of emissions described in subsection (B)(3)(a) of this section in sufficient detail to establish the basis for fees and applicability of requirements.

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- c. Emissions rate in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.
- d. The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.
- e. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
- f. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the Class I source.
- g. Other information required by any applicable requirement (including information related to stack height limitations in R18-2-332).
- h. Calculations on which the information in subsections (B)(3)(a) through (g) of this section is based.
- 4. The following air pollution control requirements:
 - a. Citation and description of all applicable requirements, and
 - b. Description of or reference to any applicable test method for determining compliance with each applicable requirement.
- 5. Other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements.
- 6. An explanation of any proposed exemptions from otherwise applicable requirements.
- 7. Additional information as determined to be necessary by the Director to define proposed AOS identified by the source pursuant to R18-2-306(A)(11) or to define permit terms and conditions implementing any AOS under R18-2-306(A)(11) or implementing R18-2-317, R18-2-306(A)(12), R18-2-306(A)(14), or R18-2-306.02. The permit application shall include documentation demonstrating that the source has obtained all authorizations required under the applicable requirements relevant to any proposed AOS, or a certification that the source has submitted all relevant materials to the Director for obtaining such authorizations.
- 8. A compliance plan for all Class I sources that contains all of the following:
 - a. A description of the compliance status of the source with respect to all applicable requirements.
 - b. A description as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
 - iv. For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
- c. A compliance schedule as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
 - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
 - iv. For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
- d. A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.
- e. The compliance plan content requirements specified in subsection (B)(8) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.
- 9. Requirements for compliance certification, including the following:
 - a. A certification of compliance with all applicable requirements by a responsible official, which shall include:

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- i. Identification of the applicable requirement that is the basis of the certification;
 - ii. The method used for determining the compliance status of the source, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - iii. The compliance status; and
 - iv. Such other facts as the Director may require;
- b. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority;
 - c. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act; and
 - d. A certification of truth, accuracy, and completeness pursuant to R18-2-304(I).
10. The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the act.
- C. The Director, either upon the Director's own initiative or on the request of a permit applicant, may waive a requirement that specific information or data be submitted in the application for a Class II permit for a particular source or category of sources if the Director determines that the information or data would be unnecessary to determine all of the following:
1. The applicable requirements to which the source may be subject;
 2. That the source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of A.R.S. Title 49, Chapter 3, Article 2 and this Chapter;
 3. The fees to which the source may be subject; and
 4. A proposed emission limitation, control, or other requirement that meets the requirements of R18-2-306.01 or R18-2-306.02.
- D. A timely application is:
1. For a source, that becomes subject to the permit program as a result of a change in regulation and not as a result of construction or a physical or operational change, one that is submitted within 12 months after the source becomes subject to the permit program.
 2. For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than 18 months, prior to the date of permit expiration.
 3. Any source under R18-2-326(A)(3) which becomes subject to a standard promulgated by the Administrator pursuant to section 112(d) of the Act shall, within 12 months of the date on which the standard is promulgated, submit an application for a permit revision demonstrating how the source will comply with the standard.
- E. If an applicable implementation plan allows the determination of an alternative emission limit, a source may, in its application, propose an emission limit that is equivalent to the emission limit otherwise applicable to the source under the applicable implementation plan. The source shall also demonstrate that the equivalent limit is quantifiable, accountable, enforceable, and subject to replicable compliance determination procedures.
- F. A complete application shall comply with all of the following:
1. To be complete, an application shall provide all information required by subsection (B) (standard application form section). An application for permit revision only need supply information related to the proposed change, unless the source's proposed permit revision will change the permit from a Class II permit to a Class I permit. A responsible official shall certify the submitted information consistent with subsection (H) (Certification of Truth, Accuracy, and Completeness).
 2. An application for a new permit or permit revision shall contain an assessment of the applicability of the requirements of Article 4 of this Chapter. If the applicant determines that the proposed new source is a major source as defined in R18-2-401, or the proposed permit revision constitutes a major modification as defined in R18-2-101, then the application shall comply with all applicable requirements of Article 4.
 3. An application for a new permit or permit revision shall contain an assessment of the applicability of Minor New Source Review requirements in R18-2-334. If the applicant determines that the proposed new source is subject to R18-2-334, or the proposed permit revision constitutes a Minor NSR Modification, then the application shall comply with all applicable requirements of R18-2-334.
 4. Except for proposed new major sources or major modifications subject to the requirements of Article 4 of this Chapter, an application for a new permit, a permit revision, or a permit renewal shall be deemed to be complete unless, within 60 days of receipt of the application, the Director notifies the applicant by certified mail that the application is not complete.
 5. If a source wishes to voluntarily enter into an emissions limitation, control, or other requirement pursuant to R18-2-306.01, the source shall describe that emissions limitation, control, or other requirement in its application, along with proposed associated monitoring, recordkeeping, and reporting requirements necessary to demonstrate that the emissions limitation, control, or other requirement is permanent, quantifiable, and otherwise enforceable as a practical matter.
 6. If, while processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response. Except for minor permit revisions as set forth in R18-2-319, a source's ability to continue operating without a permit, as set forth in subsection (J), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Director.
 7. The completeness determination shall not apply to revisions processed through the minor permit revision process.
 8. Activities which are insignificant pursuant to the definition of insignificant activities in R18-2-101 shall be listed in the application. Except as necessary to complete the assessment required by subsection (E)(2) or (3), the application need not provide emissions data regarding insignificant activities. If the Director determines that an activity listed as insignificant does not meet the requirements of the definition of insignificant activities in R18-2-101 or that emissions data for the activity is required to complete the assessment required by subsection (E)(2) or

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- (3), the Director shall notify the applicant in writing and specify additional information required.
9. If a permit applicant requests terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements, the permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable.
 10. The Director is not in disagreement with a notice of confidentiality submitted with the application pursuant to A.R.S. § 49-432.
- G.** A source applying for a Class I permit that has submitted information with an application under a claim of confidentiality pursuant to A.R.S. § 49-432 and R18-2-305 shall submit a copy of such information directly to the Administrator.
- H.** Duty to Supplement or Correct Application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a proposed permit.
- I.** Certification of Truth, Accuracy, and Completeness. Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Article shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- J.** Action on Application.
1. The Director shall issue or deny each permit according to the provisions of A.R.S. § 49-427. The Director may issue a permit with a compliance schedule for a source that is not in compliance with all applicable requirements at the time of permit issuance.
 2. In addition, a permit may be issued, revised, or renewed only if all of the following conditions have been met:
 - a. The application received by the Director for a permit, permit revision, or permit renewal shall be complete according to subsection (E).
 - b. Except for revisions qualifying as administrative or minor under R18-2-318 and R18-2-319, all of the requirements for public notice and participation under R18-2-330 shall have been met.
 - c. For Class I permits, the Director shall have complied with the requirements of R18-2-307 for notifying and responding to affected states, and if applicable, other notification requirements of R18-2-402(D)(2) and R18-2-410(C)(2).
 - d. For Class I and II permits, the conditions of the permit shall require compliance with all applicable requirements.
 - e. For permits for which an application is required to be submitted to the Administrator under R18-2-307(A), and to which the Administrator has properly objected to its issuance in writing within 45 days of receipt of the proposed final permit and all necessary supporting information from the Department, the Director has revised and submitted a proposed final permit in response to the objection and EPA has not objected to this proposed final permit within 45 days of receipt.
- f. For permits to which the Administrator has objected to issuance pursuant to a petition filed under 40 CFR 70.8(d), the Administrator's objection has been resolved.
 - g. For a Class II permit that contains voluntary emission limitations, controls, or other requirements established pursuant to R18-2-306.01, the Director shall have complied with the requirement of R18-2-306.01(C) to provide the Administrator with a copy of the proposed permit.
3. If the Director denies a permit under this Section, a notice shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the denial and a statement that the permit applicant is entitled to a hearing.
 4. The Director shall provide a statement that sets forth the legal and factual basis for the proposed permit conditions including references to the applicable statutory or regulatory provisions. The Director shall send this statement to any person who requests it and, for Class I permits, to the Administrator.
 5. Priority shall be given by the Director to taking action on applications for construction or modification submitted pursuant to Title I, Parts C (Prevention of Significant Deterioration) and D (New Source Review) of the Act.
- K.** Requirement for a Permit. Except as noted under the provisions in R18-2-317 and R18-2-319, no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued pursuant to this Chapter. However, if a source under R18-2-326(A)(3) submits a timely and complete application for continued operation under a permit revision or renewal, the source's failure to have a permit is not a violation of this Article until the Director takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the Director, any additional information identified as being needed to process the application. This subsection does not affect a source's obligation to obtain a permit revision before making a modification to the source.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Former Section R9-3-304 repealed, new Section R9-3-304 formerly Section R9-3-305 renumbered and amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-304 repealed, new Section R9-3-304 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-304 repealed, new Section R9-3-304 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-304 renumbered without change as Section R18-2-304 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). The reference to R18-2-101(54) in subsection (E)(8) corrected to reference R18-2-101(57) (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21,

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2017 (Supp. 17-1).

R18-2-305. Public Records; Confidentiality

- A. The Director shall make all permits, including all elements required to be in the permit pursuant to R18-2-306, available to the public. No permit shall be issued unless the information required by R18-2-306 is present in the permit.
- B. A notice of confidentiality pursuant to A.R.S. § 49-432(C) shall:
1. Precisely identify the information in the documents submitted which is considered confidential.
 2. Contain sufficient supporting information to allow the Director to evaluate whether such information satisfies the requirements related to trade secrets or, if applicable, how the information, if disclosed, is likely to cause substantial harm to the person's competitive position.
- C. Within 30 days of receipt of a notice of confidentiality that complies with subsection (B) above, the Director shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position pursuant to A.R.S. § 49-432(C)(1) and so notify the applicant in writing. If the Director agrees with the applicant that the information covered by the notice of confidentiality satisfies the statutory requirements, the Director shall include a notice in the file for the permit or permit application that certain information has been considered confidential.
- D. If the Director takes action pursuant to A.R.S. § 49-432(D) and obtains a final order authorizing disclosure, the Director shall place the information in the public file and shall notify any person who has requested disclosure. If the court determines that the information is not subject to disclosure, the Director shall provide the notice specified in subsection (C) above.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1).
 Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Former Section R9-3-306 renumbered as Section R9-3-305 effective August 6, 1976. References changed to conform (Supp. 76-4). Amended effective April 12, 1977 (Supp. 77-2). Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-305 renumbered without change as R18-2-305 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-306. Permit Contents

- A. Each permit issued by the Director shall include the following elements:
1. The date of issuance and the permit term.
 2. Enforceable emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under R18-2-306.01.
 - a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - b. The permit shall state that, if an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.
 3. Each permit shall contain the following requirements with respect to monitoring:
 - a. All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including:
 - i. Monitoring and analysis procedures or test methods under 40 CFR 64;
 - ii. Other procedures and methods promulgated under sections 114(a)(3) or 504(b) of the Act; and
 - iii. Monitoring and analysis procedures or test methods required under R18-2-306.01.
 - b. 40 CFR 64 as adopted July 1, 1998, is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions if the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements not included in the permit as a result of such streamlining;
 - c. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported under subsection (A)(4). The monitoring requirements shall ensure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this subsection; and
 - d. As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.
 4. The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established under R18-2-306.01, for the following:
 - a. Records of required monitoring information that include the following:
 - i. The date, place as defined in the permit, and time of sampling or measurement;
 - ii. The date any analyses was performed;
 - iii. The name of the company or entity that performed the analysis;

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- iv. A description of the analytical technique or method used;
 - v. The results of any analysis; and
 - vi. The operating conditions existing at the time of sampling or measurement;
 - b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit.
5. The permit shall incorporate all applicable reporting requirements including reporting requirements established under R18-2-306.01 and require the following:
 - a. Submittal of reports of any required monitoring. All instances of deviations from permit requirements shall be clearly identified in the reports. All required reports shall be certified by a responsible official consistent with R18-2-304(I) and R18-2-309(A)(5) and shall be submitted with the following frequency:
 - i. For a Class I permit, at least once every six months;
 - ii. For a Class II permit, at least once per year.
 - b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of the deviations, and any corrective actions or preventive measures taken. Where the applicable requirement contains a definition of prompt or otherwise specifies a timeframe for reporting deviations, that definition or timeframe shall govern. Where the applicable requirement does not address the timeframe for reporting deviations, the permittee shall submit reports of deviations in compliance with the following schedule:
 - i. Notice that complies with timeframe in R18-2-310.01(A) is prompt for deviations that constitute excess emissions;
 - ii. Except as otherwise provided in the permit, notice that complies with subsection (A)(5)(a) is prompt for all other types of deviation.
 6. A permit condition prohibiting emissions exceeding any allowances the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.
 - a. A permit revision is not required for increases in emissions that are authorized by allowances acquired under the acid rain program, if the increases do not require a permit revision under any other applicable requirement.
 - b. A limit shall not be placed on the number of allowances held by the source. The source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - c. Any allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
 - d. Any permit issued under the requirements of this Chapter and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:
 - i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owner or operator of the unit or the designated representative of the owner or operator,
 - ii. Exceedances of applicable emission rates,
 - iii. Use of any allowance before the year for which it is allocated, and
 - iv. Contravention of any other provision of the permit.
 7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.
 8. Provisions stating the following:
 - a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes A.R.S. Title 49, Chapter 3, and the air quality rules, 18 A.A.C. 2. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforceable requirement in a permit is a violation of the Act.
 - b. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
 - c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - d. The permit does not convey any property rights of any sort, or any exclusive privilege to the permit holder.
 - e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon the Director's request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of the records directly to the Administrator along with a claim of confidentiality.
 - f. For any major source operating in a nonattainment area for all pollutants for which the source is classified as a major source, the source shall comply with reasonably available control technology.
 9. A provision to ensure that the source pays fees to the Director under A.R.S. § 49-426(E), R18-2-326, and R18-2-511.
 10. A provision stating that a permit revision shall not be required under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes provided for in the permit.
 11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. The terms and conditions shall:
 - a. Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

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- b. Extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
 - c. Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.
12. Terms and conditions, if the permit applicant requests them, and as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading the increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:
- a. Shall include all terms required under subsections (A) and (C) to determine compliance;
 - b. Shall not extend the permit shield in subsection (D) to all terms and conditions that allow the increases and decreases in emissions;
 - c. Shall not include trading that involves emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
 - d. Shall meet all applicable requirements and requirements of this Chapter.
13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If the terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
14. Upon request of a permit applicant, the Director shall issue a permit that contains terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this subsection (shall) not include modifications under any provision of Title I of the Act and shall not exceed emissions allowable under the permit. The terms and conditions shall provide, for Class I sources, for notice that conforms to R18-2-317(D) and (E), and for Class II sources, for logging that conforms to R18-2-317.02(B)(5). In addition, the notices for Class I and Class II sources shall describe how the increases and decreases in emissions will comply with the terms and conditions of the permit.
15. Other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2, and the rules adopted in 18 A.A.C. 2.
- B. Federally-enforceable Requirements.**
- 1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:
 - a. Except as provided in subsection (B)(2), all terms and conditions in a Class I permit, including any provision designed to limit a source's potential to emit;
 - b. Terms or conditions in a Class II permit setting forth federal applicable requirements; and
 - c. Terms and conditions in any permit entered into voluntarily under R18-2-306.01, as follows:
 - i. Emissions limitations, controls, or other requirements; and
 - ii. Monitoring, recordkeeping, and reporting requirements associated with the emissions limitations, controls, or other requirements in subsection (B)(1)(c)(i).
2. Notwithstanding subsection (B)(1)(a), the Director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.
- C.** Each permit shall contain a compliance plan as specified in R18-2-309.
- D.** Each permit shall include the applicable permit shield provisions under R18-2-325.
- E.** Emergency provision.
- 1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, that requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
 - 2. An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection (E)(3) are met.
 - 3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An emergency occurred and the permittee can identify the cause or causes of the emergency;
 - b. At the time of the emergency the permitted facility was being properly operated;
 - c. During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and
 - d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile, or hand delivery within two working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.
 - 4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
 - 5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.
- F.** A Class I permit issued to a major source shall require that revisions be made under R18-2-321 to incorporate additional applicable requirements adopted by the Administrator under the Act that become applicable to a source with a permit with a remaining permit term of three or more years. A revision shall not be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than 18

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months after the promulgation of the standards and regulations. Any permit revision required under this subsection (shall) comply with R18-2-322 for permit renewal and shall reset the five-year permit term.

Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976. Reference changed to conform (Supp. 76-4). Former Section R9-3-306 repealed, new Section R9-3-306 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-306 renumbered without change as R18-2-306 (Supp. 87-3). Amended subsection (I) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards

- A. A source may voluntarily propose in its application, and accept in its permit, emissions limitations, controls, or other requirements that are permanent, quantifiable, and otherwise enforceable as a practical matter in order to avoid classification as a source that requires a Class I permit or to avoid one or more other applicable requirements. For the purposes of this Section, "enforceable as a practical matter" means that specific means to assess compliance with an emissions limitation, control, or other requirement are provided for in the permit in a manner that allows compliance to be readily determined by an inspection of records and reports.
- B. In order for a source to obtain a permit containing voluntarily accepted emissions limitations, controls, or other requirements, the source shall demonstrate all of the following in its permit application:
 1. The emissions limitations, controls, or other requirements to be imposed for the purpose of avoiding an applicable requirement are at least as stringent as the emissions limitations, controls, or other requirements that would otherwise be applicable to that source, including those that originate in an applicable implementation plan; and the permit does not waive, or make less stringent, any limitations or requirements contained in or issued pursuant to an applicable implementation plan, or that are otherwise federally enforceable.
 2. All voluntarily accepted emissions limitations, controls, or other requirements will be permanent, quantifiable, and otherwise enforceable as a practical matter.
- C. At the same time as notice of proposed issuance is first published pursuant to A.R.S. § 49-426(D), the Director shall send a copy of any Class II permit proposed to be issued pursuant to this Section to the Administrator for review during the comment period described in the notice pursuant to R18-2-330(C)(3).
- D. The Director shall send a copy of each final permit issued pursuant to this Section to the Administrator.

Historical Note

Adopted effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-306.02. Expired**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R18-2-307. Permit Review by the EPA and Affected States

- A. Except as provided in R18-2-304(G) and as waived by the Administrator, for each Class I permit, a copy of each of the following shall be provided to the Administrator as follows:
 1. The applicant shall provide a complete copy of the application including any attachments, compliance plans, and other information required by R18-2-304(F) at the time of submittal of the application to the Director.
 2. The Director shall provide the proposed final permit after public and affected state review.
 3. The Director shall provide the final permit at the time of issuance.
- B. The Director shall keep all records associated with all permits for a minimum of five years from issuance.
- C. No permit for which an application is required to be submitted to the Administrator under subsection (A) shall be issued if the Administrator properly objects to its issuance in writing within 45 days of receipt of the proposed final permit from the Department and all necessary supporting information.
- D. Review by Affected States.
 1. For each Class I permit, the Director shall provide notice of each proposed permit to any affected state on or before the time that the Director provides this notice to the public as required under R18-2-330 except to the extent R18-2-319 requires the timing of the notice to be different.
 2. If the Director refuses to accept a recommendation of any affected state submitted during the public or affected state review period, the Director shall notify the Administrator and the affected state in writing. The notification shall include the Director's reasons for not accepting any such recommendation and shall be provided to the Administrator as part of the submittal of the proposed final permit. The Director shall not be required to accept recommendations that are not based on federal applicable requirements or requirements of state law.
- E. Any person who petitions the Administrator pursuant to 40 CFR 70.8(d) shall notify the Department by certified mail of such petition as soon as possible, but in no case more than 10 days following such petition. Such notice shall include the grounds for objection and whether such objections were raised during the public comment period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the Director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day administrative review period and prior to the Administrator's objection.
- F. If the Director has issued a permit prior to receipt of the Administrator's objection under subsection (E), and the Administrator indicates that it should be revised, terminated, or revoked and reissued, the Director shall reopen the permit in accordance with R18-2-321 and may thereafter issue only a revised permit that satisfies the Administrator's objection. In

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any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

G. Prohibition on Default Issuance.

1. No Class I permit including a permit renewal or revision shall be issued until affected states and the Administrator have had an opportunity to review the proposed permit.
2. No permit or renewal shall be issued unless the Director has acted on the application.

Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976 (Supp. 76-4). New Section R9-3-307 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-307 repealed, new Section R9-3-307 adopted effective May 28, 1982 (Supp. 82-3). Amended subsection (B)(4)(b) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-307 renumbered without change as R18-2-307 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-308. Emission Standards and Limitations

Wherever applicable requirements apply different standards or limitations to a source for the same item, all applicable requirements shall be included in the permit.

Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-308 repealed, new Section R9-3-308 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-308 renumbered without change as R18-2-308 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-309. Compliance Plan; Certification

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4), and (5).
2. Requirements for certifications of compliance with terms and conditions contained in the permit, including emissions limitations, standards, and work practices. Permits shall include each of the following:
 - a. The frequency of submissions of compliance certifications, which shall not be less than annually;
 - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;
 - c. A requirement that the compliance certification include all of the following (the identification of applicable information may cross-reference the permit or previous reports, as applicable):
 - i. The identification of each term or condition of the permit that is the basis of the certification;
 - ii. The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. The methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
- iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the methods or means designated in subsection (2)(c)(ii). The certification shall identify each deviation and take it into account in the compliance certification. For emission units subject to 40 CFR 64, the certification shall also identify as possible exceptions to compliance any period during which compliance is required and in which an excursion or exceedance defined under 40 CFR 64 occurred; and
- iv. Other facts the Director may require to determine the compliance status of the source.
- d. A requirement that permittees submit all compliance certifications to the Director. Class I permittees shall also submit compliance certifications to the Administrator.
- e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. A requirement for any document required to be submitted by a permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
4. Inspection and entry provisions that require that upon presentation of proper credentials, the permittee shall allow the Director to:
 - a. Enter upon the permittee's premises where a source is located, emissions-related activity is conducted, or records are required to be kept under the conditions of the permit;
 - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
 - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
 - d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
 - e. Record any inspection by use of written, electronic, magnetic, or photographic media.
5. A compliance plan that contains all the following:
 - a. A description of the compliance status of the source with respect to all applicable requirements;
 - b. A description as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and

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- iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
- c. A compliance schedule as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;
 - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. The progress reports shall contain:
 - i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - ii. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- 6. The compliance plan content requirements specified in subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated under R18-2-333 with regard to the schedule and each method the source will use to achieve compliance with the acid rain emissions limitations.
- 7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amendment filed September 18, 1979, effective following the adoption of Article 7. Nonferrous Smelter Orders. Amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Amendment filed September 18, 1979 effective January 8, 1980 (Supp. 80-2). Amended effective Sep-

tember 28, 1984 (Supp. 84-5). Former Section R9-3-309 renumbered without change as R18-2-309 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004 (Supp. 04-2).

R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown**A. Applicability.**

This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:

1. Promulgated pursuant to Sections 111 or 112 of the Act,
2. Promulgated pursuant to Titles IV or VI of the Clean Air Act,
3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A.,
4. Contained in R18-2-715(F), or
5. Included in a permit to meet the requirements of R18-2-406(A)(5).

B. Affirmative Defense for Malfunctions.

Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:

1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or

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planned, and could not have been avoided by better operations and maintenance practices;

9. All emissions monitoring systems were kept in operation if at all practicable; and
10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

C. Affirmative Defense for Startup and Shutdown.

1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
 - a. The excess emissions could not have been prevented through careful and prudent planning and design;
 - b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
 - c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
 - d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
 - e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
 - f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
 - g. All emissions monitoring systems were kept in operation if at all practicable; and
 - h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
2. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection (B).

D. Affirmative Defense for Malfunctions During Scheduled Maintenance.

If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B).

E. Demonstration of Reasonable and Practicable Measures.

For an affirmative defense under subsection (B) or (C), the owner or operator of the source shall demonstrate, through submission of the data and information required by this Section and R18-2-310.01, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective June 19, 1981 (Supp. 81-3). Amended Arizona Testing Manual for Air Pollutant Emissions, effective

September 22, 1983 (Supp. 83-5). Amended Arizona Testing Manual for Air Pollutant Emissions, as of September 15, 1984, effective August 9, 1985 (Supp. 85-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-310 renumbered without change as R18-2-310 (Supp. 87-3). Amended effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

R18-2-310.01. Reporting Requirements

- A.** The owner or operator of any source shall report to the Director any emissions in excess of the limits established by this Chapter or the applicable permit. The owner or operator of any registered source may report excess emissions in accordance with this Section in order to qualify for the affirmative defense established in R18-2-310. The report shall be in two parts as specified below:
1. Notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occurrence of excess emissions that includes all available information from subsection (B).
 2. Detailed written notification by submission of an excess emissions report within 72 hours of the notification under subsection (A)(1).
- B.** The excess emissions report shall contain the following information:
1. The identity of each stack or other emission point where the excess emissions occurred;
 2. The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
 3. The time and duration or expected duration of the excess emissions;
 4. The identity of the equipment from which the excess emissions emanated;
 5. The nature and cause of the emissions;
 6. The steps taken, if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;
 7. The steps that were or are being taken to limit the excess emissions; and
 8. If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions resulted from startup or malfunction, a list of the steps taken to comply with the permit procedures.
- C.** In the case of continuous or recurring excess emissions, the notification requirements of this Section shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to subsections (A) and (B).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-311. Test Methods and Procedures

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- A. Except as otherwise specified in this Chapter, the applicable procedures and testing methods contained in the Arizona Testing Manual; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C shall be used to determine compliance with the requirements established in this Chapter or contained in permits issued pursuant to this Chapter.
- B. Except as otherwise provided in this subsection the opacity of visible emissions shall be determined by Reference Method 9 of the Arizona Testing Manual or by alternative method ALT-082 approved by the Administrator on May 15, 2012. A permit may specify a method, other than Method 9 or ALT-082, for determining the opacity of emissions from a particular emissions unit, if the method has been promulgated by the Administrator in 40 CFR 60, Appendix A or approved by the Administrator as an alternative method.
- C. Except as otherwise specified in this Chapter, the heat content of solid fuel shall be determined according to ASTM method D-3176-89, (Practice for Ultimate Analysis of Coal and Coke) and ASTM method D-2015-91, (Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter).
- D. Except for ambient air monitoring and emissions testing required under Articles 9 and 11 of this Chapter, alternative and equivalent test methods in any test plan submitted to the Director may be approved by the Director for the duration of that plan provided that the following three criteria are met:
1. The alternative or equivalent test method measures the same chemical and physical characteristics as the test method it is intended to replace.
 2. The alternative or equivalent test method has substantially the same or better reliability, accuracy, and precision as the test method it is intended to replace.
 3. Applicable quality assurance procedures are followed in accordance with the Arizona Testing Manual, 40 CFR 60 or other quality assurance methods which are consistent with principles contained in the Arizona Testing Manual or 40 CFR 60 as approved by the Director.
4. Waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Director's satisfaction that the source is in compliance with the standard.
5. Nothing in this Section shall be construed to abrogate the Director's authority to require testing.
- C. Performance tests shall be conducted under such conditions as the Director shall specify to the plant operator based on representative performance of the source. The owner or operator shall make available to the Director such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions of performance tests unless otherwise specified in the applicable standard.
- D. The owner or operator of a permitted source shall provide the Director two weeks prior notice of the performance test to afford the Director the opportunity to have an observer present.
- E. The owner or operator of a permitted source shall provide, or cause to be provided, performance testing facilities as follows:
1. Sampling ports adequate for test methods applicable to such facility.
 2. Safe sampling platform(s).
 3. Safe access to sampling platform(s).
 4. Utilities for sampling and testing equipment.
- F. Each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs is required to be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the arithmetic means of the results of the two other runs. If the Director, or the Director's designee is present, tests may only be stopped with the Director's or such designee's approval. If the Director, or the Director's designee is not present, tests may only be stopped for good cause, which includes forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the operator's control. Termination of testing without good cause after the first run is commenced shall constitute a failure of the test.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-311 renumbered without change as R18-2-311 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-312. Performance Tests

- A. Except as provided in subsection (J), within 60 days after a source subject to the permit requirements of this Article has achieved the capability to operate at its maximum production rate on a sustained basis but no later than 180 days after initial start-up of such source and at such other times as may be required by the Director, the owner or operator of such source shall conduct performance tests and furnish the Director a written report of the results of the tests.
- B. Performance tests shall be conducted and data reduced in accordance with the test method and procedures contained in the Arizona Testing Manual unless the Director:
1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
 2. Approves the use of an equivalent method;
 3. Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or
- G. Except as provided in subsection (H) compliance with the emission limits established in this Chapter or as prescribed in permits issued pursuant to this Chapter shall be determined by the performance tests specified in this Section or in the permit.
- H. In addition to performance tests specified in this Section, compliance with specific emission limits may be determined by:
1. Opacity tests.
 2. Emission limit compliance tests specifically designated as such in the regulation establishing the emission limit to be complied with.
 3. Continuous emission monitoring, where applicable quality assurance procedures are followed and where it is designated in the permit or in an applicable requirement to show compliance.
- I. Nothing in this Section shall be so construed as to prevent the utilization of measurements from emissions monitoring devices or techniques not designated as performance tests as evidence of compliance with applicable good maintenance and operating requirements.

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- J.** The owner or operator of a source subject to this Section may request an extension to the performance test deadline due to a force majeure event as follows:
1. If a force majeure event is about to occur, occurs, or has occurred for which the owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Director in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline. The notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall be given as soon as practicable.
 2. The owner or operator shall provide to the Director a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure event occurs.
 3. The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Director. The Director shall notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.
 4. Until an extension of the performance test deadline has been approved by the Director under paragraphs (1), (2), and (3) of this subsection, the owner or operator remains subject to the requirements of this Section.
 5. For purposes of this subsection, a "force majeure event" means an event that will be or has been caused by circumstances beyond the control of the source, its contractors, or any entity controlled by the source that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the source's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the source.
- Historical Note**
- Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-312 renumbered without change as R18-2-312 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).
- R18-2-313. Existing Source Emission Monitoring**
- A.** Every source subject to an existing source performance standard as specified in this Chapter shall install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants and other gases specified in this Section for the applicable source category.
1. Applicability.
 - a. Fossil-fuel fired steam generators, as specified in subsection (C)(1), shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.
 - b. Fluid bed catalytic cracking unit catalyst regenerators, as specified in subsection (C)(4), shall be monitored for opacity.
 - c. Sulfuric acid plants, as specified in subsection (C)(3) of this Section, shall be monitored for sulfur dioxide emissions.
 - d. Nitric acid plants, as specified in subsection (C)(2), shall be monitored for nitrogen oxides emissions.
 2. Emission monitoring shall not be required when the source of emissions is not operating.
 3. Variations.
 - a. Unless otherwise prohibited by the Act, the Director may approve, on a case-by-case basis, alternative monitoring requirements different from the provisions of this Section if the installation of a continuous emission monitoring system cannot be implemented by a source due to physical plant limitations or extreme economic reasons. Alternative monitoring procedures shall be specified by the Director on a case-by-case basis and shall include, as a minimum, annual manual stack tests for the pollutants identified for each type of source in this Section. Extreme economic reasons shall mean that the requirements of this Section would cause the source to be unable to continue in business.
 - b. Alternative monitoring requirements may be prescribed when installation of a continuous emission monitoring system or monitoring device specified by this Section would not provide accurate determinations of emissions (e.g., condensed, uncombined water vapor may prevent an accurate determination of opacity using commercially available continuous emission monitoring systems).
 - c. Alternative monitoring requirements may be prescribed when the affected facility is infrequently operated (e.g., some affected facilities may operate less than one month per year).
 4. Monitoring system malfunction: A temporary exemption from the monitoring and reporting requirements of this Section may be provided during any period of monitoring system malfunction, provided that the source owner or operator demonstrates that the malfunction was unavoidable and is being repaired expeditiously.
- B.** Installation and performance testing required under this Section shall be completed and monitoring and recording shall commence within 18 months of the effective date of this Section.
- C.** Minimum monitoring requirements:
1. Fossil-fuel fired steam generators: Each fossil-fuel fired steam generator, except as provided in the following subsections, with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1976, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question.
 - a. A continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this Section by the owner or operator of any such steam generator of greater than 250 million Btu per hour heat input except where:
 - i. Gaseous fuel is the only fuel burned; or
 - ii. Oil or a mixture of gas and oil are the only fuels burned and the source is able to comply with the applicable particulate matter and opacity

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- regulations without utilization of particulate matter collection equipment, and where the source has never been found to be in violation through any administrative or judicial proceedings, or accepted responsibility for any violation of any visible emission standard.
- b. A continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section shall be installed, calibrated, using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on any fossil-fuel fired steam generator of greater than 250 million Btu per hour heat input which has installed sulfur dioxide pollutant control equipment.
 - c. A continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specification of this Section shall be installed, calibrated using nitric oxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on fossil-fuel fired steam generators of greater than 1000 million Btu per hour heat input when such facility is located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, unless the source owner or operator demonstrates during source compliance tests as required by the Department that such a source emits nitrogen oxides at levels 30% or more below the emission standard within this Chapter.
 - d. A continuous emission monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the performance specifications of this Section shall be installed, calibrated, operated, and maintained on fossil-fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard within this Chapter.
2. Nitric acid plants: Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100% acid located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, shall install, calibrate using nitrogen dioxide calibration gas mixtures, maintain, and operate a continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specifications of this Section for each nitric acid producing facility within such plant.
 3. Sulfuric acid plants: Each sulfuric acid plant as defined in R18-2-101, of greater than 300 tons per day production capacity, the production being expressed as 100% acid, shall install, calibrate using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section for each sulfuric acid producing facility within such a plant.
 4. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh-feed capacity shall install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section for each regenerator within such refinery.
- D. Minimum specifications:** Owners or operators of monitoring equipment installed to comply with this Section shall demonstrate compliance with the following performance specifications.
1. The performance specifications set forth in Appendix B of 40 CFR 60 are incorporated herein by reference and shall be used by the Director to determine acceptability of monitoring equipment installed pursuant to this Section. However where reference is made to the Administrator in Appendix B of 40 CFR 60, the Director may allow the use of either the state-approved reference method or the federally approved reference method as published in 40 CFR 60. The performance specifications to be used with each type of monitoring system are listed below.
 - a. Continuous emission monitoring systems for measuring opacity shall comply with performance specification 1.
 - b. Continuous emission monitoring systems for measuring nitrogen oxides shall comply with performance specification 2.
 - c. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 2.
 - d. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 3.
 - e. Continuous emission monitoring systems for measuring carbon dioxide shall comply with performance specification 3.
 2. Calibration gases: Span and zero gases shall be traceable to National Bureau of Standards reference gases whenever these reference gases are available. Every six months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A of 40 CFR 60 (Chapter 1) as amended: For sulfur dioxide, use Reference Method 6; for nitrogen oxides, use Reference Method 7; and for carbon dioxide or oxygen, use Reference Method 3. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.
 3. Cycling time: Time includes the total time required to sample, analyze, and record an emission measurement.
 - a. Continuous emission monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive six-minute period.
 - b. Continuous emission monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one cycle of operation (sampling, analyzing, and date recording) for each successive 15-minute period.
 4. Monitor location: All continuous emission monitoring systems or monitoring devices shall be installed such that representative measurements of emissions of process parameter (i.e., oxygen, or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous emission monitoring systems to obtain representative samples are contained in the applicable performance specifications of Appendix B of 40 CFR 60.

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5. Combined effluents: When the effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere through more than one point, separate monitors shall be installed.
6. Zero and drift: Owners or operators of all continuous emission monitoring systems installed in accordance with the requirements of this Section shall record the zero and span drift in accordance with the method prescribed by the manufacturer's recommended zero and span check at least once daily, using calibration gases specified in subsection (C) as applicable, unless the manufacturer has recommended adjustments at shorter intervals, in which case such recommendations shall be followed; shall adjust the zero span whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of Part 60, Chapter 1, Title 40 CFR are exceeded.
7. Span: Instrument span should be approximately 200% of the expected instrument data display output corresponding to the emission standard for the source.
- E. Minimum data requirement: The following subsections set forth the minimum data reporting requirements for sources employing continuous monitoring equipment as specified in this Section. These periodic reports do not relieve the source operator from the reporting requirements of R18-2-310.01.
1. The owners or operators of facilities required to install continuous emission monitoring systems shall submit to the Director a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known. The averaging period used for data reporting shall correspond to the averaging period specified in the emission standard for the pollutant source category in question. The required report shall include, as a minimum, the data stipulated in this subsection.
 2. For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of all six-minute opacity averages greater than any applicable standards for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four equally spaced, instantaneous opacity measurements per minute. Any time periods exempted shall be deleted before determining any averages in excess of opacity standards.
 3. For gaseous measurements the summary shall consist of emission averages in the units of the applicable standard for each averaging period during which the applicable standard was exceeded.
 4. The date and time identifying each period during which the continuous emission monitoring system was inoperative, except for zero and span checks and the nature of system repair or adjustment shall be reported. The Director may require proof of continuous emission monitoring system performance whenever system repairs or adjustments have been made.
 5. When no excess emissions have occurred and the continuous emission monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.
 6. Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous emission monitoring system or as necessary to convert monitoring data to the units of the applicable standard for a minimum of two years from the date of collection of such data or submission of such summaries.
- F. Data reduction: Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.
1. For fossil-fuel fired steam generators the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million Btu) where necessary.
 - a. When the owner or operator of a fossil-fuel fired steam generator elects under subsection (C)(1)(d) to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry).
 - i. When measurements are on a wet basis, except where wet scrubbers are employed or where moisture is otherwise added to stack gases, the following conversion procedure shall be used:

$$E(Q) = C(ws)F(w) \left[\frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$
 - ii. When measurements are on a wet basis and the water vapor content of the stack gas is determined at least once every 15 minutes the following conversion procedure shall be used:

$$E(Q) = C(ws)F \left[\frac{20.9}{20.9(1 - B(wa))\%O(2ws)} \right]$$

Use of this equation is contingent upon demonstrating the ability to accurately determine B(ws) such that any absolute error in B(ws) will not cause an error of more than $\pm 1.5\%$ in the term:

$$\left[\frac{20.9}{29.9(1 - B(wa)) - \%O(2ws)} \right]$$
 - iii. When measurements are on a dry basis, the following conversion procedure shall be used:

$$E(Q) = CF \left[\frac{20.9}{20.9 - \%O(2ws)} \right]$$
 - b. When the owner or operator elects under subsection (C)(1)(d) to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure used:

$$E(Q) = CF(c) \left[\frac{100}{\%CO(2)} \right]$$
 - c. The values used in the equations under subsection (F)(1) above are derived as follows:
E(Q) = pollutant emission, g/million cal (lb/million Btu).

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C = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by 4.16×10^{-5} M g/dscm per ppm (2.64×10^{-9} M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole), M = 64 for sulfur dioxide and 46 for oxides of nitrogen.

C(ws) = pollutant concentrations at stack conditions, g/wscm (lb/wscf), determined by multiplying the average concentration (ppm) for each one-hour period by 4.15×10^{-5} M lb/wscm per ppm (2.59×10^{-5} M lb/wscf per ppm) where M = pollutant molecular weight, g/g mole (lb/lb mole). M = 64 for sulfur dioxide and 46 for nitrogen oxides.

%O(2),%CO(2) = Oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under subsection (D)(1)(d).

F,F(c) = A factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (F(c)), respectively. Values of F and F(c) are given in 40 CFR 60.45(f) (Chapter 1).

F(w) = A factor representing a ratio of the volume of wet flue gases generated to the caloric value of the fuel combusted. Values of F(w) are given in Reference Method 19 of the Arizona Testing Manual.

B(wa) = Proportion by volume of water vapor in the ambient air. Approval may be given for determination of B(w)a by on-site instrumental measurement provided that the absolute accuracy of the measurement technique can be demonstrated to be within $\pm 0.7\%$ water vapor. Estimation methods for B(wa) are given in Reference Method 19 of the Arizona Testing Manual.

B(ws) = Proportion by volume of water vapor in the stack gas.

2. For sulfuric acid plants as defined in R18-2-101, the owner or operator shall:
 - a. Establish a conversion factor three times daily according to the procedures of 40 CFR 60.84(b) (Chapter 1),
 - b. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in Kg/metric ton (lb/short ton), and
 - c. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.
3. For nitric acid plants, the owner or operator shall:
 - a. Establish a conversion factor according to the procedures of 40 CFR 60.73(b) (Chapter 1),
 - b. Multiply the conversion factor by the average nitrogen oxides concentration in the flue gases to obtain the nitrogen oxides emissions in the units of the applicable standard,
 - c. Report the average nitrogen oxides emission for each averaging period in excess of applicable emission standard in the quarterly summary.
4. The Director may allow data reporting or reduction procedures varying from those set forth in this Section if the

owner or operator of a source shows to the satisfaction of the Director that his procedures are at least as accurate as those in this Section. Such procedures may include but are not limited to the following:

- a. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).
- b. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1), subparagraph (d) (Supp 80-2). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-313 renumbered without change as R18-2-313 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

R18-2-314. Quality Assurance

Facilities subject to the permit requirements of this Article shall submit a quality assurance plan to the Director that meets the requirements of R18-2-311(D)(3) within 12 months of the effective date of this Section. Facilities subject to the requirements of R18-2-313 shall submit a quality assurance plan as specified in the permit.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-314 renumbered without change as R18-2-314 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-315. Posting of Permit

- A. Any person who has been granted an individual or general permit shall post such permit or a certificate of permit issuance on location where the equipment is installed in such a manner as to be clearly visible and accessible. All equipment covered by the permit shall be clearly marked with one of the following:
 1. The current permit number,
 2. A serial number or other equipment number that is also listed in the permit to identify that piece of equipment.
- B. A copy of the complete permit shall be kept on the site.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-315 renumbered without change as R18-2-315 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-316. Notice by Building Permit Agencies

All agencies of the county or political subdivisions of the county that issue or grant building permits or approvals shall examine the plans and specifications submitted by an applicant for a permit or approval to determine if an air pollution permit will possibly be required under the provisions of this Chapter. If it appears that an air pollution permit will be required, the agency or political subdivision shall give written notice to the applicant to contact the Director and shall furnish a copy of that notice to the Director.

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Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-316 renumbered without change as R18-2-316 (Supp. 87-3).

R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I

- A.** A facility with a Class I permit may make changes that contravene an express permit term without a permit revision if all of the following apply:
1. The changes are not modifications under any provision of Title I of the Act or under A.R.S. § 49-401.01(24);
 2. The changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions;
 3. The changes do not violate any applicable requirements or trigger any additional applicable requirements;
 4. The changes satisfy all requirements for a minor permit revision under R18-2-319(A);
 5. The changes do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and
 6. The changes do not constitute a minor NSR modification.
- B.** The substitution of an item of process or pollution control equipment for an identical or substantially similar item of process or pollution control equipment shall qualify as a change that does not require a permit revision, if the substitution meets all of the requirements of subsections (A), (D), and (E).
- C.** Except for sources with authority to operate under general permits, permitted sources may trade increases and decreases in emissions within the permitted facility, as established in the permit under R18-2-306(A)(12), if an applicable implementation plan provides for the emissions trades without applying for a permit revision and based on the seven working days notice prescribed in subsection (D). This provision is available if the permit does not provide for the emissions trading as a minor permit revision.
- D.** For each change under subsections (A) through (C), a written notice by certified mail or hand delivery shall be received by the Director and the Administrator a minimum of seven working days in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided less than seven working days in advance of the change but must be provided as far in advance of the change or, if advance notification is not practicable, as soon after the change as possible.
- E.** Each notification shall include:
1. When the proposed change will occur;
 2. A description of the change;
 3. Any change in emissions of regulated air pollutants;
 4. The pollutants emitted subject to the emissions trade, if any;
 5. The provisions in the implementation plan that provide for the emissions trade with which the source will comply and any other information as may be required by the provisions in the implementation plan authorizing the trade;
 6. If the emissions trading provisions of the implementation plan are invoked, then the permit requirements with which the source will comply; and
 7. Any permit term or condition that is no longer applicable as a result of the change.
- F.** The permit shield described in R18-2-325 shall not apply to any change made under subsections (A) through (C). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to

requirements of the implementation plan authorizing the emissions trade.

- G.** Except as otherwise provided for in the permit, making a change from one alternative operating scenario to another as provided under R18-2-306(A)(11) shall not require any prior notice under this Section.
- H.** The Director shall make available to the public monthly summaries of all notices received under this Section.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-317 renumbered without change as R18-2-317 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-317.01. Facility Changes that Require a Permit Revision - Class II

- A.** The following changes at a source with a Class II permit shall require a permit revision:
1. A change that would trigger a new applicable requirement or violate an existing applicable requirement.
 2. Establishment of, or change in, an emissions cap under R18-2-306.02;
 3. A change that will require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
 4. A change that results in emissions that are subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3), (4), or (5) if the emissions cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
 5. A change that will authorize the burning of used oil, used oil fuel, hazardous waste, or hazardous waste fuel, or any other fuel not currently authorized by the permit;
 6. A change that requires the source to obtain a Class I permit;
 7. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better pollutant removal efficiency;
 8. Establishment or revision of a limit under R18-2-306.01;
 9. Increasing operating hours or rates of production above the permitted level;
 10. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results:
 - a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
 - b. From a change in an applicable requirement; and
 11. A minor NSR modification.
- B.** A source with a Class II permit may make any physical change or change in the method of operation without revising the source's permit unless the change is specifically prohibited in the source's permit or is a change described in subsection (A). A change that does not require a permit revision may still be subject to requirements in R18-2-317.02.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R.

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4074, effective September 22, 1999 (Supp. 99-3).

Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II

- A.** Except for a physical change or change in the method of operation at a Class II source requiring a permit revision under R18-2-317.01, or a change subject to logging or notice requirements in subsection (B) or (C), a change at a Class II source shall not be subject to revision, notice, or logging requirements under this Chapter.
- B.** Except as otherwise provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source keeps onsite records of the changes according to Appendix 3:
1. Implementing an alternative operating scenario, including raw material changes;
 2. Changing process equipment, operating procedures, or making any other physical change if the permit requires the change to be logged;
 3. Engaging in any new insignificant activity listed in the definition of insignificant activities in R18-2-101 but not listed in the permit;
 4. Replacing an item of air pollution control equipment listed in the permit with an identical (same model, different serial number) item. The Director may require verification of efficiency of the new equipment by performance tests; and
 5. A change that results in a decrease in actual emissions if the source wants to claim credit for the decrease in determining whether the source has a net emissions increase for any purpose. The logged information shall include a description of the change that will produce the decrease in actual emissions. A decrease that has not been logged is creditable only if the decrease is quantifiable, enforceable, and otherwise qualifies as a creditable decrease.
- C.** Except as provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source provides written notice to the Department in advance of the change as provided below:
1. Replacing an item of air pollution control equipment listed in the permit with one that is not identical but that is substantially similar and has the same or better pollutant removal efficiency: seven days. The Director may require verification of efficiency of the new equipment by performance tests;
 2. A physical change or change in the method of operation that increases actual emissions more than 10% of the major source threshold for any conventional pollutant but does not require a permit revision: seven days;
 3. Replacing an item of air pollution control equipment listed in the permit with one that is not substantially similar but that has the same or better efficiency: 30 days. The Director may require verification of efficiency of the new equipment by performance tests;
 4. A change that would trigger an applicable requirement that already exists in the permit: 30 days unless otherwise required by the applicable requirement;
 5. A change that amounts to reconstruction of the source or an affected facility: seven days. For purposes of this subsection, reconstruction of a source or an affected facility shall be presumed if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new source or affected facility and the changes to the components have occurred over the 12

consecutive months beginning with commencement of construction; and

6. A change that will result in the emissions of a new regulated air pollutant above an applicable regulatory threshold but that does not trigger a new applicable requirement for that source category: 30 days. For purposes of this requirement, an applicable regulatory threshold for a conventional air pollutant shall be 10% of the applicable major source threshold for that pollutant.
- D.** For each change under subsection (C), the written notice shall be by certified mail or hand delivery and shall be received by the Director the minimum amount of time in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided with less than required notice, but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible. The written notice shall include:
1. When the proposed change will occur,
 2. A description of the change,
 3. Any change in emissions of regulated air pollutants, and
 4. Any permit term or condition that is no longer applicable as a result of the change.
- E.** A source may implement any change in subsection (C) without the required notice by applying for a minor permit revision under R18-2-319 and complying with R18-2-319(D)(2) and (G).
- F.** The permit shield described in R18-2-325 shall not apply to any change made under this Section, other than implementation of an alternate operating scenario under subsection (B)(1).
- G.** Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, constitutes a change under R18-317.01(A).
- H.** If a source change is described under both subsections (B) and (C), the source shall comply with subsection (C). If a source change is described under both subsection (C) and R18-2-317.01(B), the source shall comply with R18-2-317.01(B).
- I.** A copy of all logs required under subsection (B) shall be filed with the Director within 30 days after each anniversary of the permit issue date. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R.

4074, effective September 22, 1999 (Supp. 99-3).

Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-318. Administrative Permit Amendments

- A.** Except for provisions pursuant to Title IV of the Act, an administrative permit amendment is a permit revision that does any of the following:
1. Corrects typographical errors;
 2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 3. Requires more frequent monitoring or reporting by the permittee;
 4. Allows for a change in ownership or operational control of a source as approved under R18-2-323 where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility cover-

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- age, and liability between the current and new permittee has been submitted to the Director;
- B. Administrative permit amendments to Title IV provisions of the permit shall be governed by regulations promulgated by the Administrator under Title IV of the Act.
 - C. The Director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and for Class I permits may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this Section.
 - D. The Director shall submit a copy of Class I permits revised under this Section to the Administrator.
 - E. Except for administrative permit amendments involving a transfer under R18-2-323, the source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
- 6. Are not changes in fuels not represented in the permit application or provided for in the permit;
 - 7. Are not minor NSR modifications subject to R18-2-334; and
 - 8. Are not required to be processed as a significant permit revision under R18-2-320.
- B. Minor permit revision procedures shall be used for the following changes at a Class II source:
 - 1. A change that triggers a new applicable requirement if all of the following apply:
 - a. The change is not a minor NSR modification subject to R18-2-334;
 - b. A case-by-case determination of an emission limitation or other standard is not required; and
 - c. The change does not require the source to obtain a Class I permit.
 - 2. A change that increases emissions above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;
 - 3. A change in fuel from fuel oil or coal, to natural gas or propane, if not authorized in the permit;
 - 4. A change that results in emissions subject to monitoring, recordkeeping, or reporting under R18-2-306(A)(3),(4), or (5) and that cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
 - 5. A decrease in the emissions permitted under an emissions cap unless the decrease requires a change in the conditions required to enforce the cap or to ensure that emissions trades conducted under the cap are quantifiable and enforceable; and
 - 6. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better efficiency.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-318 renumbered without change as R18-2-318 (Supp. 87-3). Amended subsection (A) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-318.01. Annual Summary Permit Amendments for Class II Permits

The Director may amend any Class II permit annually without following R18-2-321 in order to incorporate changes reflected in logs or notices filed under R18-2-317.02. The amendment shall be effective to the anniversary date of the permit. The Director shall make available to the public for any source:

1. A complete record of logs and notices sent to the Department under R18-2-317.02; and
2. Any amendments or revisions to the source's permit.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

R18-2-319. Minor Permit Revisions

- A. Minor permit revision procedures may be used only for those changes at a Class I source that satisfy all of the following:
 1. Do not violate any applicable requirement;
 2. Do not involve substantive changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or an analysis of impacts on visibility or maximum increases allowed under R18-2-218;
 4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
 - a. A federally enforceable emissions cap that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and
 - b. An alternative emissions limit approved under regulations promulgated under the section 112(i)(5) of the Act.
 5. Are not modifications under any provision of Title I of the Act;
- B. As approved by the Director, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that the minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the Administrator.
- C. An application for minor permit revision shall be on the standard application form provided under R18-2-304(B) and include the following:
 1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 2. For Class I sources, and any source that is making the change immediately after it files the application, the source's suggested draft permit;
 3. Certification by a responsible official, consistent with standard permit application requirements, that the proposed revision meets the criteria for use of minor permit revision procedures and a request that the procedures be used;
- D. EPA and affected state notification. For Class I permits, within five working days of receipt of an application for a minor permit revision, the Director shall notify the Administrator and affected states of the requested permit revision in accordance with R18-2-307.
- E. For Class I permits, the Director shall not issue a final permit revision until after the Administrator's 45-day review period or until the Administrator has notified the Director that the Administrator will not object to issuance of the permit revision, whichever is first, although the Director may approve the permit revision before that time. Within 90 days of the Direc-

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tor's receipt of an application under minor permit revision procedures, or 15 days after the end of the Administrator's 45-day review period, whichever is later, the Director shall do one or more of the following:

1. Issue the permit revision as proposed,
 2. Deny the permit revision application,
 3. Determine that the proposed permit revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures, or
 4. Revise the proposed permit revision and transmit to the Administrator the new proposed permit revision as required in R18-2-307.
- G.** The source may make the change proposed in its minor permit revision application immediately after it files the application. After a Class I source makes a change allowed by the preceding sentence, and until the Director takes any of the actions specified in subsection (F), the source shall comply with both the applicable requirements governing the change and the proposed revised permit terms and conditions. During this time period, the Class I source need not comply with the existing permit terms and conditions it seeks to modify. However, if the Class I source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.
- H.** The permit shield under R18-2-325 shall not extend to minor permit revisions.
- I.** Notwithstanding any other part of this Section, the Director may require a permit to be revised under R18-2-320 for any change that, when considered together with any other changes submitted by the same source under this Section or R18-2-317.02 over the life of the permit, do not satisfy subsection (A) for Class I sources or subsection (B) for Class II sources.
- J.** The Director shall make available to the public monthly summaries of all applications for minor permit revisions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-319 renumbered without change as R18-2-319 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-320. Significant Permit Revisions

- A.** For Class I sources, a significant revision shall be used for an application requesting a permit revision that does not qualify as a minor permit revision or as an administrative amendment. A significant revision that is only required because of a change described in R18-2-319(A)(6) or (7) shall not be considered a significant permit revision under part 70 for the purposes of 40 CFR 64.5(a)(2). Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.
- B.** A source with a Class II permit shall make the following changes only after the permit is revised following the public participation requirements of R18-2-330:
1. Establishing or revising a voluntarily accepted emission limitation or standard as described by R18-2-306.01 or R18-2-306.02, except a decrease in the limitation authorized by R18-2-319(B)(5);
 2. Making any change in fuel not authorized by the permit and that is not fuel oil or coal, to natural gas or propane;

3. A change that is a minor NSR modification subject to R18-2-334;
 4. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results from:
 - a. Removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
 - b. A change in an applicable requirement.
 5. A change that will cause the source to violate an existing applicable requirement including the conditions establishing an emissions cap;
 6. A change that will require any of the following:
 - a. A case-by-case determination of an emission limitation or other standard;
 - b. A source-specific determination of ambient impacts, or an analysis of impacts on visibility or maximum allowable increases allowed under R18-2-218; or
 - c. A case-by-case determination of a monitoring, recordkeeping, and reporting requirement.
 7. A change that requires the source to obtain a Class I permit.
- C.** Any modification to a major source of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significant permit revision procedures and any rules adopted under A.R.S. § 49-426.03.
- D.** Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected states, and review by the Administrator that apply to permit issuance and renewal. Notwithstanding R18-2-330(C), the Director may provide notice for changes requiring a significant permit revision solely under subsection (B)(2), (4) or (6)(c) by posting a notice on the Department's web site, sending e-mails to persons who have requested electronic notification of the Department's proposed air quality permit actions and by mailing a copy of the notice as provided in R18-2-330(C)(1).
- E.** When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination

- A.** Reopening for Cause.

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1. Each issued permit shall include provisions specifying the conditions under which the permit shall be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
 - a. Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to R18-2-322(B). Any permit revision required pursuant to this subsection shall comply with provisions in R18-2-322 for permit renewal and shall reset the five-year permit term.
 - b. Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the Class I permit.
 - c. The Director or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - d. The Director or the Administrator determines that the permit needs to be revised or revoked to assure compliance with the applicable requirements.
 2. Proceedings to reopen and issue a permit, including appeal of any final action relating to a permit reopening, shall follow the same procedures as apply to initial permit issuance and shall, except for reopenings under subsection (A)(1)(a), affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
 3. Reopenings under subsection (A)(1) shall not be initiated before a notice of such intent is provided to the source by the Director at least 30 days in advance of the date that the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency.
 4. When a permit is reopened and revised pursuant to this Section, the Director may make appropriate revisions to the permit shield established pursuant to R18-2-325.
- B.** Within 10 days of receipt of notice from the Administrator that cause exists to reopen a Class I permit, the Director shall notify the source. The source shall have 30 days to respond to the Director. Within 90 days of receipt of notice from the Administrator that cause exists to reopen a permit, or within any extension to the 90 days granted by EPA, the Director shall forward to the Administrator and the source a proposed determination of termination, revision, or revocation and reissuance of the permit. Within 90 days of receipt of an EPA objection to the Director's proposal, the Director shall resolve the objection and act on the permit.
- C.** The Director may issue a notice of termination of a permit or registration issued pursuant to this Chapter if:
1. The Director has reasonable cause to believe that the permit or registration was obtained by fraud or misrepresentation.
 2. The person applying for the permit or registration failed to disclose a material fact required by the application form or the regulation applicable to the permit or registration, of which the applicant had or should have had knowledge at the time the application was submitted.
 3. The terms and conditions of the permit or registration have been or are being violated.
- D.** If the Director issues a notice of termination under this Section, the notice shall be served on the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation and a statement that the permittee is entitled to a hearing.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-321 renumbered without change as R18-2-321 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-322. Permit Renewal and Expiration

- A.** A permit being renewed is subject to the same procedural requirements, including any for public participation and affected states and Administrator review, that would apply to that permit's initial issuance.
- B.** Except as provided in R18-2-303(A), permit expiration terminates the source's right to operate unless a timely application for renewal that is sufficient under A.R.S. § 41-1064 has been submitted in accordance with R18-2-304. Any testing that is required for renewal shall be completed before the proposed permit is issued by the Director.
- C.** The Director shall act on an application for a permit renewal within the same time-frames as on an initial permit.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-322 renumbered without change as R18-2-322 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-323. Permit Transfers

- A.** Except as provided in A.R.S. § 49-429 and subsection (B), a Class I or II permit may be transferred to another person if the person who holds the permit gives notice to the Director in writing at least 30 days before the proposed transfer. The notice shall contain the following:
1. The permit number and expiration date;
 2. The name, address, and telephone number of the current permit holder;
 3. The name, address and telephone number of the person to receive the permit;
 4. The name and title of the individual within the organization who is accepting responsibility for the permit along with a signed statement by that person indicating such acceptance;
 5. A description of the equipment to be transferred;
 6. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee;
 7. Provisions for the payment of any fees pursuant to R18-2-326 or R18-2-501 that will be due and payable before the effective date of transfer;
 8. Sufficient information about the source's technical and financial capabilities of operating the source to allow the Director to make the decision in subsection (B) including:
 - a. The qualifications of each person principally responsible for the operation of the source;

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- b. A statement by the chief financial officer of the new permittee that it is financially capable of operating the facility in compliance with the law, and the information that provides the basis for that statement;
 - c. A brief description of any action for the enforcement of any federal or state law, or any county, city, or local government ordinance relating to the protection of the environment, instituted against any person employed by the new permittee and principally responsible for operating the facility during the five years preceding the date of application. In lieu of this description, the new permittee may submit a copy of the certificate of disclosure or 10-K form required under A.R.S. § 49-109, or a statement that this information has been filed in compliance with A.R.S. § 49-109.
- B.** The Director shall deny the transfer if the Director determines that the organization receiving the permit is not capable of operating the source in compliance with A.R.S. Title 49, Chapter 3, Article 2, the provisions of this Chapter or the provisions of the permit. Notice of the denial shall be sent to the original permit holder by certified mail stating the reason for the denial within 10 working days of the Director's receipt of the application. If the transfer is not denied within 10 working days after receipt of the notice, it shall be deemed approved.
- C.** To appeal the transfer denial:
- 1. Both the transferor and transferee shall petition the Office of Administrative Hearings in writing for a public hearing; and
 - 2. All parties shall follow the appeal process for a permit.
- D.** The Director shall make available to the public monthly summaries of all notices received under this Section.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-323 renumbered without change as R18-2-323 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

R18-2-324. Portable Sources

- A.** A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has a permit issued by the Director and obtains a county permit shall request that the Director terminate the permit. Upon issuance of the county permit, the permit issued by the Director is no longer valid.
- B.** A portable source which has a county permit but proposes to operate outside that county shall obtain a permit from the Director. A portable source that has a permit issued by a county and obtains a permit issued by the Director shall request that the county terminate the permit. Upon issuance of a permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (C).
- C.** A portable source may be transferred from one location to another provided that the owner or operator of such equipment notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of

the transfer prior to the transfer. The notification required under this subsection shall include:

- 1. A description of the equipment to be transferred including the permit number for such equipment;
- 2. A description of the present location;
- 3. A description of the new location;
- 4. The date on which the equipment is to be moved; and
- 5. The date on which operation of the equipment will begin at the new location.

- D.** Any permit for a portable source shall contain conditions that will assure compliance with all applicable requirements at all authorized locations.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-325. Permit Shields

- A.** Each Class I or II permit issued under this Chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that such applicable requirements are included and expressly identified in the permit. The Director may include in a permit determinations that other requirements specifically identified are not applicable. Any permit under this Chapter that does not expressly state that a permit shield exists shall not provide such a shield.
- B.** Nothing in this Section or in any permit shall alter or affect the following:
- 1. The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that Section;
 - 2. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - 3. The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;
 - 4. The ability of the Administrator or the Director to obtain information from a source pursuant to Section 114 of the Act, or any provision of state law;
 - 5. The authority of the Director to require compliance with new applicable requirements adopted after the permit is issued.
- C.** In addition to the provisions of R18-2-321, a permit may be reopened by the Director and the permit shield revised when it is determined that standards or conditions in the permit are based on incorrect information provided by the applicant.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-326. Fees Related to Individual Permits

- A.** Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are

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based on a source being classified in one of the following three categories:

1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and that are subject to new source performance standards or national emission standards for hazardous air pollutants.
3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and that are not subject to new source performance standards or national emission standards for hazardous air pollutants.

B. Fees for Permit Actions.

1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
 - a. \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
 - b. The actual costs of public notice conducted according to R18-2-330.
2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.

C. Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:

1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$20,800
Air Curtain Destructors	\$750
Cement Plants	\$63,690
Combustion/Boilers	\$15,480
Compressor Stations	\$12,730
Electronics	\$20,490
Expandable Foam	\$14,680
Foundries	\$19,520
Landfills	\$15,960
Lime Plants	\$60,160
Copper & Nickel Mines	\$15,000
Gold Mines	\$15,000
Mobile Home Manufacturing	\$14,830
Paper Mills	\$20,480
Paper Coaters	\$15,480
Petroleum Products Terminal Facilities	\$22,730
Polymeric Fabric Coaters	\$20,480
Reinforced Plastics	\$15,480
Semiconductor Fabrication	\$26,930

Copper Smelters	\$63,690
Utilities - Fossil Fuel Fired Except Coal	\$16,440
Utilities - Coal Fired	\$32,570
Vitamin/Pharmaceutical Manufacturing	\$15,800
Wood Furniture	\$15,480
Others	\$20,490
Others with Continuous Emissions Monitoring	\$20,490

2. An emissions-based fee of \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (C)(2)(d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
 - a. For purposes of this Section, "actual emissions" means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
 - b. For purposes of this Section, regulated pollutants consist of the following:
 - i. Nitrogen oxides and any volatile organic compounds;
 - ii. Conventional air pollutants, except carbon monoxide and ozone;
 - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
 - iv. Any federally listed hazardous air pollutant.
 - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source's actual emissions:
 - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
 - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM₁₀;
 - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(F)(8);
 - iv. Fugitive emissions of PM₁₀ from activities other than crushing, belt transfers, screening, or stacking; and
 - v. Fugitive emissions of VOC from solution-extraction units.
 - d. The Director shall adjust the rate for emission-based fees every November 1, after December 4, 2007, by multiplying \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.
- D. Class II Title V Fees.** The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days

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after the Director mails the invoice under subsection (F), whichever is later.

Class II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$8,070
Portables	\$8,070
Small Source	\$750

E. Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$5,230
Portables	\$5,230
Gasoline Service Stations	\$750

F. The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.

G. Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:

1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
2. The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.
3. If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.

H. The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, after December 4, 2007, by multiplying \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every November 1, to the nearest \$10, beginning December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

I. An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:

1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
 - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
 - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.

J. Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by December 15 of the calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.

K. If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.

L. Transition.

1. Subsections (A) through (J) of this Section are effective December 4, 2007. The first administrative or inspection fees are due on February 1, 2008.
2. Except as provided in subsection (b), all fees incurred after December 4, 2007, are payable in accordance with the rates contained in this Section.
 - a. Emission-based fees for calendar year 2006 shall be billed at \$38.25 per ton and be due February 1, 2008.

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- b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
- c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-326.01. Expired**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 613, effective February 14, 2017 (Supp. 17-1).

R18-2-327. Annual Emissions Inventory Questionnaire

- A. Every source subject to permit requirements under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
- B. The questionnaire shall be on a form provided by the Director and shall include the following information:
 - 1. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
 - 2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.
 - 3. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:
 - a. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant in the definition of "significant" in R18-2-101(131)(a) or (b), whichever is less.
 - b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.
- C. Actual quantities of emissions shall be determined using the following emission factors or data:
 - 1. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, or data quality assured pursuant to Appendix F of 40 CFR 60.

- 2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
- 3. When sufficient data pursuant to subsection (C)(1) or (2) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC, including Supplements A through F and all updates published through July 1, 2011 (and no future editions). AP-42 is incorporated by reference and is on file with the Department of Environmental Quality and can be obtained from the Government Printing Office, 732 North Capitol Street, NW, Washington, D.C. 20401, telephone (202) 512-1800, or by downloading the document from the web site for the EPA Clearinghouse for Emission Inventories and Emission Factors.
- 4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
- 5. When sufficient data pursuant to subsections (C)(1) through (4) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as one of the methods in subsections (C)(1) through (4).
- D. Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.
- E. An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection (shall) not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.
- F. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23

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A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-328. Conditional Orders

- A.** The Director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of A.R.S. Title 49, Chapter 3, Article 2, or this Chapter, for any non-federally enforceable requirement of a permit issued pursuant to this Chapter if the Director makes each of the following findings:
1. Issuance of the conditional order will not endanger public health or the environment, impede attainment or maintenance of the national ambient air quality standards, or constitute a violation of the Act; and
 2. Either of the following is true:
 - a. There has been a breakdown of equipment or upset of operations beyond the control of the petitioner which causes the source to be out of compliance with the requirements of this Chapter; the source was in compliance with the requirements of this Chapter before the breakdown or upset, and the breakdown or upset may be corrected within a reasonable time;
 - b. There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.
- B.** The following procedures shall apply to a person seeking a conditional order:
1. The person shall file a petition for a conditional order with the Director. The petition shall contain at a minimum:
 - a. A description of the breakdown or upset;
 - b. A description of corrective action being undertaken to bring the source back into compliance;
 - c. An estimate of emissions related to the breakdown or upset;
 - d. A compliance schedule with a date of final compliance and interim dates as appropriate;
 - e. A detailed analysis of the economic and social costs and benefits of achieving compliance with the requirement for which the variance is sought, if the petition is based on subsection (A)(2)(b).
 2. If the issuance of the conditional order requires a public hearing pursuant to R18-2-330, the Director shall set the hearing date within 30 days after the filing of the petition and the hearing shall be held within 60 days after the filing of the petition.
 3. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in A.R.S. § 49-444 and R18-2-330.
- C.** Decisions on petitions for a conditional order shall be made as follows:
1. For any conditional order that requires a revision to the SIP, the Director shall comply with the requirements contained in 40 CFR 51, Subpart F.
 2. For any other conditional order, the Director shall grant or deny the petition with such terms and conditions as are listed in subsection (E)(2) within 30 days after the conclusion of any required hearing, or, if no hearing is held, within 60 days after the filing of the petition.
- D.** A fee to cover the costs of processing conditional orders may be charged by the Director prior to issuance consistent with R18-2-326(I) or (J). The fee shall be deposited in the permit administration fund established in A.R.S. § 49-455.
- E.** The terms of a conditional order or its renewal shall conform to the following:
1. A conditional order issued by the Director shall be valid for such period as the Director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this Chapter and Title V of the Act, and three years in the case of any other source that is required to obtain a permit pursuant to this Chapter.
 2. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include:
 - a. A detailed plan for completion of corrective steps needed to conform to the provisions of A.R.S. Title 49, Chapter 3, Article 2, this Chapter, and the requirements of any permit issued pursuant to this Chapter;
 - b. A requirement that necessary construction shall begin as expeditiously as practicable and proceed as specified in the compliance schedule;
 - c. Written reports, at least quarterly, of the status of the source and construction progress;
 - d. The right of the Director to make periodic inspection of the facilities for which the conditional order is granted;
 - e. Such additional terms and conditions as the Director finds necessary to meet the requirements of this Section and A.R.S. § 49-437.
 3. A holder of a conditional order may petition the Director to renew the order. The total term of the initial period and all renewals shall not exceed three years from the date of initial issuance of the order. Petitions for renewal may be filed at any time not more than 60 days nor less than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of a petition, shall renew the conditional order for one year if the petitioner is in compliance and conforming with the terms and conditions imposed. The Director may refuse to renew the conditional order if, after a public hearing held within 30 days of receipt of a petition, the Director finds that the petitioner is not in compliance and conforming with the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance and conforming with the terms and conditions, the Director may renew a conditional order for a total term of two additional years only if the Director finds that failure to comply and conform is due to conditions beyond the control of such petitioner.
 4. If the Director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the Director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the Director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this Section, except that the total term of the renewal shall not exceed two years.
 5. A conditional order issued by the Director shall be effective when issued unless:
 - a. The conditional order varies from the requirements of the applicable implementation plan, in which case the conditional order shall be submitted to the Administrator as a revision to the applicable implementation plan pursuant to Section 110(l) of the Act and shall become effective upon approval by the Administrator.

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- b. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to Title V of the Act, in which case the conditional order shall be submitted to the Administrator if required by Section 505 of the Act and shall be effective at the end of the review period specified in such section, unless objected to within such period by the Administrator.
- F. Violation of the terms and conditions of the conditional order shall subject the source to suspension or revocation of the conditional order in accordance with A.R.S. § 49-441.
 - d. The activity or activities involved in the permit action;
 - e. The emissions change involved in any permit revisions;
 - f. The air contaminants to be emitted;
 - g. If applicable, that a notice of confidentiality has been filed under R18-2-305;
 - h. If applicable, that the source has submitted a risk management analysis under R18-2-1708;
 - i. A statement that any person may submit written comments, or a written request for a public hearing, or both, on the proposed permit action, along with the deadline for such requests or comments;
 - j. The name, address, and telephone number of a person from the Department from whom additional information may be obtained;
 - k. Locations where the materials identified in subsection (D) may be reviewed and the times at which they shall be available for public inspection.
 - l. The Director shall include a statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits under R18-2-1204, or the utilization of emission reduction credits under R18-2-1206.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees

- A. The terms and conditions of either a delayed compliance order (DCO) or consent decree shall be incorporated into a permit through a permit revision. In the event the permit expires prior to the expiration of the DCO or consent decree, the DCO or consent decree shall be incorporated into any permit renewal.
- B. The owner or operator of a source subject to a DCO or consent decree shall submit to the Director a quarterly report of the status of the source and construction progress and copies of any reports to the Administrator required under the order or decree. The Director may require additional reporting requirements and conditions in permits issued under this Article.
- C. For the purpose of this Chapter, sources subject to a consent decree issued by a federal court shall meet the same requirements as those subject to a DCO.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

R18-2-330. Public Participation

- A. The Director shall provide public notice, an opportunity for public comment, and an opportunity for a hearing before taking any of the following actions:
 - 1. The issuance or denial of a permit or permit renewal,
 - 2. The issuance or denial of a significant permit revision,
 - 3. The revocation and reissuance or reopening of a permit,
 - 4. The grant of any conditional orders pursuant to R18-2-328,
 - 5. The issuance or denial of a registration for the construction of a source, except as provided in R18-2-302.01(B)(5).
- B. The Director shall provide public notice of receipt of complete applications for permits or permit revisions subject to Article 4 of this Chapter by publishing a notice in a newspaper of general circulation in the county where the source is or will be located.
- C. The Director shall provide the notice required pursuant to subsection (A) as follows:
 - 1. The Director shall publish the notice once each week for two consecutive weeks in two newspapers of general circulation in the county where the source is or will be located.
 - 2. The Director shall mail a copy of the notice to persons on a mailing list developed by the Director consisting of those persons who have requested in writing to be placed on such a mailing list.
 - 3. The notice shall include the following:
 - a. Identification of the affected facility;
 - b. Name and address of the permittee or applicant;
 - c. Name and address of the permitting authority processing the permit action;
- D. By no later than the date notice is first published under subsection (A), the Department shall make copies of the following materials available at a public location in the same county as the stationary source that is the subject of the application and at the closest Department office:
 - 1. The application;
 - 2. The proposed permit or permit revision, if applicable;
 - 3. The Department's analysis in support of the grant or denial of the permit or permit revision; and
 - 4. All other materials available to the Director that are relevant to the permit decision.
- E. The Director shall hold a public hearing to receive comments on petitions for conditional orders which would vary from requirements of the applicable implementation plan. For all other actions involving a proposed permit, the Director shall hold a public hearing only upon written request. If a public hearing is requested, the Director shall schedule the hearing and publish notice as described in A.R.S. § 49-444 and subsection (D). The Director shall give notice of any public hearing at least 30 days in advance of the hearing.
- F. At the time the Director publishes the first notice under subsection (C)(1), the applicant shall post a notice containing the information required in subsection (C)(3) at the site where the source is or may be located. Consistent with federal, state, and local law, the posting shall be prominently placed at a location under the applicant's legal control, adjacent to the nearest public roadway, and visible to the public using the public roadway. If a public hearing is to be held, the applicant shall place an additional posting providing notice of the hearing. Any posting shall be maintained until the public comment period is closed.
- G. The Director shall provide at least 30 days from the date of its first notice for public comment to receive comments and requests for a hearing. The Director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final proposed permit is submitted to EPA, in the case of a Class I permit, or a final decision is made, in the case of a Class II permit, the record and copies of the Director's responses shall be made available to the applicant and all commenters.

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Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). R18-2-330 has been corrected to include subsection (D)(12), which was omitted when the Section was amended in the 02-1 supplement (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-331. Material Permit Conditions

- A. For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a “material permit condition” shall mean a condition which satisfies all of the following:
1. The condition is in a permit or permit revision issued by the Director or a control officer after November 15, 1993.
 2. The condition is identified within the permit as a material permit condition.
 3. The condition is one of the following:
 - a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement;
 - b. A requirement to install, operate, or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required under Article 17 of this Chapter;
 - c. A requirement for the installation or certification of a monitoring device;
 - d. A requirement for the installation of air pollution control equipment;
 - e. A requirement for the operation of air pollution control equipment;
 - f. An opacity standard required by Section 111 or Title I, Part C or D of the Act.
 4. Violation of the condition is not covered by A.R.S. § 49-464(A) through (F), or (H) through (J) or A.R.S. § 49-514(A) through (F), or (H) through (J).
- B. For the purposes of subsections (A)(3)(c), (d), and (e), a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this Section, “circumstances outside the control of the source” shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.
- C. For purposes of this Section, the term “emission standard” shall have the meaning specified in A.R.S. §§ 49-464(U) and 49-514(T).

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

R18-2-332. Stack Height Limitation

- A. The degree of emission limitation required of any source for control of any pollutant shall not be affected by so much of the source’s stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in subsection (B). This section does not require the plan to restrict, in any manner, the actual stack height of any source.
- B. Subsection (A) shall not apply to:

1. Stacks in existence, or dispersion techniques implemented, on or before December 31, 1970, unless the stationary source or emission unit emitting pollutants through the stack, or employing the dispersion technique, was constructed, reconstructed or underwent a major modification after December 31, 1970; or
 2. Coal-fired steam electric generating units, subject to the provisions of Section 118 of the Act which commenced operation before July 1, 1957, with stacks constructed under a construction contract awarded before February 8, 1974.
- C. Good engineering practice stack height is the greater of the following heights:
1. 213.25 feet (65 meters) measured from the ground-level elevation at the base of the stack;
 2. The result of one of the following equations, where “Hg” = good engineering practice stack height measured from the ground-level elevation at the base of the stack; “H” = height of nearby structures measured from the ground-level elevation at the base of the stack; and “L” = lesser dimension (height or projected width) of nearby structures:
 - a. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under 40 CFR 51 and 52, $H_g = 2.5H$, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; or
 - b. For all other stacks, $H_g = H + 1.5L$, provided that EPA, the Director, or local control agency may require the use of a field study or fluid model to verify good engineering practice stack height for the source;
 3. The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.
- D. As used in this Section:
1. For a specific structure or terrain feature, “nearby” means:
 - a. For purposes of applying the formulae in subsection (C)(2), that distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km (1/2 mile).
 - b. For conducting demonstrations under subsection (C)(3), not greater than 0.8 km (1/2 mile). An exception is that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieved a height (Ht) 0.8 km from the stack that is at least 40% of the good engineering practice stack height determined by the formula provided in subsection (C)(2)(b), or 85 feet (26 meters), whichever is greater, as measured from the ground-level elevation at the base of the stack.
 2. “Excessive concentrations” means:
 - a. For sources seeking credit for stack height exceeding that established under subsection (C)(2), a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is

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at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a national ambient air quality standard. For sources subject to R18-2-406, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than the applicable maximum allowable increase contained in R18-2-218. The allowable emission rate to be used in making demonstrations under subsection (C)(3) shall be prescribed by the new source performance standard which is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

- b. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subsection (C)(2), either:
 - i. A maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects as provided in subsection (D)(2)(a), except that emission rate specified by any applicable SIP (or, in the absence of such a limit, the actual emission rate) shall be used; or
 - ii. The actual presence of a local nuisance caused by the existing stack, as determined by the Director; and
 - c. For sources seeking credit after January 12, 1979, for a stack height determined under subsection (C)(2), where the Director requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subsection (C)(2), a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.
- E. Before the Director issues a permit or permit revision under R18-2-334 or Article 4 to a source based on a good engineering practice stack height that exceeds the height allowed by subsection (B)(1) or (2), the Director shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing in accordance with the requirements of R18-2-330.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).
Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-333. Acid Rain

- A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of June 28, 2013, (and no future amendments) are

incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

- B. When used in 40 CFR 72, 74, 75 or 76, "Permitting Authority" means the Arizona Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.
- C. If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining portions of this Title, the regulations incorporated in this Section apply and take precedence.

Historical Note

Adopted effective October 7, 1994 (Supp. 94-4).
Amended effective December 7, 1995 (Supp. 95-4).
Amended effective December 4, 1997 (Supp. 97-4).
Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

R18-2-334. Minor New Source Review

- A. Applicability.
1. Except as provided in subsection (A)(4), this Section shall apply to the following activities:
 - a. Construction of any new Class I or Class II source, including the construction of any source requiring a Class II permit under R18-2-302.01(C)(4); or
 - b. Any minor NSR modification to a Class I or Class II source.
 2. This Section shall apply to a regulated minor NSR pollutant emitted by a new stationary source subject to this Section, if the source will have the potential to emit that pollutant at an amount equal to or greater than the permitting exemption threshold.
 3. This Section shall apply to an increase in emissions of a regulated minor NSR pollutant from a minor NSR modification, if the modification would increase the source's potential to emit that pollutant by an amount equal to or greater than the permitting exemption threshold.
 4. This Section shall not apply to the emissions of a pollutant from any of the activities identified in this subsection, if the emissions of that pollutant are subject to Article 4 of this Chapter.
- B. No person shall begin actual construction of a new stationary source, or minor NSR modification, subject to this Section without first obtaining a permit, a permit revision, a proposed final permit, or a proposed final permit revision from the Director in accordance with R18-2-304.
- C. The Director shall not issue a proposed final Class I permit or permit revision or a Class II permit or permit revision subject to this Section to a person proposing to construct a new source or make a minor NSR modification unless the source or modification meets one of the following conditions for each regulated minor NSR pollutant subject to this section:
1. The owner or operator elects to implement RACT.

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- a. In the case of a new source, the owner or operator shall implement RACT for each emissions unit that has the potential to emit a regulated minor NSR pollutant in an amount equal to or greater than 20% of the permitting exemption threshold.
 - b. In the case of a minor NSR modification, the owner or operator shall implement RACT for each emissions unit that will experience an increase in the potential to emit a regulated minor NSR pollutant equal to or greater than 20% of the permitting exemption threshold.
 - c. When it is technically feasible and otherwise consistent with the definition of RACT to apply the same devices, systems, process modifications, work practices or other apparatus or techniques to a group of emissions units, that group of emissions units shall be treated as a single emissions unit for purposes of subsections (C)(1)(a) and (b). The following are examples of situations to which this subsection (may) apply:
 - i. Emissions from a group of emissions units can be vented to a single control device.
 - ii. A low-VOC coating can be used in several spray-painting booths.
2. An ambient air quality assessment demonstrates that emissions from the source or minor NSR modification will not interfere with attainment or maintenance of a national ambient air quality standard in Arizona or any affected state.
 - a. An owner or operator may elect to have the Director perform a screening model of its emissions. If the results of the screening model indicate that the source or minor NSR modification will interfere with attainment or maintenance of a national ambient air quality standard, the owner or operator may perform a more refined model to make the demonstration required by this subsection.
 - b. The requirements of this subsection shall be satisfied, if the results of the screening or more refined model conducted pursuant to subsection (B)(2)(a) demonstrate either of the following:
 - i. Ambient concentrations resulting from emissions from the source or modification combined with existing concentrations of regulated minor NSR pollutants will not interfere with attainment or maintenance of a national ambient air quality standard.
 - ii. Emissions from the source or minor modification will have an ambient impact below the significance levels as defined in R18-2-401.
 - c. The assessment required by this subsection shall take into account any limitations, controls or emissions decreases that are or will be enforceable in the permit or permit revision for the source.
- D. RACT Determinations.**
1. Except as otherwise provided in this subsection, the Director shall determine RACT on the basis of a case-by-case analysis performed by the permit applicant of the emission reduction methods available for each emission unit subject to the RACT requirement under subsection (C)(1).
 2. The Director shall accept a requirement proposed by a permit applicant as RACT under subsection (C)(1) if it complies with the most recently adopted of the following guidelines or standards in effect at the time of the application:
 - a. A control technique guideline issued by the Administrator under section 108(f)(1) of the Act.
 - b. An emissions standard established or revised by the Administrator for the same type of source under section 111 or 112 of the Act after November 15, 1990.
 - c. An applicable requirement of this Chapter or of air quality control regulations adopted by a County under A.R.S. § 49-479 that has been specifically identified as constituting RACT.
 - d. A RACT standard imposed on the same type of source by a general permit.
 - e. A RACT standard imposed on the same type of source under this Section no more than 10 years before submission of the application by the permit applicant. To facilitate identification of previously imposed RACT standards, the Director shall establish an online database of RACT determinations made under this Section.
- E.** Notwithstanding an election to adopt RACT under subsection (C)(1), a permit applicant subject to this Section shall conduct an ambient air quality impact assessment under subsection (C)(2) upon the Director's request. The Director shall make such a request, if there is reason to believe that a source or minor NSR modification could interfere with attainment or maintenance of a national ambient air quality standards. In making that determination, the Director shall take into consideration:
1. The source's emission rates.
 2. The location of emission units within the facility and their proximity to the ambient air.
 3. The terrain in which the source is or will be located.
 4. The source type.
 5. The location and emissions of nearby sources.
 6. Background concentrations of regulated minor NSR pollutants.
- F.** The Director shall deny an application for a Class I permit or permit revision or a Class II permit or permit revision subject to this Section, if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with attainment or maintenance of a national ambient air quality standard.
- G.** A copy of the notice required by R18-2-330 for permits or significant permit revisions subject to this Section must also be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the permit or permit revision will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, I.
- H.** All modeling required pursuant to this Section shall be conducted in accordance with 40 CFR 51, Appendix W.
- I.** The Director shall specify those conditions in the permit that are implemented pursuant to this Section. The specified conditions shall be included in subsequent permit renewals unless modified pursuant to this Section or Article 4 of this Chapter.
- J.** The issuance of a permit or permit revision under this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

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ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES**R18-2-401. Definitions**

The following definitions apply to this Article:

1. "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a federal Class I area, as determined according to R18-2-410. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the federal Class I area and the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.
2. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subsections (2)(a) through (d).
 - a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
 - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
 - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
 - iii. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
 - iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(a)(ii).
 - b. For any existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under 40 CFR 52.21 or by the Director for a permit required under the state implementation plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
 - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
 - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period. This provision applies to excess emissions associated with a malfunction.
 - iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major source must currently comply, had such major source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the state of Arizona has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
 - iv. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units affected by the project. A different consecutive 24-month period may be used for each regulated NSR pollutant.
 - v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(b)(ii) or (iii).
3. "Basic design parameter" means:
 - a. Except as provided in subsection (3)(c), for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on Btu content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit.

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- b. Except as provided in subsection (3)(c), the basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.
 - c. If the owner or operator believes the basic design parameters in subsections (3)(a) and (b) are not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Director an alternative basic design parameters for the source's process unit. If the Director approves of the use of an alternative basic design parameters, the Director shall issue a permit that is legally enforceable that records such basic design parameters and requires the owner or operator to comply with such parameters.
 - d. The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameters specified in subsections (3)(a) and (b).
 - e. If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameters using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
 - f. Efficiency of a process unit is not a basic design parameter.
 - g. The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
4. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Department from requesting or accepting any additional information.
5. "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
- a. Using that portion of a stack that exceeds good engineering practice stack height;
 - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams that increases the exhaust gas plume rise. This shall not include any of the following:
 - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
 - ii. The merging of exhaust gas streams under any of the following conditions:
 - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with the merged gas streams;
 - (2) After July 8, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
 - (3) Before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Department shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Department shall deny credit for the effects of the merging in calculating the allowable emissions for the source.
 - iii. Smoke management in agricultural or silvicultural prescribed burning programs.
 - iv. Episodic restrictions on residential woodburning and open burning.
 - v. Techniques that increase final exhaust gas plume rise if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
6. "Existing emissions unit" is any emissions unit that is currently in existence and that is not a new emissions unit. A replacement unit is an existing emissions unit.
7. "Federal Class I area" means an area designated as Class I under R18-2-217.
8. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
9. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
10. "Low terrain" means any area other than high terrain.
11. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on one of the following:
- a. The most stringent emissions limitation that is contained in any implementation plan approved or promulgated under sections 110 or 172 of the Act for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

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- b. The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under the applicable new source performance standards.
- 12. "Major emissions unit" means:
 - a. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or
 - b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.
- 13. "Major source" is defined as follows:
 - a. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, major source means any stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that the following thresholds shall apply in areas subject to subpart 2, subpart 3 or subpart 4 of part D, Title I of the Act:

Pollutant Emitted	Nonattainment Pollutant and Classification	Quantity Threshold tons/year or more
Carbon Monoxide (CO)	CO, Serious, if stationary sources contribute significantly to CO levels in the area as determined under rules issued by the Administrator	50
VOC	Ozone, Serious	50
VOC	Ozone, Severe	25
PM ₁₀	PM ₁₀ , Serious	70
PM _{2.5}	PM _{2.5} Serious	70
PM _{2.5} precursors identified in R18-2-101(124)(a)	PM _{2.5} Serious	70
NO _x	Ozone, Serious	50
NO _x	Ozone, Severe	25
 - b. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, major source means any stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant if the source is classified as a categorical source, or 250 tons per year or more of any regulated NSR pollutant if the source is not classified as a categorical source;
- c. A major source includes a physical change that would occur at a stationary source, not otherwise qualifying under subsection (13)(a) or (b) as a major source, if the change would constitute a major source by itself.
- d. A major source that is major for VOC or nitrogen oxides shall be considered major for ozone.
- e. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Article whether it is a major source, unless the source belongs to a section 302(j) category.
- 14. "Mandatory federal Class I area" means an area identified in R18-2-217(B).
- 15. "New emissions unit" means any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.
- 16. "Plantwide applicability limitation" or "PAL" means an emission limitation that is based on the baseline actual emissions of all emissions units at the stationary source that emit or have the potential to emit the PAL pollutant, expressed in tons per year, for a pollutant at a major source, that is enforceable as a practical matter and established source-wide in accordance with this Section.
- 17. "PAL allowable emissions" means "allowable emissions" as defined in R18-2-101, except that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
- 18. PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
- 19. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.
- 20. "PAL major modification" means any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
- 21. "PAL permit" means the permit issued by the Director that establishes a PAL for a major source under Article 3 or 4 of this Chapter.
- 22. "PAL pollutant" means the pollutant for which a PAL is established at a major source.
- 23. "Projected actual emissions" means:
 - a. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant during any 12-month period in the 60 calendar months following the date the unit resumes regular operation after the project, or in any 12-month period in the 120 calendar months following that date if the project involves increasing the design capacity or potential to emit of any emissions unit for that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major source.
 - b. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major source:
 - i. Shall consider all relevant information, including but not limited to, historical operational

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- data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the county, state or federal regulatory authorities, and compliance plans under these regulations; and
- ii. Shall include fugitive emissions to the extent quantifiable;
 - iii. Shall include emissions associated with start-ups, shutdowns, and malfunctions ; and
 - iv. Shall exclude, only for calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
- c. In lieu of using the method set out subsections 23(b)(i) through (iv), the owner or operator may elect to use the emissions unit's potential to emit, in tons per year.
24. "Replacement unit" means an emissions unit for which all the criteria listed in subsections (24)(a) through (d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.
- a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
 - b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
 - c. The replacement does not alter the basic design parameters of the process unit.
 - d. The replaced emissions unit is permanently removed from the major source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
25. "Resource recovery project" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste that provides more than 50% of the heat input shall be considered a resource recovery project under this Article.
26. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.
27. "Significance levels" means the following ambient concentrations for the enumerated pollutants:

Averaging Time					
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO ₂	1 µg/m ³	5 µg/m ³		25 µg/m ³	
NO ₂	1 µg/m ³				

CO			0.5 mg/m ³		2 mg/m ³
PM ₁₀	1 µg/m ³	5 µg/m ³			
PM _{2.5} federal Class I area	0.06 µg/m ³	0.07 µg/m ³			
PM _{2.5} federal Class II area	0.3 µg/m ³	1.2 µg/m ³			
PM _{2.5} federal Class III area	0.3 µg/m ³	1.2 µg/m ³			

Except for the annual pollutant concentrations, the Department shall deem that exceedance of significance levels has occurred when the ambient concentration of the above pollutant is exceeded more than once per year at any one location. If the concentration occurs at a specific location and at a time when the national ambient air quality standards for the pollutant are not violated, the significance level does not apply.

28. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-401 renumbered without change as Section R18-2-401 (Supp. 87-3). Section R18-2-401 renumbered to R18-2-601. New Section R18-2-401 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Typographical error corrected in R18-2-401(9)(a) (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 1134, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-402. General

- A. The preconstruction review requirements of this Article shall apply to the construction of any new major source or any project at an existing major source.
- B. The requirements of R18-2-403 through R18-2-410 apply to the construction of any new major source or any major modification of any existing major source, except as this Article otherwise provides.
- C. No person shall begin actual construction of a new major source or a major modification subject to the requirements of R18-2-403 through R18-2-410 without first obtaining a proposed final permit from the Director, pursuant to R18-2-307(A)(2), stating that the major source or major modification shall meet those requirements.
- D. The requirements of this Article apply to projects at major sources in accordance with the following principles.
 - 1. Except as otherwise provided in subsection (E), a project is a major modification for a regulated NSR pollutant if it causes both a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions

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- increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
2. The procedure for calculating before beginning actual construction whether a significant emissions increase will occur depends upon the types of emissions units being modified as set forth in subsections (D)(3) through (6). The procedure for calculating before beginning actual construction whether a significant net emissions increase will occur at the major source is set forth in the definition of net emissions increase in R18-2-101. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
 3. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
 4. Actual-to-potential applicability test for projects that only involve new emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
 5. [Reserved.]
 6. Hybrid applicability test for projects that involve both new emissions units and existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subsections (D)(3) through (D)(4), as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.
- E. Any major source with a PAL for a regulated NSR pollutant shall comply with R18-2-412.
- F. This subsection applies with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (F)(6), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in R18-2-401(23)(b)(i) through (iv) of the definition of projected actual emissions for calculating projected actual emissions.
1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
 - a. A description of the project;
 - b. Identification of the emissions unit(s) with emissions of a regulated NSR pollutant that could be affected by the project;
 - c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions the amount of emissions excluded under R18-2-401(23)(b)(iv) of the definition of projected actual emissions, and an explanation for why such amount was excluded; and
 - d. Any netting calculations, if applicable.
 2. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subsection (F)(1) to the Director. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.
 3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (F)(1)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of a section 302(j) category or if the emissions unit is located at a major stationary source that belongs to a section 302(j) category.
 4. The owner or operator shall submit a report to the Director if for a calendar year the annual emissions, in tons per year, from the project identified in subsection (F)(1) exceed the sum of the baseline actual emissions, as documented and maintained under subsection (F)(1)(c), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subsection (F)(1)(c). The owner or operator shall submit the report to the Director within 60 days after the end of the calendar year. The report shall contain the following:
 - a. The name, address and telephone number of the major source;
 - b. The annual emissions as calculated pursuant to subsection (F)(3); and
 - c. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.
 5. Notwithstanding subsection (F)(4), if any existing emissions unit identified in subsection (F)(1)(b) is an electric utility steam generating unit, the owner or operator shall submit a report to the Director within 60 days after the end of each calendar year during which the owner or operator must generate records under subsection (F)(3). The report shall document the unit's post-project annual emissions during the calendar year that preceded submission of the report.
 6. A "reasonable possibility" under subsection (F) occurs when the owner or operator calculates the project to result in one of the following:
 - a. A projected actual emissions increase of at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant.
 - b. A projected actual emissions increase that, added to the amount of emissions excluded under subsection R18-2-401(23)(b)(iv) of the definition of projected actual emissions, sums to at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For

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a project for which a reasonable possibility occurs only within the meaning of subsection (F)(6)(b), and not also within the meaning of subsection (F)(6)(a), subsections (F)(2) through (5) do not apply to the project.

7. The owner or operator of the source shall make the information required to be documented and maintained under subsection (F) available for review upon request for inspection by the Department or the general public.
- G.** An application for a permit or permit revision under this Article, other than a PAL permit pursuant to R18-2-412, shall not be considered complete unless the application demonstrates that:
1. The requirements in subsection (H) are met;
 2. The more stringent of the applicable new source performance standards or the existing source performance standards in Article 7 of this Chapter are applied to the proposed new major source or major modification of a major source;
 3. The visibility requirements contained in R18-2-410 are satisfied;
 4. All applicable provisions of Article 3 of this Chapter are met;
 5. The new major source or major modification will be in compliance with whatever emission limitation, design, equipment, work practice or operational standard, or combination thereof is applicable to the source or modification. The degree of emission limitation required for control of any pollutant under this Article shall not be affected in any manner by:
 - a. Stack height in excess of GEP stack height except as provided in R18-2-332; or
 - b. Any other dispersion technique, unless implemented prior to December 31, 1970;
 6. The new major source or major modification will not exceed the applicable standards for hazardous air pollutants contained in this Chapter;
 7. The new major source or major modification will not exceed the limitations, if applicable, on emission from nonpoint sources contained in Article 6 of this Chapter;
 8. The new major source or major modification will not have an adverse impact on visibility, as determined according to R18-2-410.
- H.** Except for assessing air quality impacts within federal Class I areas, the air impact analysis required to be conducted as part of a permit application shall initially consider only the geographical area located within a 50 kilometer radius from the point of greatest emissions for the new major source or major modification. The Director, on his own initiative or upon receipt of written notice from any person shall have the right at any time to request an enlargement of the geographical area for which an air quality impact analysis is to be performed by giving the person applying for the permit or permit revision written notice thereof, specifying the enlarged radius to be so considered. In performing an air impact analysis for any geographical area with a radius of more than 50 kilometers, the person applying for the permit or permit revision may use monitoring or modeling data obtained from major sources having comparable emissions or having emissions which are capable of being accurately used in such demonstration, and which are subjected to terrain and atmospheric stability conditions which are comparable or which may be extrapolated with reasonable accuracy for use in such demonstration.
- I.** The Director shall comply with following requirements with respect to an application for a permit or permit revision subject to this Article:
1. Within 60 days after receipt of the application, or any addition to the application, the Director shall advise the applicant of any deficiency. The date of receipt of a complete application shall be, for the purpose of this Section, the date on which the Director receives all required information. The permit application shall not be deemed complete if the Director fails to meet the requirements of this subsection.
 2. Within one year after receipt of a complete application, the Director shall do all of the following:
 - a. Make a preliminary determination as to whether the permit or permit revision should be granted or denied.
 - b. Make the application, all materials the applicant submitted, the preliminary determination, and materials relating to the application available under R18-2-330(D).
 - c. Notify the public of the application, the preliminary determination and the opportunity for a public hearing and to submit written comments in accordance with R18-2-330(C). In the case of an application subject to R18-2-406, the notice shall include the degree of consumption of the maximum allowable increases allowed under R18-2-218 that is expected to occur as a result of emissions from the proposed source or modification.
 - d. Take final action on the application by denying the permit or permit revision or issuing a proposed final permit or permit revision.
 - e. Notify the applicant in writing of the approval or denial and make the notification, comments on the proposed action, and materials supporting the final action available for public inspection at the location where materials relating to the proposed action were placed under R18-2-330(D).
 3. A copy of any notice required by R18-2-330 and subsection (I)(2)(c) shall be sent to the permit applicant, to the Administrator, and to the following officials and agencies having cognizance over the location where the proposed major source or major modification would occur:
 - a. The air pollution control officer, if one exists, for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
 - b. The county manager for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
 - c. The city or town managers of the city or town which contains, and any city or town the boundaries of which are within 5 miles of, the location of the proposed or existing source that is the subject of the permit or permit revision application;
 - d. Any regional land use planning agency with authority for land use planning in the area where the proposed or existing source that is the subject of the permit or permit revision application is located; and
 - e. Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the proposed source or modification.
- J.** The authority to construct and operate a new major source or major modification under a permit or permit revision issued under this Article shall terminate if the owner or operator does not commence the proposed construction or major modification within 18 months of issuance or if, during the construction or major modification, the owner or operator suspends work for more than 18

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months. The Director may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-402 repealed, new Section R9-3-402 adopted effective May 14, 1979 (Supp. 79-1). Amended and adopted by reference Open Burning Guidelines for Air Pollution Control effective September 22, 1983 (Supp. 83-5). Former Section R9-3-402 renumbered without change as Section R18-2-402 (Supp. 87-3). Section R18-2-402 renumbered to R18-2-602, new Section R18-2-402 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-403. Permits for Sources Located in Nonattainment Areas

- A.** Except as provided in subsections (C) through (G) below, no permit or permit revision shall be issued under this Article to a person proposing to construct a new major source or make a major modification that is major for the pollutant for which the area is designated nonattainment unless:
1. The person demonstrates that the new major source or the major modification will meet an emission limitation which is the lowest achievable emission rate (LAER) for that source for that regulated NSR pollutant.
 2. The person demonstrates that all existing major sources owned or operated by that person (or any entity controlling, controlled by, or under common control with that person) in the state are in compliance with, or on a schedule of compliance for, all conditions contained in permits of each of the sources and all other applicable emission limitations and standards under the Act and this Chapter.
 3. The person demonstrates that emission reductions for the specific pollutant(s) from source(s) in existence in the allowable offset area of the new major source or major modification (whether or not under the same ownership) meet the offset requirements of R18-2-404.
 4. The Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements in this Section.
- B.** No permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source located in a nonattainment area unless:
1. The person performs an analysis of alternative sites, sizes, production processes, and environmental control techniques for such new major source or major modification; and
 2. The Director determines that the analysis demonstrates that the benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.
- C.** At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established

after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

- D.** Secondary emissions shall not be considered in determining the potential to emit of a new source or modification and therefore whether the new source or modification is major. However, if a new source or modification is subject to this Section on the basis of its direct emissions, a permit or permit revision under this Article to construct the new source or modification shall be denied unless the requirements of R18-2-403(A)(3) and R18-2-404 are met for reasonably quantifiable secondary emissions caused by the new source or modification.
- E.** A permit to construct a new major source or major modification shall be denied unless the conditions specified in subsections (A)(1), (2), and (3) are met for fugitive emissions caused by the new source or modification. However, these conditions shall not apply to a new major source or major modification that would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.
- F.** The requirements of subsection (A)(3) shall not apply to temporary emissions units, such as pilot plants, portable facilities that will be relocated outside of the nonattainment area and the construction phase of a new source, if those units will operate for no more than 24 months in the nonattainment area, are otherwise in compliance with the requirement to obtain a permit under this Chapter and are in compliance with the conditions of that permit.
- G.** A decrease in actual emissions shall be considered in determining the potential of a new source or modification to emit only to the extent that the Director has not relied on it in issuing any permit or permit revision under this Article or the state has not relied on it in demonstrating attainment or reasonable further progress.
- H.** The Director shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification under this Section. Within 30 days of the issuance of any permit under this Section, the Director shall also submit control technology information from the permit to the Administrator for the purposes listed in Section 173(d) of the Act.
- I.** The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

Historical Note

Former Section R9-3-403 repealed, new Section R9-3-403 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-403 renumbered without change as Section R18-2-403 (Supp. 87-3). Section R18-2-403 renumbered to R18-2-603, new Section R18-2-403 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-404. Offset Standards

- A.** Increased emissions by a major source or major modification subject to R18-2-403 of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major shall be offset by real

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reductions in the actual emissions of the pollutant. Offsets shall be for the same regulated NSR Pollutant, except that emissions of the ozone precursors NOx and VOC may be offset by reductions in emissions of either of those pollutants, provided that all other applicable requirements of this Section and R18-2-405 are satisfied. Except as provided in R18-2-405 and subsection (J), the ratio of the total actual reductions to the emissions increase shall be at least 1 to 1.

- B.** Except as provided in subsection (B)(1) or (2), for sources and modifications subject to this Section, the baseline for determining credit for emissions reductions is the emissions limit for the source generating the offset credit under the applicable implementation plan in effect at the time the application for a permit or permit revision is filed.
1. The offset baseline shall be the actual emissions of the source from which offset credit is obtained where either of the following conditions is satisfied:
 - a. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted.
 - b. The applicable implementation plan does not contain an emissions limitation for that source or source category.
 2. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.
- C.** For an existing fuel combustion source, emissions offset credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable or actual emissions for the fuels involved is not acceptable, unless the permit for the existing source is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a fuel generating higher emissions. The owner or operator of the existing source must demonstrate that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.
- D.** Offset Credit for Shutdowns.
1. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be credited for offsets if they meet both of the following conditions.
 - a. The reductions are surplus, permanent, quantifiable, and federally enforceable.
 - b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the Director may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
 2. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (D)(1)(b) may be credited only if one of the following conditions is satisfied:
 - a. The shutdown or curtailment occurred on or after the date the construction permit application is filed.
 - b. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of subsection (D)(1)(a).
- E.** No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314 (July 8, 1977).
- F.** All emission reductions claimed as offset credits shall be federally enforceable by the time a proposed final permit is issued to the owner or operator of the major source subject to this Section and shall be in effect by the time the new or modified source subject to the permit commences operation.
- G.** The owner or operator of a major source or major modification subject to this Section must obtain offset credits from the same source or from other sources in the same nonattainment area, except that the Director may allow the owner or operator to obtain offset credits from another nonattainment area if both of the following conditions are satisfied:
 1. The other area has an equal or higher nonattainment classification than the area in which the source is located.
 2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.
- H.** Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under this Article, R18-2-334, or the state has not relied on it in a demonstration of attainment or reasonable further progress.
- I.** The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset under this Section shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
- J.** In ozone nonattainment areas classified as marginal, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.10 to 1. In ozone nonattainment areas classified as moderate, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.15 to 1. New major sources and major modifications in serious and severe ozone nonattainment areas shall comply with this Section and R18-2-405.

Historical Note

Former Section R9-3-404 repealed, new Section R9-3-404 adopted effective May 14, 1979 (Supp. 79-1). Amended by adding subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-404 renumbered without change as Section R18-2-404 (Supp. 87-3). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Section R18-2-404 renumbered to R18-2-604, new Section R18-2-404 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R.

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333, effective March 21, 2017 (Supp. 17-1).

R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe

- A. Applicability. The provisions of this Section only apply to stationary sources of VOC or nitrogen oxides in ozone nonattainment areas classified as serious or severe. Unless otherwise provided in this Section, all requirements of Articles 3 and 4 of this Chapter apply.
- B. "Significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds or nitrogen oxides that would result from any physical change in, or change in the method of operation of, a major source, if the emissions increase of volatile organic compounds or nitrogen oxides exceeds 25 tons per year.
- C. For any major source that emits or has the potential to emit less than 100 tons of VOC or oxides of nitrogen per year, a physical or operational change that results in a significant increase in VOC or oxides of nitrogen, respectively, from any discrete operation, unit, or other pollutant emitting activity at the source shall constitute a major modification, except that the increase shall not constitute a major modification, if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities at the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such an election, the change shall constitute a major modification but BACT shall be substituted for LAER when applying R18-2-403(A)(1) to the major modification.
- D. For any stationary source that emits or has the potential to emit 100 tons or more of VOC or oxides of nitrogen per year, a physical or operational change that results in any significant increase in VOC from any discrete operation, unit or other pollutant emitting activity at the source or oxides of nitrogen, respectively, shall constitute a major modification except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities within the source at an internal offset ratio of at least 1.3 to 1, R18-2-403(A)(1) shall not apply to the change.
- E. For any new major source or major modification that is classified as major because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as serious, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.2 to 1. The offset shall be made in accordance with the provisions of R18-2-404.
- F. For any new major source or major modification that is classified as such because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as severe, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.3 to 1. These offsets shall be made in accordance with the provisions of R18-2-404.

Historical Note

Former R9-3-405, Other industries, renumbered R9-3-406, new Section adopted effective September 17, 1975 (Supp. 75-1). Former Section R9-3-405 repealed, new Section R9-3-405 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-405 renumbered without change as Section R18-2-405 (Supp. 87-3). Section R18-2-405 renumbered to R18-2-605, new Section R18-2-405

adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas

- A. Except as provided in subsections (B) through (J) below and R18-2-408 (Innovative control technology), no permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source that would be constructed in an area designated as attainment or unclassifiable for any regulated NSR pollutant unless the source or modification meets the following conditions:
1. A new major source shall apply best available control technology (BACT) for each regulated NSR pollutant for which the potential to emit is significant.
 2. A major modification shall apply BACT for each regulated NSR pollutant for which the project would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
 3. For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.
 4. BACT shall be determined on a case-by-case basis and may constitute application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques, for control of such pollutant. In no event shall such application of BACT result in emissions of any pollutant, which would exceed the emissions allowed by any applicable new source performance standard or national emission standard for hazardous air pollutants or by the applicable implementation plan. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.
 5. The person applying for the permit or permit revision under this Article performs an air impact analysis and monitoring as specified in R18-2-407, and the analysis demonstrates that allowable emission increases from the proposed new major source or major modification, in conjunction with all other applicable emission increases or reductions, including secondary emissions, would not cause or contribute to concentrations of conventional air pollutants in violation of:
 - a. Any national ambient air quality standard in any air quality control region; or

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- b. Any applicable maximum increase allowed under R18-2-218 over the baseline concentration in any area.
6. Air quality models:
- a. All estimates of ambient concentrations required under this Section shall be based on the applicable air quality models, databases, and other requirements specified in 40 CFR 51, Appendix W, "Guideline On Air Quality Models," as of July 1, 2015 (and no future amendments or editions), which shall be referred to hereinafter as "Guideline" and is adopted by reference and is on file with the Department.
 - b. Where an air quality impact model specified in the "Guideline" is not applicable, the model may be modified or another model substituted. Such a change shall be subject to notice and opportunity for public comment under R18-2-330. Written approval of the EPA Administrator shall be obtained for any modification or substitution.
- B.** This Section and R18-2-407 shall not apply to a new major source or major modification to a source with respect to a particular pollutant if the person applying for the permit or permit revision under this Article demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment for the pollutant. This exemption shall not apply to an area designated nonattainment for a revoked national ambient air quality standard in 40 CFR 81.
- C.** This Section, R18-2-407, and R18-2-410(B), (F), and (G) shall not apply to a new major source or a major modification if the source or modification would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.
- D.** This Section, R18-2-407, and R18-2-410(B), (F), and (G) shall not apply to a new major source or major modification to a source when the owner or operator of the source is a nonprofit health or educational institution.
- E.** This Section, R18-2-407, and R18-2-410(B), (F) and (G) shall not apply to a portable source which would otherwise be a new major source or major modification to an existing source if all of the following conditions are satisfied:
1. The portable source proposes to relocate and will operate for no more than 24 months at its new location.
 2. The source is subject to a permit or permit revision issued under this Section or 40 CFR 52.21.
 3. The source is in compliance with the conditions of that permit or permit revision.
 4. Emissions from the source will not impact a federal Class I area or an area where an applicable maximum increase allowed under R18-2-218 is known to be violated.
 5. Reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location at least 10 calendar days in advance of the proposed relocation, unless a different time duration is previously approved by the Director.
- F.** Subsection (A)(5), R18-2-407, and R18-2-410(B) shall not apply to a proposed major source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification, would be temporary and impact no federal Class I area and no area where a maximum increase allowed under R18-2-218 is known to be violated.
- G.** Subsection (A)(5), R18-2-407, and R18-2-410(B) as they relate to any maximum allowable increase for a Class II area shall not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.
- H.** Subsection (A)(5)(b) shall not apply to a stationary source or modification with respect to any maximum increase allowed for nitrogen oxides under R18-2-218 if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved or promulgated under the Act before the provisions embodying the maximum allowable increase took effect as part of the state implementation plan and the Director subsequently determined that the application as submitted before that date was complete.
- I.** Subsection (A)(5)(b) shall not apply to a stationary source or modification with respect to any maximum increase allowed for PM₁₀ under R18-2-218 if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved under the Act before the provisions embodying the maximum allowable increases for PM₁₀ took effect as part of the state implementation plan and the Director subsequently determined that the application as submitted before that date was complete. Instead, subsection (A)(5)(b) shall apply with respect to the maximum allowable increases for total suspended particulate as in effect on the date the application was submitted.
- J.** Subsection (A)(5)(a) shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM_{2.5} in effect on March 18, 2013 if either of the following is true:
1. The Director determined a permit application subject to this Section was complete on or before December 14, 2012. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for PM_{2.5} in effect at the time the Director determined the permit application to be complete.
 2. The Director first published before March 18, 2013 a public notice of a proposed permit subject to this Section. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for PM_{2.5} in effect at the time of first publication of the public notice.
- K.** Subsection (A)(5)(a) of this section shall not apply to a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015 if:
1. The Director has determined the permit application subject to this section to be complete on or before October 1, 2015. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Director determined the permit application to be complete.
 2. The Director has first published, before December 25, 2015, a public notice of a preliminary determination or draft permit for the permit application subject to this section. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Director determined the permit application to be complete.
- L.** The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make a determination required under this Section. The owner or operator shall also provide information regarding:
1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact, and

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2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.
- M.** The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.
- N.** At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- E.** The owner or operator of a proposed stationary source or modification to a source of volatile organic compounds who satisfies all conditions of 40 CFR 51, Appendix S, Section IV, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subsections (B), (C), and (D) above.
- F.** Post-construction monitoring. The owner or operator of a new major source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the effect emissions from the new source or modification may have, or are having, on air quality in any area.
- G.** Operations of monitoring stations. The owner or operator of a new major source or major modification shall meet the requirements of 40 CFR 58, Appendix B, during the operation of monitoring stations for purposes of satisfying subsections (B) through (F) above.
- H.** The requirements of subsections (B) through (G) above shall not apply to a new major source or major modification to an existing source with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
 - a. Carbon Monoxide - 575 $\mu\text{g}/\text{m}^3$, eight-hour average;
 - b. Nitrogen dioxide - 14 $\mu\text{g}/\text{m}^3$, annual average;
 - c. $\text{PM}_{2.5}$ - 0 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - d. PM_{10} - 10 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - e. Sulfur dioxide - 13 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - f. Lead - 0.1 $\mu\text{g}/\text{m}^3$, 3-month average;
 - g. Fluorides - 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - h. Total reduced sulfur - 10 $\mu\text{g}/\text{m}^3$, one-hour average;
 - i. Hydrogen sulfide - 0.04 $\mu\text{g}/\text{m}^3$, one-hour average;
 - j. Reduced sulfur compounds - 10 $\mu\text{g}/\text{m}^3$, one-hour average;
 - k. Ozone - net emissions increases of less than 100 tons per year of volatile organic compounds or oxides of nitrogen;
2. The concentrations of the pollutant in the area that the new source or modification would affect are less than the concentrations listed in subsection (H)(1); or
3. The pollutant is not listed in subsection (H)(1).

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-407 renumbered without change as Section R18-2-407 (Supp. 87-3). Section R18-2-407 renumbered to R18-2-607, new Section R18-2-407 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-408. Innovative Control Technology

- A.** Notwithstanding the provisions of R18-2-406(A)(1) through (3), the owner or operator of a proposed new major source or major modification may request that the Director approve a system of innovative control technology rather than the best available control technology requirements otherwise applicable to the new source or modification.
- B.** The Director shall approve the installation of a system of innovative control technology if the following conditions are met:
1. The owner or operator of the proposed source or modification satisfactorily demonstrates that the proposed control system would not cause or contribute to an

Historical Note

Former Section R9-3-405, renumbered effective September 17, 1975 (Supp. 75-1). Former Section R9-3-406 repealed, new Section R9-3-406 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-406 renumbered without change as Section R18-2-406 (Supp. 87-3). Section R18-2-406 renumbered to R18-2-606, new Section R18-2-406 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). The references to R18-2-101(97)(a) in subsection (A)(1) and (2) amended to reference R18-2-101(104)(a) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

- A.** Any application for a permit or permit revision under R18-2-406 to construct a new major source or major modification to a major source shall contain an analysis of ambient air quality in the area that the new major source or major modification would affect for each of the following pollutants:
1. For the new source, each pollutant that it would have the potential to emit in a significant amount;
 2. For the modification, each pollutant for which it would result in a significant net emissions increase.
- B.** With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain all air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of the pollutant would affect.
- C.** With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
- D.** In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

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unreasonable risk to public health, welfare, or safety in its operation or function;

2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under R18-2-406(A)(1) or (2) by a date specified in the permit or permit revision under this Article for the source. Such date shall not be later than four years from the time of start-up or seven years from the issuance of a permit or permit revision under this Article;
 3. The source or modification would meet requirements equivalent to those in R18-2-406(A) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified in the permit or permit revision under this Article.
 4. Before the date specified in the permit or permit revision under this Article, the source or modification would not:
 - a. Cause or contribute to any violation of an applicable national ambient air quality standard; or
 - b. Impact any area where an applicable maximum increase allowed under R18-2-208 is known to be violated.
 5. All other applicable requirements including those for public participation have been met.
 6. The Director receives the consent of the governors of other affected states.
 7. The requirements of R18-2-410 for federal Class I areas will be met for all periods during the life of the source or modification.
- C. The Director shall withdraw any approval to employ a system of innovative control technology made under this Section if:
1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
 2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
 3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.
- D. If the new source or major modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection (C) above, the Director may allow the owner or operator of the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-408 renumbered without change as Section R18-2-408 (Supp. 87-3). Section R18-2-408 renumbered to R18-2-608, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-409. Air Quality Models

- A. Where the Director requires a person requesting a permit or permit revision under this Article to perform air quality impact modeling to obtain such permit or permit revision under this Article, the modeling shall be performed in a manner consistent with the Guideline specified in R18-2-406(A)(6)(a).
- B. Where the person requesting a permit or permit revision under this Article can demonstrate that an air quality impact model

specified in the Guideline is inappropriate, the model may be modified or another model substituted. However, before such modification or substitution can occur, the Director shall make a written finding that:

1. No model in the Guideline is appropriate for a particular permit or permit revision under this Article under consideration, or
 2. The data base required for the appropriate model in the Guideline is not available, and
 3. The model proposed as a substitute or modification is likely to produce results equal or superior to those obtained by models in the Guideline, and
 4. The model proposed as a substitute or modification has been approved by the Administrator.
- C. The substitution or modification of an air quality model under this Section shall be included in the public notice under R18-2-330(C).

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-409 renumbered without change as Section R18-2-409 (Supp. 87-3). Section R18-2-409 renumbered to R18-2-609, new Section R18-2-409 adopted effective November 15, 1993 (Supp. 93-4).

R18-2-410. Visibility and Air Quality Related Value Protection

- A. Applicability.
 1. All of the requirements of this Section apply to a new major source or major modification that would be constructed in an area that is designated attainment or unclassified.
 2. Subsections (B) to (D) apply to the following:
 - a. A new major source or major modification that may have an impact on any integral vista of a mandatory federal Class I area, if it is identified in accordance with 40 CFR 51.304 by the Federal Land Manager at least twelve months before submission of a complete permit application for the source or modification, except where the Federal Land Manager has provided notice and opportunity for public comment on the integral vista, in which case the review must include impacts on any integral vista identified at least six months before submission of a complete permit application. This subsection shall not apply if the Director determines under 40 CFR 51.304(d) that the identification was not in accordance with the identification criteria.
 - b. A new major source or major modification that proposes to locate in an area designated as nonattainment and that may have an impact on visibility in any mandatory federal Class I area.
- B. Application Requirements. Any application for a permit or permit revision to construct a major source or major modification subject to this section shall contain:
 1. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new source or modification and general commercial, residential, industrial, and other growth associated with the new source or modification. The applicant need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
 2. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new source or modification.
- C. Notification Requirements.

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1. The Director shall provide written notice of the application for a permit or permit revision subject to this section to the Administrator, the Federal Land Manager and the federal official charged with direct responsibility for management of any lands within any Class I area that may be affected by the source or modification. The notice shall be provided within 30 days of receipt of the application and at least 60 days before any public hearing on the application. The notice shall:
 - a. Include a copy of the application and all information relevant to the permit or permit revision under this Article;
 - b. Include an analysis of the anticipated impacts of the proposed source on visibility in any federal Class I area; and
 - c. Provide for no less than a 30-day period within which written comments may be submitted.
 2. The Director shall notify the individuals identified in subsection (C)(1) within 30 days of receipt of any advance notification of any such permit or permit revision.
 3. The Director shall notify the individuals identified in subsection (C)(1) of the preliminary determination for the application under R18-2-402(I)(2)(c) and shall make available any materials used in making that determination.
 4. The Director shall provide notice to the administrator of every action related to the consideration of such permit or permit revision.
- D. Consideration of Federal Land Manager Analysis.**
1. The Federal Land Manager and the federal official charged with direct responsibility for management of federal Class I areas have an affirmative responsibility to protect the air quality related values, including visibility, of any such areas and to consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on such values.
 2. The Director shall consider any analysis performed by the Federal Land Manager and provided within 30 days of the notification required by subsection (C)(1) that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a federal Class I area or integral vista.
 3. In considering the analysis, the Director shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a), taking into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.
 4. If the Director concurs with the analysis, the Director shall deny the permit or permit revision.
 5. If the Director finds that the analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the federal Class I area or integral vista, the Director shall, in the notice required by R18-2-402(I)(2)(c), either explain that decision or give notice as to where the explanation can be obtained.
- E. Federal Land Manager Analysis Showing Adverse Impact Despite Compliance with Maximum Allowable Increases for Class I Area.**
1. Within 30 days after the notification required by subsection (C)(3), the Federal Land Manager may present to the Director a demonstration that the emissions attributed to a new major source or major modification would have an adverse impact on visibility or other specifically defined air quality related values of any mandatory federal Class I

area, even though the change in air quality resulting from emissions attributable to the source or modification will not cause or contribute to concentrations that exceed the maximum increases allowed for the area in R18-2-218.

2. If the Director concurs with the demonstration, the Director shall not issue a permit or permit revision for the major source or major modification.
- F. Class I Variance with Federal Land Manager Concurrence.**
1. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that emissions from the source will have no adverse impact on the air quality related values (including visibility) of federal Class I areas, even though the change in air quality resulting from emissions from the source or modification are projected to cause or contribute to concentrations that exceed the maximum increases allowed for a Class I area under R18-2-218.
 2. If the Federal land manager concurs with the demonstration and so certifies to the Director, the Director may issue the permit, provided that:
 - a. Applicable requirements are otherwise met; and
 - b. The permit contains emission limits necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides will not cause increases in ambient concentrations of those pollutants exceeding the following maximum allowable increases over minor source baseline concentrations:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM _{2.5} :	
Annual arithmetic mean	4
24-hr maximum	9
PM ₁₀ :	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide	
Annual arithmetic mean	25

- G. Class I Sulfur Dioxide Variance by Governor with Concurrence by Federal Land Manager or President.**
1. The owner or operator of a proposed source or modification that cannot be approved under subsection (F) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of mandatory federal Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase. If the variance is granted, the Director shall issue a permit or permit to the source or modification pursuant to the requirements of subsection (G)(3), provided that the applicable requirements of R18-2-406 are otherwise met.

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- 2. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor’s recommendation if the President finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant to subsection (G)(3), provided that the applicable requirements of R18-2-406 are otherwise met.
- 3. In the case of a permit pursuant to subsection (G)(1) or (G)(2) the source or modification shall comply with emission limitations necessary to assure that emissions of sulfur dioxide from the source or modification will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that the emissions will not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase [Micrograms per cubic meter]		
Period of exposure	Terrain areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

- H. Visibility Monitoring. The Director may require monitoring of visibility in any federal Class I area near a proposed major source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-410 renumbered without change as Section R18-2-410 (Supp. 87-3). Section R18-2-410 renumbered to R18-2-610, new Section R18-2-410 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-411. Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of Any National Ambient Air Quality Standard

- A. Except as provided in subsection (C) or (D), the Director shall deny a permit or permit revision to any major source or major modification that would locate in any attainment or unclassified area, if the source or modification would cause or contribute to a violation of any national ambient air quality standard.
- B. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when the source or modification would, at a minimum, cause an increase in the concentrations of a regulated NSR pollutant that exceeds the significance level at any locality that does not, or as a result of the increase would not, meet the standard.
- C. A proposed major source or major modification subject to subsection (A) may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

- D. Subsection (A) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment pursuant to section 107 of the Act.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-412. PALs

- A. Applicability.
 - 1. The Director may approve the use of a PAL for any existing major source if the PAL meets the requirements of this Section.
 - 2. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Section, and complies with the PAL permit:
 - a. Is not a major modification for the PAL pollutant,
 - b. Does not have to be approved under R18-2-403 or R18-2-406, and
 - c. Is not subject to the provisions in R18-2-403(C) or R18-2-406(M).
 - 3. Except as provided under subsection (A)(2)(c), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.
- B. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major source shall submit the following information to the Director for approval:
 - 1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.
 - 2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions shall include emissions associated not only with operation of the unit, but also emissions associated with the startup, shutdown and malfunction.
 - 3. The calculation procedures that the major source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (L)(1).
- C. General requirements for establishing PALs.
 - 1. The Director is allowed to establish a PAL at a major source, provided that at a minimum, the following requirements are met:
 - a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month sum, rolled monthly). For each month during the first 11 months from the

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PAL effective date, the major source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

- b. The PAL shall be established in a PAL permit that meets the requirements in subsection (D).
 - c. The PAL permit shall contain all the requirements of subsection (F).
 - d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major source.
 - e. Each PAL shall regulate emissions of only one pollutant.
 - f. Each PAL shall have a PAL effective period of 10 years.
 - g. The owner or operator of the major source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections (K) through (M) for each emissions unit under the PAL through the PAL effective period.
2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under R18-2-404 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.
- D. Action on PAL permit application.** A PAL permit application shall be processed in accordance with one of the following:
1. As an initial Class I permit pursuant to R18-2-304.
 2. As a renewal of a Class I permit pursuant to R18-2-322.
 3. As a significant revision to a Class I permit pursuant to R18-2-320.
- E. Setting the 10-year actuals PAL level.**
1. Except as provided in subsection (E)(2), the PAL level for a major source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant. When establishing the PAL level, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
 2. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (E)(1), the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.
- F. Contents of the PAL permit.** The PAL permit must contain, at a minimum, the following information:
1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.
 2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
 3. Specification in the PAL permit that if a major source owner or operator applies to renew a PAL in accordance with subsection (I) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.
 4. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
 5. A requirement that, once the PAL expires, the major source is subject to the requirements of subsection (H).
 6. The calculation procedures that the major source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subsection (L)(1).
 7. A requirement that the major source owner or operator monitor all emissions units in accordance with the provisions under subsection (K).
 8. A requirement to retain the records required under subsection (L) onsite. Such records may be retained in an electronic format.
 9. A requirement to submit the reports required under subsection (M) by the required deadlines.
 10. Any other requirements that the Director deems necessary to implement and enforce the PAL.
- G. PAL effective period and reopening of the PAL permit.**
1. PAL effective period. The Director shall specify a PAL effective period of 10 years.
 2. Reopening of the PAL permit.
 - a. During the PAL effective period, the Director must reopen the PAL permit to:
 - i. Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL,
 - ii. Reduce the PAL if the owner or operator of the major source creates creditable emissions reductions for use as offsets under R18-2-404, and
 - iii. Revise the PAL to reflect an increase in the PAL as provided under subsection (J).
 - b. The Director shall have discretion to reopen the PAL permit for the following:
 - i. Reduce the PAL to reflect new federal applicable requirements with compliance dates after the PAL effective date;
 - ii. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major source under the State Implementation Plan; and
 - iii. Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a violation of a national ambient air quality standard or a maximum increase allowed under R18-2-208, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a Federal Land Manager and for which information is available to the general public.

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- c. Except for the permit reopening in subsection (G)(2)(a)(i) for the correction of typographical/calculational errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection (D).
- H.** Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in subsection (I) shall expire at the end of the PAL effective period, and the following requirements shall apply.
1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.
 - a. Within the time-frame specified for PAL renewals in subsection (I)(2), the major source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate) by distributing the PAL allowable emissions for the major source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as would be required under subsection (I)(5), such distribution shall be made as if the PAL had been adjusted.
 - b. The Director shall decide how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.
 2. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
 3. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (H)(1)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
 4. Any physical change or change in the method of operation at the major source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification.
 5. The major source owner or operator shall continue to comply with any applicable requirements that may have applied either during the PAL effective period or before the PAL effective period except for those emission limitations that had been established pursuant to R18-2-403(C) or R18-2-406(H), but were eliminated by the PAL in accordance with subsection (A)(2)(c).
- I.** Renewal of a PAL.
1. The Director shall follow the procedures specified in subsection (D) in approving any request to renew a PAL for a major source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.
 2. Application deadline. A major source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
- J.** Increasing a PAL during the PAL effective period.
1. The Director may increase a PAL emission limitation only if the following requirements are met:
 - a. The owner or operator of the major source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major source's emissions to equal or exceed its PAL.
 - b. As part of this application, the major source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions
 2. Application requirements. The application to renew a PAL permit shall contain the following information.
 - a. The information required in subsections (B)(1) through (3).
 - b. A proposed PAL level.
 - c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
 - d. Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.
 3. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subsections (I)(4)(a) and (b). However, in no case may any such adjustment fail to comply with subsection (I)(4)(c).
 - a. If the emissions level calculated in accordance with subsection (E) is equal to or greater than 80% of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subsection (I)(4)(b); or
 - b. The Director may set the PAL at a level that the Director determines to be more representative of the source's baseline actual emissions, or that the Director determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in the Director's written rationale.
 - c. Notwithstanding subsections (I)(4)(a) and (b):
 - i. If the potential to emit of the major source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and
 - ii. The Director shall not approve a renewed PAL level higher than the current PAL, unless the PAL has been increased in accordance with subsection (J).
 4. If the compliance date for an applicable requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or renewal of the source's Class I permit, whichever occurs first.

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units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT or LAER equivalent controls, plus the sum of the PAL allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT or LAER equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT or LAER analysis at the time the application is submitted, as applicable for the particular PAL pollutant, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

- c. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (J)(1)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
 - d. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
2. The Director shall calculate the new PAL level as the sum of the PAL allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT or LAER equivalent controls as determined in accordance with subsection (J)(1)(b), plus the sum of the baseline actual emissions of the small emissions units.
 3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection (D).
- K. Monitoring requirements for PALs.**
1. General requirements.
 - a. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
 - b. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsections (K)(2)(a) through (d) and must be approved by the Director.
 - c. Notwithstanding subsection (K)(1)(b), the owner or operator may also employ an alternative monitoring approach if approved by the Director as meeting the requirements of subsection (K)(1)(a).
 - d. Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.
 2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (K)(3) through (9):
 - a. Mass balance calculations for activities using coatings or solvents,
 - b. CEMS,
 - c. CPMS or PEMS, and
 - d. Emission factors.
 3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
 - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
 - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
 - c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a site-specific monitoring program to support another content within the range.
 4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
 - a. CEMS must comply with applicable Performance Specifications found in 40 CFR 60, Appendix B; and
 - b. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
 5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
 - a. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
 - b. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.
 6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
 - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
 - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
 - c. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL per-

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- mit issuance, unless the Director determines that testing is not required.
7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
 8. Notwithstanding the requirements in subsections (K)(3) through (7), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:
 - a. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s), or
 - b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
 9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every five years after issuance of the PAL.
- L. Recordkeeping requirements.**
1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Section and with the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.
 2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:
 - a. A copy of the PAL permit application and any applications for revisions to the PAL, and
 - b. Each annual certification of compliance pursuant to R18-2-309(2) and the data relied on in certifying compliance.
- M. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with R18-2-306(A)(5). The reports shall meet the following requirements:
1. Semi-annual report. The semi-annual report shall be submitted to the Director within 30 days of the end of each reporting period. This report shall contain the following information:
 - a. The identification of owner and operator and the permit number.
 - b. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subsection (L)(1).
 - c. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
 - d. A list of any emissions units modified or added to the major source during the preceding six-month period.
 - e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
 - f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subsection (K)(7).
 - g. A certification by the responsible official consistent with R18-2-304(I).
2. Deviation report. The major source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL permit requirements, including periods where no monitoring is available, in accordance with R18-2-306(A)(5). The reports shall contain the following information:
 - a. The identification of owner and operator and the permit number,
 - b. The PAL permit requirement that experienced the deviation or that was exceeded,
 - c. Emissions resulting from the deviation or the exceedance, and
 - d. A certification by the responsible official consistent with R18-2-304(I).
 3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or method within three months after completion of such test or method.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

ARTICLE 5. GENERAL PERMITS**R18-2-501. Applicability**

- A.** The Director may issue general permits for a facility class that contains 10 or more facilities that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, or recordkeeping. "Similar in nature" refers to facility size, processes, and operating conditions.
- B.** The Director may issue general permits, in accordance with subsection (A), with emission limitations, controls, or other requirements that meet the requirements of R18-2-306.01. A source that seeks to vary from such a general permit, and obtain an emission limitation, control, or other requirement not contained in that general permit, shall apply for a permit pursuant to Article 3 of this Chapter.
- C.** General permits shall not be issued for affected sources except as provided in regulations promulgated by the Administrator under Title IV of the Act.
- D.** Unless otherwise stated, the provisions of Article 3 shall apply to general permits.

Historical Note

Former Section R18-2-501 renumbered to R18-2-502, new Section R18-2-501 adopted effective September 26, 1990 (Supp. 90-3). Former Section R18-2-501 renumbered to R18-2-701; new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective

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August 1, 1995 (Supp. 95-3).

R18-2-502. General Permit Development

- A. The Director may issue a general permit on the Director's own initiative or in response to a petition.
- B. Any person may submit a petition to the Director requesting the issuance of a general permit for a defined class of facilities. The petition shall propose a particular class of facilities, and list the approximate number of facilities in the proposed class along with their size, processes, and operating conditions, and demonstrate how the class meets the criteria for a general permit as specified in R18-2-501 and A.R.S. § 49-426(H). The Director shall provide a written response to the petition within 120 days of receipt.
- C. General permits shall be issued for classes of facilities using the same engineering principles that applies to permits for individual sources and following the public notice requirements of R18-2-504.
- D. General permits shall include all of the following:
 1. All elements required by R18-2-306(A) except R18-2-306(A)(2)(b) and (6).
 2. The process for individual sources to apply for coverage under the general permit.
- E. General permits may include conditions imposed under R18-2-515.

Historical Note

Former Section R9-3-501 repealed, new Section R9-3-501 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (D) effective June 19, 1981 (Supp. 81-3). Amended subsections (C) and (D) effective February 2, 1982 (Supp. 82-1). Amended subsection (D) effective May 25, 1982 (Supp. 82-3). Former Section R9-3-501 renumbered without change as Section R18-2-501 (Supp. 87-3). Former Section R18-2-502 repealed, new Section R18-2-502 renumbered from R18-2-501 and amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-502 renumbered to R18-2-702; new Section R18-2-502 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-503. Application for Coverage under General Permit

- A. Once the Director has issued a general permit, any source which is a member of the class of facilities covered by the general permit may apply to the Director for authority to operate under the general permit. At the time the Director issues a general permit, the Director may also establish a specific application form with filing instructions for sources in the category covered by the general permit. Applicants shall complete the specific application form or, if a specific form has not been adopted, the standard application form provided under R18-2-304(B). The specific application form shall, at a minimum, require the applicant to submit the following information:
 1. Information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine qualification for, and to assure compliance with, the general permit.
 2. A compliance plan that meets the requirements of R18-2-514.
- B. For sources required to obtain a permit under Title V of the Act, the Director shall provide the Administrator with a permit application summary form and any relevant portion of the permit application and compliance plan. To the extent possible,

this information shall be provided in computer-readable format compatible with the Administrator's national database management system.

- C. The Director shall act on the application for coverage under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time. The Director may defer acting on an application under this subsection (if) the Director has provided notice of intent to renew or not renew the permit.
- D. The Director shall deny an application for coverage from any Class I source that is subject to case-by-case standards or requirements.
- E. Upon notification from the Director of the availability of a web portal to apply for and obtain a general permit, an applicant shall file all applications and conduct all transactions related to the general permit through the portal.

Historical Note

Former Section R9-3-503 repealed, new Section R9-3-503 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (6) effective June 19, 1981 (Supp. 81-3). Amended subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-503 renumbered without change as Section R18-2-503 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-503 renumbered to R18-2-703; new Section R18-2-503 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-504. Public Notice

- A. This Section applies to issuance, revision, or renewal of a general permit.
- B. The Director shall provide public notice for any proposed new general permit, for any revision of an existing general permit, and for renewal of an existing general permit.
- C. The Director shall publish notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county and shall provide at least 30 days from the date of the first notice for public comment. The notice shall describe the following:
 1. The proposed permit;
 2. The category of sources that would be affected;
 3. The air contaminants which the Director expects to be emitted by a typical facility in the class and the class as a whole;
 4. The Director's proposed actions and effective date for the actions;
 5. Locations where documents relevant to the proposed permit will be available during normal business hours;
 6. The name, address, and telephone number of a person within the Department who may be contacted for further information;
 7. The address where any person may submit comments or request a public hearing and the date and time by which comments or a public hearing request are required to be received;
 8. The process by which sources may obtain authorization to operate under the general permit.
- D. A copy of the notice required by subsection (C), shall be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies in the state. The notice shall also be sent to any other agency in

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the state having responsibility for implementing the procedures required under 40 CFR 51, I. For general permits under which operation may be authorized in lieu of Class I permits, the Director shall provide the proposed final permit to the Administrator after public and affected state review. No Class I permit shall be issued if the Administrator properly objects to its issuance in writing within 45 days from receipt of the proposed final permit and any necessary supporting information from the Director.

- E. By no later than the date notice is first published under subsection (A), the Department shall make copies of the following materials available at a public location in each county and at each Department office:
1. The proposed general permit;
 2. The Department's analysis in support of the grant of the general permit;
 3. All other materials available to the Director that are relevant to the permit decision.
- F. Written comments to the Director shall include the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued pursuant to the criteria for issuance in A.R.S. §§ 49-426 and 49-427 and this Chapter.
- G. At the time a general permit is issued, the Director shall make available a response to all relevant comments on the proposed permit raised during the public comment period and during any requested public hearing. The response shall specify which provisions, if any, of the proposed permit have been changed and the reason for the changes. The Director shall also notify in writing any petitioner and each person who has submitted written comments on the proposed general permit or requested notice of the final permit decision.

Historical Note

Former Section R9-3-504 repealed, new Section R9-3-504 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-504 renumbered without change as Section R18-2-504 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-504 renumbered to R18-2-704; new Section R18-2-504 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-505. General Permit Renewal

- A. The Director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall coincide with the term of the general permit regardless of when the authorization began during the five-year period, except as provided in R18-2-510(C). In addition to the public notice required to issue a proposed permit under R18-2-504, the Director shall notify in writing all sources who have been granted, or who have applications pending for, authorization to operate under the permit. The written notice shall describe the source's duty to reapply and may include requests for information required under the proposed permit.
- B. At the time a general permit is renewed, the Director shall notify in writing all sources who were granted coverage under the previous permit and shall require them to submit a timely renewal application. For purposes of general permits, a timely application is one that is submitted within the time-frame specified by the Director in the written notification. Until such time that a timely application is submitted, the source shall continue to comply with the previously issued general permit coverage. Upon submittal of a timely application, the source shall com-

ply with the renewed permit. Failure to submit a timely application terminates the source's right to operate.

Historical Note

Former Section R9-3-1007 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-505 repealed, new Section R9-3-505 adopted effective May 14, 1979 (Supp. 79-1). Editorial corrections, subsection (B), paragraph (5), and subsection (D), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-505 renumbered without change as Section R18-2-505 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-505 renumbered to R18-2-705; new Section R18-2-505 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-506. Relationship to Individual Permits

Any source covered under a general permit may request to be excluded from coverage by applying for an individual source permit. Coverage under the general permit shall terminate on the date the individual permit is issued.

Historical Note

Former Section R9-3-1008 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-506 repealed, new Section R9-3-506 adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (1) effective June 19, 1981 (Supp. 81-3). Former Section R9-3-506 renumbered without change as Section R18-2-506 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-506 renumbered to R18-2-706; new Section R18-2-506 adopted effective November 15, 1993 (Supp. 93-4).

R18-2-507. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-507 renumbered without change as Section R18-2-507 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-507 renumbered to R18-2-707; new Section R18-2-507 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-508. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-508 renumbered without change as Section R18-2-508 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-508 renumbered to R18-2-708; new Section R18-2-508 adopted effective November 15, 1993 (Supp. 93-4). Repealed by final rulemaking at 23 A.A.R. 333, effective

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March 21, 2017 (Supp. 17-1).

R18-2-509. General Permit Appeals

Any person who filed a comment on a proposed general permit as provided in R18-2-504 may appeal the terms and conditions of the general permit, as they apply to the facility class covered under a general permit, by filing an appeal with the Office of Administrative Hearings within 30 days after receipt of notice that the general permit has been issued.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-509 renumbered without change as Section R18-2-509 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-509 renumbered to R18-2-709; new Section R18-2-509 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

R18-2-510. Terminations of General Permits and Revocations of Authority to Operate under a General Permit

- A. The Director may terminate a general permit at any time if:
 1. The Director has determined that the emissions from the sources in the facility class cause or contribute to ambient air quality standard violations which are not adequately addressed by the requirements in the general permit, or
 2. The Director has determined that the terms and conditions of the general permit no longer meet the requirements of A.R.S. §§ 49-426 and 49-427.
- B. The Director shall provide written notice to all sources operating under a general permit prior to termination of a general permit. Such notice shall include an explanation of the basis for the proposed action. Within 180 days of receipt of the notice of the expiration, termination or cancellation of any general permit, sources notified shall submit an application to the Director for an individual permit.
- C. The Director may require a source authorized to operate under a general permit to apply for and obtain an individual source permit at any time if the source is not in compliance with the terms and conditions of the general permit.
- D. If the Director revokes a source's authority to operate under a general permit pursuant to subsection (C), the Director shall notify the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation of authority and a statement that the permittee is entitled to a hearing. A source previously authorized to operate under a general permit may operate under the terms of the general permit until the earlier of the date it submits a complete application for an individual permit, at which time it may operate under that application, or 180 days after receipt of the notice of revocation of authority to operate under the general permit.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsections (E)(3) and (E)(4) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-510 renumbered without change as Section R18-2-510 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-510 renumbered to R18-2-710; new Section R18-2-510 adopted effective November 15, 1993 (Supp. 93-4).

R18-2-511. Fees Related to General Permits

- A. Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of each application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B. Administrative or Inspection Fee. The owner or operator of a source required to have a general permit, that has undergone initial startup by January 1, shall pay, for each calendar year, the applicable administrative or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$750
Other Class II Title V General Permits	\$4,520
	Inspection Fee
Class II Non-Title V Crematories	\$1,500
Other Class II Non-Title V General Permits	\$3,020

Historical Note

Former Section R18-2-511 renumbered to R18-2-711; new Section R18-2-511 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4).

R18-2-512. Changes to Facilities Granted Coverage under General Permits

- A. This Section applies to changes made at a facility that has been granted coverage under a general permit.
- B. Facility Changes that Require New Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source requests new authorization to operate from the Director:
 1. Adding new emissions units that require new authorization to operate,
 2. Installing replacement emissions units that require authorization to operate.
- C. Facility Changes that Do Not Require Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source provides notification to the Department:
 1. Adding new emissions units that do not require authorization to operate,
 2. Installing a replacement emissions unit with a higher capacity that does not require authorization to operate,
 3. Adding or replacing air pollution control equipment.
- D. A source that has been granted coverage under a general permit shall keep a record of any physical change or change in the method of operation that could affect emissions. The record shall include a description of the change and the date the change occurred.
- E. For sources that submit a request or notification under subsection (B) or (C), the applicant shall provide information identifying and describing the source, its processes, and operating

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conditions in sufficient detail to allow the Director to determine continued qualification for, and to assure compliance with, the general permit. The Director shall act on a request for new authority to operate under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-512 renumbered without change as Section R18-2-512 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-712 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-513. Portable Sources Covered under a General Permit

- A. This Section applies to sources that have been granted coverage under a general permit that allows for the operation of a source at more than one location.
- B. General permits developed by the Director for portable sources shall contain conditions that assure compliance with all applicable requirements at all authorized locations.
- C. Owners and operators that hold multiple coverages under the same general permit:
 1. Shall have separate coverage under the general permit for each location at which each portable source operates.
 2. Until the Director notifies permittees of the availability of a web portal under R18-2-503(E), may move equipment between portable sources without obtaining a new authorization to operate. At no time shall an owner or operator move equipment to a portable source if the move would cause emissions from the portable source to exceed emission limitations in the general permit. Equipment from a portable source covered by one general permit shall not be moved to a portable source covered by a different general permit, unless the owner or operator obtains a new authorization to operate under the general permit covering the new location.
 3. After the Director notifies permittees of the availability of a web portal under R18-2-503(E), must use the portal to obtain authorizations to operate for each location at which the equipment will operate.
- D. A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has been granted coverage under a general permit that subsequently obtains a county permit shall request that the Director terminate the coverage under the general permit. Upon issuance of the county permit, the coverage under the general permit issued by the Director is no longer valid.
- E. A portable source which has a county permit but proposes to operate outside that county may obtain coverage under a general permit from the Director. A portable source that has a permit issued by a county and obtains coverage under a general permit issued by the Director shall request that the county terminate the permit. Upon issuance of coverage under a general permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has juris-

dition in the county that includes the new location according to subsection (F).

- F. A portable source granted coverage under a general permit may be transferred from one location to another provided that the owner or operator of the portable source notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer prior to the transfer. The notification required under this subsection (shall) include:
 1. A description of the equipment to be transferred including the permit number and as appropriate the Authorization-to-Operate number for each piece of equipment;
 2. A description of the present location;
 3. A description of the new location;
 4. The date on which the equipment is to be moved;
 5. The date on which operation of the equipment will begin at the new location;
 6. A complete list of all equipment requiring authorization to operate that may be located at the new location; and
 7. Revised emissions calculations demonstrating that the equipment at the new location continues to qualify for the general permit under which the portable source has coverage.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (2) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-513 renumbered without change as Section R18-2-513 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-713 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-514. General Permit Compliance Certification

- A. A compliance certification submitted by the owner or operator of a stationary source covered by a general permit shall be on a form provided by the Director and shall include the following information:
 1. The source's name, mailing address, contact person and contact person phone number, permit number, compliance reporting period, and physical address and location, if different than the mailing address.
 2. A certification of truth, accuracy, and completeness signed by the facility's responsible officer.
 3. Process information for the source, including design capacity, operations schedule, hours of operation, and total production.
 4. Method of documenting compliance and the status of compliance with all recordkeeping, reporting, monitoring, and testing requirements and all emission limitations and standards imposed in the permit.
- B. Upon notification from the Director of the availability of a web portal to complete and submit a compliance certification, the owner or operator shall complete and submit all compliance certifications through the portal.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-514 renumbered without change as Section R18-2-514 (Supp.

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87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-714 effective November 14, 1993 (Supp. 93-4). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-515. Minor NSR in General Permits

- A. A general permit may include emission standards designed to assure that a stationary source covered by the permit will comply with minor new source review under R18-2-334(C). The emission standards may consist of any combination of the following:
1. Limits designed to assure that emissions from a stationary source that is a member of the class of facilities covered by the permit will not interfere with attainment or maintenance of a NAAQS.
 2. Limits imposing reasonably available control technology.
- B. Except as provided in subsection (C), if a general permit includes emission standards under subsection (A), then any stationary source that is a member of the class of facilities covered by the permit or any minor NSR modification to such a source may comply with R18-2-334 by obtaining coverage under the permit.
- C. An owner or operator seeking coverage under a general permit in order to obtain authorization to construct or make a minor NSR modification to a stationary source shall instead apply for an individual permit, if the Department determines there is reason to believe the source or modification could interfere with attainment or maintenance of any national ambient air quality standard. In making this determination, the Department:
1. Shall consider the factors in R18-2-334(E)(1) to (6).
 2. Shall consider whether the dispersion characteristics of the source are likely to result in higher ambient concentrations of a conventional pollutant than the modeling assumptions used to establish an emission standard under subsection (A)(1).
 3. May apply a screening model to the source's emissions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Section R9-3-515 will be repealed and new Section R9-3-515 adopted effective following the adoption of Article 7. Nonferrous Smelter Orders, filed September 18, 1979 for public hearing (Supp. 79-5). Section R9-3-515 adopted effective May 14, 1979, amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Section R9-3-515 filed September 18, 1979 for public hearing and effective following the adoption of Article 7 now amended and effective January 8, 1980 (Supp. 80-1). Amended as an emergency effective March 6, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency adoption effective March 6, 1980 now adopted and amended effective July 9, 1980. Amended subsection (C), paragraph (1) effective August 29, 1980 (Supp. 80-4). Amended as an emergency effective October 9, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 9, 1980, now adopted and amended effective June 19, 1981 (Supp. 81-3). Amended subsection (B), paragraph (1) effective February 2, 1982 (Supp. 82-1). Amended effective May 25, 1982 (Supp. 82-3). Amended subsections ((C)(3) and (C)(5) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-515 renumbered without change as Section R18-2-515 (Supp. 87-3). Section amended and subsections (C)(1)(h) through (C)(7)

renumbered to R18-2-515.01 and subsections (C)(8) through (C)(9) renumbered to R18-2-515.02 effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-515.01. Renumbered**Historical Note**

Section R18-2-515.01 renumbered from R18-2-515(C)(1)(h) through (C)(7) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.01 effective November 15, 1993 (Supp. 93-4).

R18-2-515.02. Renumbered**Historical Note**

R18-2-515.02 renumbered from R18-2-515(C)(8) through (C)(9) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.02 effective November 15, 1993 (Supp. 93-4).

R18-2-516. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4) Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-4). Former Section R9-3-516 renumbered without change as Section R18-2-516 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-716 effective November 15, 1993 (Supp. 93-4).

R18-2-517. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-517 renumbered without change as Section R18-2-517 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-717 effective November 15, 1993 (Supp. 93-4).

R18-2-518. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-4). Former Section R9-3-518 renumbered without change as Section R18-2-518 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-718 effective November 15, 1993 (Supp. 93-4).

R18-2-519. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (A), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-519 renumbered without change as Section R18-2-519 (Supp. 87-3). Amended effective September

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26, 1990 (Supp. 90-3). Renumbered to R18-2-719 effective November 15, 1993 (Supp. 93-4).

R18-2-520. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (1) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-520 renumbered without change as Section R18-2-520 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-720 effective November 15, 1993 (Supp. 93-4).

R18-2-521. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-521 renumbered without change as Section R18-2-521 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-721 effective November 15, 1993 (Supp. 93-4).

R18-2-522. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-522 renumbered without change as Section R18-2-522 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-722 effective November 15, 1993 (Supp. 93-4).

R18-2-523. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-523 renumbered without change as Section R18-2-523 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-723 effective November 15, 1993 (Supp. 93-4).

R18-2-524. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-524 renumbered without change as Section R18-2-524 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-724 effective November 15, 1993 (Supp. 93-4).

R18-2-525. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B) (Supp. 79-6). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-525 renumbered without change as Section R18-2-525 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-

3). Renumbered to R18-2-725 effective November 15, 1993 (Supp. 93-4).

R18-2-526. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-526 renumbered without change as Section R18-2-526 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-726 effective November 15, 1993 (Supp. 93-4).

R18-2-527. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-527 renumbered without change as Section R18-2-527 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-727 effective November 15, 1993 (Supp. 93-4).

R18-2-528. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-528 renumbered without change as Section R18-2-528 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-728 effective November 15, 1993 (Supp. 93-4).

R18-2-529. Renumbered**Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-529 renumbered without change as Section R18-2-529 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-729 effective November 15, 1993 (Supp. 93-4).

R18-2-530. Renumbered**Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-730 effective November 15, 1993 (Supp. 93-4).

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES**R18-2-601. General**

For purposes of this Article, any source of air contaminants which due to lack of an identifiable emission point or plume cannot be considered a point source, shall be classified as a nonpoint source. In applying this criteria, such items as air-curtain destructors, heater-planners, and conveyor transfer points shall be considered to have identifiable plumes. Any affected facility subject to regulation under Article 7 of this Chapter or Title 18, Chapter 2, Article 9, shall not be subject to regulation under this Article.

Historical Note

Former Section R9-3-601 repealed, new Section R9-3-601 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-601 renumbered without change as Section R18-2-601 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-601 renumbered to R18-2-801, new Section R18-2-601 renumbered from R18-2-401 and amended effective November 15, 1993 (Supp. 93-4). Section updated to reflect corrected citation reference (Supp. 08-1).

R18-2-602. Unlawful Open Burning

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retary of State December 23, 2016 (Supp. 16-4).

R18-2-1706. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1707. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1708. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

Table 3. Expired**Historical Note**

Table 3 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 3 expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1709. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

ARTICLE 18. REPEALED**R18-2-1801. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1802. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1803. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1804. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1805. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1806. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1807. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1808. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1809. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1810. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1811. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1812. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

CHAPTER APPENDICES**Appendix 1. Repealed**

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Historical Note

Former Appendix 1 repealed, new Appendix 1 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended effective December 1, 1988 (Supp. 88-4). Appendix 1 repealed, new Appendix 1 adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). The reference to R18-2-101(80) amended to reference R18-2-101(84) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

Appendix 2. Test Methods and Protocols

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as applicable requirements revised as of June 30, 2017, and no future editions or amendments. These standards are on file with the Department, and are also available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

- A. 40 CFR 50;
- B. 40 CFR 50, all appendices;
- C. 40 CFR 51, Appendix M, Section IV of Appendix S, and Appendix W;
- D. 40 CFR 52, Appendices D and E;
- E. 40 CFR 53;
- F. 40 CFR 58;
- G. 40 CFR 58, all appendices;
- H. 40 CFR 60, all appendices;
- I. 40 CFR 61, all appendices;
- J. 40 CFR 63, all appendices;
- K. 40 CFR 75, all appendices.
- L. 40 CFR 51.128, Appendix A(1)(B).
- M. Silt Content Test Method. The purpose of this test method is to estimate the silt content of the trafficked parts of commercial farm roads, as defined in R18-2-610. The higher the silt content, the more fine dust particles that are released when cars and trucks drive on commercial farm roads.
 1. Equipment:
 - a. A set of sieves with the following openings: 4 millimeters (mm), 2mm, 1 mm, 0.5 mm and 0.25 mm and a lid and collector pan
 - b. A small whisk broom or paintbrush with stiff bristles and dustpan 1 ft. in width. (The broom/brush should preferably have one, thin row of bristles no longer than 1.5 inches in length.)
 - c. A spatula without holes A small scale with half ounce increments (e.g. postal/package scale)
 - d. A shallow, lightweight container (e.g. plastic storage container)
 - e. A sturdy cardboard box or other rigid object with a level surface
 - f. Basic calculator
 - g. Cloth gloves (optional for handling metal sieves on hot, sunny days)
 - h. Sealable plastic bags (if sending samples to a laboratory)
 - i. Pencil/pen and paper
 2. Step 1: Look for a routinely-traveled surface, as evidenced by tire tracks. [Only collect samples from surfaces that are not wet or damp due to precipitation, dew or watering.] Use caution when taking samples to ensure

personal safety with respect to passing vehicles. Gently press the edge of a dustpan (1 foot in width) into the surface four times to mark an area that is 1 square foot. Collect a sample of loose surface material using a whisk broom or brush and slowly sweep the material into the dustpan, minimizing escape of dust particles. Use a spatula to lift heavier elements such as gravel. Only collect dirt/gravel to an approximate depth of 3/8 inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is < 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface. In other words, you are only collecting a surface sample of loose material down to 1 cm. In order to confirm that samples are collected to 1 cm. in depth, a wooden dowel or other similar narrow object at least 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.

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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 expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 23 A.A.R. 1564, effective May 2, 2018 (Supp. 18-2).

Appendix 3. Logging

1. Each log entry required by a change under R18-2-317.02(B) shall include at least the following information:
 - a. A description of the change, including:
 - i. A description of any process change.
 - ii. A description of any equipment change, including both old and new equipment descriptions,

- iii. A description of any process material change.
 - b. The date and time that the change occurred.
 - c. The provision of R18-2-317.02(B) that authorizes the change to be made with logging.
 - d. The date the entry was made and the first and last name of the person making the entry.
2. Logs shall be kept for five years from the date created. Logging shall be performed in indelible ink in a bound log book with sequentially numbered pages, or in any other form, including electronic format, approved by the Director.

Historical Note

Appendix 3 adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

Appendix 4. Reserved**Appendix 5. Repealed****Historical Note**

Appendix 5 repealed effective November 15, 1993 (Supp. 93-4).

Appendix 6. Repealed**Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Appendix 6 repealed, new Appendix 6 adopted effective July 7, 1978 (Supp. 78-4). Former Appendix 6 repealed effective May 14, 1979 (Supp. 79-1).

Appendix 7. Repealed**Historical Note**

Adopted effective December 22, 1976 (Supp. 76-5). Former Appendix 7 repealed, new Appendix 7 adopted effective January 8, 1980 (Supp. 80-1). Editorial correction, Instructions for Schedule 2, paragraph (15) (Supp. 80-2). Repealed effective September 26, 1990 (Supp. 90-3).

A8. Appendix 8. Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions**PROCEDURES FOR UTILIZING THE SULFUR BALANCE METHOD FOR DETERMINING SULFUR EMISSIONS****A8.1. Calculating Input Sulfur**

Total sulfur input is the sum of the product of the weight of each sulfur bearing material introduced into the smelting process as calculated in A8.1.1. multiplied by the fraction of sulfur contained in that material as calculated in A8.1.2. plus the amount of sulfur contained in fuel utilized in the smelting process as calculated in A8.1.3.

A8.1.1. Material Weight

The owner or operator of a copper smelter shall weigh all sulfur-bearing materials, other than fuels, introduced into the smelting process. The weighing shall be subject to the following conditions:

- A8.1.1.1. Weight shall be determined on a belt scale, rail or truck scales, or other weighing device.
- A8.1.1.2. Weight shall be determined within an accuracy of $\pm 5\%$.
- A8.1.1.3. All devices or scales used for weighing shall be calibrated to manufacturer's specifications at least once a month.
- A8.1.1.4. Sulfur-bearing materials subject to being weighed include concentrate, cement copper, reverts that are discarded and not part of the internal circulating load and precipitates. Materials such as limestone and silica flux that are mixed with a charge

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A8.3.2. The sulfur removal equipment bypass monitoring required under R18-2-715.01(Q) shall consist of a detector and recorder system capable of producing a permanent record of all periods that the bypass is in operation.

A8.4. General Provisions

A8.4.1. For purposes of this Appendix, an approved alternative method, process, or procedure, must be approved in writing by the Director and the U.S. Environmental Protection Agency.

A8.4.2. The processes and procedures specified in this Appendix shall be available for inspection, review and verification by the Department at all reasonable times.

A8.4.3. The barium sulfate gravimetric test method and potassium iodide titration test method provided in *Standard Methods of Chemical Analysis*, Volume One, *The Elements*, Sixth Edition, N. Howell Furman (ed.), D. Van Nostrand Company, Inc., Princeton, New Jersey, 1962, pages 410-411, 1006-1011, and 1342-1343 (and no future editions or amendments) is incorporated by reference and available at the Department.

Historical Note

Adopted effective December 22, 1976 (Supp. 76-5). Correction, Appendix 8, A8-2-1.1 (Supp. 77-2). Amended effective May 28, 1982 (Supp. 82-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 2216, effective July 18, 2005 (Supp. 05-2).

A9. Appendix 9. Monitoring Requirements

MONITORING REQUIREMENTS

A9.1. Unless otherwise approved by the Director or specified in applicable Sections, the requirements of this Appendix shall apply to all continuous monitoring systems required under applicable Sections.

A9.2. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under rule R18-2-312. Verification of operational status shall, as a minimum, consist of the following:

A9.2.1. For continuous monitoring systems referenced in A9.3.1. below, completion of the conditioning period specified by applicable requirements in the Arizona Testing Manual and 40 CFR 60.

A9.2.2. For continuous monitoring systems referenced in A9.3.2. below, completion of seven days of operation.

A9.2.3. For monitoring devices referenced in other applicable Sections, completions of the manufacturer's written requirements or recommendations for checking the operation or calibration of the device.

A9.3. During any performance tests required under rule R18-2-312 or within 30 days thereafter and at such other times as may be required by the Director, the owner or operator of any affected facility shall conduct continuous monitoring system performance evaluations and furnish the Director within 60 days thereof, 2, or upon request, more copies of a written report of the results of such tests. The continuous monitoring system performance evaluations shall be conducted in accordance with the following specifications and procedures:

A9.3.1. Continuous monitoring systems listed within this subsection, except as provided in A9.3.2. below shall be evaluated in accordance with the requirements and procedures contained in the applicable performance specification of the Arizona Testing Manual and 40 CFR 60.

A9.3.1.1. Continuous monitoring systems for measuring opacity of emissions shall comply with Performance Specification 1.

A9.3.1.2. Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with Performance Specification 2.

A9.3.1.3. Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with Performance Specification 2.

A9.3.1.4. Continuous monitoring systems for measuring the oxygen content or carbon dioxide content of effluent gases shall comply with Performance Specification 3.

A9.3.2. An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components except as referenced by A9.3.2.3. below shall comply with the following requirements:

A9.3.2.1. Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within $\pm 20\%$. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 1 of 40 CFR 60, Appendix B shall be used for demonstrating compliance with this specification.

A9.3.2.2. Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within $\pm 20\%$ with a confidence level of 95%. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures set forth in Performance Specification 2 of 40 CFR 60, Appendix B shall be used for demonstrating compliance with this specification.

A9.3.2.3. Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1975, are not required to conduct tests under A9.3.2.1. and/or A9.3.2.2. above unless requested by the Director.

A9.3.3. All continuous monitoring systems referenced by A9.3.2. above shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and such improved systems shall be demonstrated to comply with applicable performance specifications under A9.3.1. above by September 11, 1979.

A9.4. Owners or operators of all continuous monitoring systems installed in accordance with the provisions of these rules shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of such systems unless the manufacturer recommends adjustments at shorter intervals, in which case such recommendations shall be followed. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in 40 CFR 60, Appendix B are exceeded. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero or span drift adjustments except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4% opacity. Unless otherwise approved by the Director, the following procedures, as applicable, shall be followed:

A9.4.1. For extractive continuous monitoring systems measuring gases, minimum procedures shall include introducing applicable zero and span gas mixtures into the measurement system as near the probe as practical. Span and zero gases certified by their manufacturer to be traceable to the National Bureau of Standards reference gases will be used whenever these reference gases are available. The span and zero gas mixtures shall be the same composition as specified in the 40 CFR 60, Appendix B. Every six months from date of manufacture, span and zero gases shall be re-analyzed by conducting triplicate analyses with Reference Methods 6 for SO₂, 7 for NO_x and 3 for O₂ and CO₂, respectively. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.

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- A9.4.2. For nonextractive continuous monitoring systems measuring gases, minimum procedures shall include upscale check(s) using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing a zero condition.
- A9.4.3. For continuous monitoring systems measuring opacity of emissions, minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.
- A9.5. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under A9.4. above, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:
- A9.5.1. All continuous monitoring systems referenced by A9.3.1. and A9.3.2. above for measuring opacity of emissions shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 10-second period.
- A9.5.2. All continuous monitoring systems referenced by A9.3.1. above for measuring oxides of nitrogen, sulfur dioxide, carbon dioxide, or oxygen shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
- A9.5.3. All continuous monitoring systems referenced by A9.3.2. above, except opacity, shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive one-hour period.
- A9.6. All continuous monitoring systems for monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems contained in the applicable Performance Specifications of 40 CFR 60, Appendix B shall be used.
- A9.7. When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the Director.
- A9.8. Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages and for systems other than opacity to one-hour averages, respectively. Six minute opacity averages shall be calculated from 24 or more data points equally spaced over each six-minute period. For systems other than opacity, one-hour averages shall be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this subsection. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or nonreduced form (e.g. ppm pollutant and percent O₂ or lb/million Btu of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in subparts. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in these rules to specify the applicable standard (e.g., rounded to the nearest 1% opacity).
- A9.9. Upon written application by an owner or operator, the Director may approve alternatives to any monitoring procedures or requirements of these rules including, but not limited to the following:
- A9.9.1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by these rules would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.
- A9.9.2. Alternative monitoring requirements when the affected facility is infrequently operated.
- A9.9.3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.
- A9.9.4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.
- A9.9.5. Alternative methods of converting pollutant concentration measurements to units of the standards.
- A9.9.6. Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.
- A9.9.7. Alternatives to the ASTM test methods or sampling procedures specified by any subpart.
- A9.9.8. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 in 40 CFR 60, Appendix B but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Director may require that such demonstration be performed for each affected facility.
- A9.9.9. Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.
- Historical Note**
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective June 15, 1995 (Supp. 95-2).
- Appendix 10. Repealed**
- Historical Note**
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective June 19, 1981 (Supp. 81-3). Repealed by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).
- Appendix 11. Repealed**
- Historical Note**
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 11, 1983 (Supp. 83-5). Repealed by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).
- A12. Appendix 12.Expired**

[A.R.S. § 41-1092.02](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 41 State Government (Chs. 1 — 55) > Chapter 6 Administrative Procedure (Arts. 1 — 11) > Article 10. Uniform Administrative Appeals Procedures (§§ 41-1092 — 41-1092.12)

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

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

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

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

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

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1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to [section 42-1251](#).
 2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to [section 42-1253](#).
- D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.
- E. Except for a contested case or an appealable agency action regarding unclaimed property, [sections 41-1092.03](#), [41-1092.08](#) and [41-1092.09](#) do not apply to the department of revenue.
- F. The board of appeals established by [section 37-213](#) is exempt from:
1. The time frames for hearings and decisions provided in [section 41-1092.05](#), subsection A, [section 41-1092.08](#) and [section 41-1092.09](#).
 2. The requirement in [section 41-1092.06](#), subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to [section 37-215](#) is the estimate of value reported in an appraisal of lands or improvements.
- G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

History

Last legislative year: 2014.

Recent legislative history: Laws 1999, Ch. 211, § [39](#); Laws 2000, Ch. 184, § [5](#); Laws 2001, Ch. 241, § [7](#); Laws 2002, Ch. 336, § [20](#); Laws 2003, Ch. 67, § [2](#); Laws 2003, Ch. 214, § [20](#); Laws 2004, Ch. 198, § [2](#); Laws 2006, Ch. 18, § [1](#); Laws 2006, Ch. 211, § [1](#); Laws 2012, 2nd Reg. Sess., Ch. 3, § [11](#); *Laws 2014, 2nd Sp. Sess., Ch. 1, § 130*; [Laws 2016, 2nd Reg. Sess., Ch. 232, § 54](#).

Annotations

Notes

Prior Law

[Laws 1998, 2nd Reg. Sess., Ch. 214, § 17](#); [Laws 1998, 2nd Reg. Sess., Ch. 214, § 18](#); [Laws 1998, 2nd Reg. Sess., Ch. 214, § 19](#).

[Laws 1997, 1st Reg. Sess., Ch. 221, § 186](#).

[Laws 1996, 2nd Reg. Sess., Ch. 324, § 9](#).

[Laws 1995, 1st Reg. Sess., Ch. 251, § 14](#).

Editor's note.

For information on the succession of the Department of Child Safety to the authority, powers, duties, and responsibilities of the Department of Economic Security, see *Laws 2014, 2nd Sp. Sess., Ch. 1, § 157*.

Amendment notes.

A.R.S. § 41-1092.02

The 2016 amendment added “except as provided in title 28, chapter 30, article 2” in (A)(8) and deleted “the provisions under” following “be subject to” in (C)(1).

Research References & Practice Aids

Hierarchy Notes:

[A.R.S. Title 41](#)

[A.R.S. Title 41, Ch. 6, Art. 10](#)

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End of Document

[A.R.S. § 49-104](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 1 General Provisions (Arts. 1 — 7) > Article 1. Department of Environmental Quality (§§ 49-101 — 49-118)

Notice

 This section has more than one version with varying effective dates.

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

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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.

B. The department, through the director, shall:

- 1.** Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
- 2.** Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
- 3.** Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
- 4.** Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
- 5.** Contract with other agencies, including laboratories, in furthering any department program.
- 6.** Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
- 7.** Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
- 8.** Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
- 9.** Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the

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facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

- 10.** Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
- 11.** Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
 - (a)** Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.
 - (b)** Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.
- 12.** Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to [section 36-136](#), subsection I, paragraph 10.
- 13.** Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:
 - (a)** Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.
 - (b)** Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.
 - (c)** Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.
 - (d)** Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.
- 14.** Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:
 - (a)** Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.
 - (b)** Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may

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establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to [sections 35-146](#) and [35-147](#), in the solid waste fee fund established by [section 49-881](#).

- 15.** Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 ([P.L. 99-499](#)) and article 2 of this chapter.
- 16.** Approve remediation levels pursuant to article 4 of this chapter.
- 17.** Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:
 - (a)** The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.
 - (b)** The availability of other funds for the duties performed.
 - (c)** The impact of the fees on the parties subject to the fees.
 - (d)** The fees charged for similar duties performed by the department, other agencies and the private sector.
- 18.** Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

- 1.** Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under [section 49-203](#), except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to [sections 35-146](#) and [35-147](#), in the water quality fee fund established by [section 49-210](#).
- 2.** Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

- 1.** If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.
- 2.** Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

History

Recent legislative history: [Laws 1999, Ch. 26, § 3](#); [Laws 2000, Ch. 225, § 2](#); [Laws 2001, Ch. 21, § 3](#); [Laws 2001, Ch. 231, § 12](#); [Laws 2001, Ch. 400, § 1](#); [Laws 2003, Ch. 104, § 37](#); [Laws 2010, 2nd Reg. Sess., Ch. 265, § 1](#); [Laws 2010, 2nd Reg. Sess., Ch. 309, § 14](#); [Laws 2011, 1st Reg. Sess., Ch. 220, § 3](#); [Laws 2015, 1st Reg. Sess., Ch. 208, § 21](#); [Laws 2016, 2nd Reg. Sess., Ch. 128, § 121](#); [Laws 2017, 1st Reg. Sess., Ch. 112, § 1](#); [Laws 2017, 1st Reg. Sess., Ch. 288, § 8](#); [Laws 2018, 2nd Reg. Sess., Ch. 192, § 1](#); [Laws 2018, 2nd Reg. Sess., Ch. 225, § 3](#).

Annotations

Notes

Prior Law

[Laws 1997, 1st Reg. Sess., Ch. 49, § 6](#).

[Laws 1996, 2nd Reg. Sess., Ch. 351, § 37](#).

[Laws 1995, 1st Reg. Sess., Ch. 261, § 1](#); [Laws 1995, 1st Reg. Sess., Ch. 232, § 2](#); [Laws 1995, 1st Reg. Sess., Ch. 231, § 1](#); [Laws 1995, 1st Reg. Sess., Ch. 202, § 2](#).

[Laws 1989, 1st Reg. Sess., Ch. 238, § 10](#).

Research References & Practice Aids

Hierarchy Notes:

[A.R.S. Title 49, Ch. 1, Art. 1](#)

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[A.R.S. § 49-401](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 1. General Provisions (§§ 49-401 — 49-414.01)

49-401. Declaration of policy

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

History

Last legislative year: 1986.

Annotations

Additional Cases of Historical Interest (1955 — 1984)

Governments: Local Governments: Administrative Boards

[State Bd. of Health v. Apache Powder Co., 21 Ariz. App. 156, 517 P.2d 114, 1973 Ariz. App. LEXIS 842 \(Ariz. Ct. App. 1973\).](#)

Overview: County Health Department had jurisdiction over air pollution sources in county subject to relinquishment to state, and air pollution source did not have vested right to regulation by county or right to notice of state's assumption of jurisdiction.

A.R.S. § 49-401

- Former Ariz. Rev. Stat. § 36-1700(A) (now Ariz. Rev. Stat. § [49-401](#)) establishes the Legislature's declaration of policy as to air pollution control: The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all of the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the state department of health and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

Real Property Law: Environmental Regulation: Liabilities & Risks: General Overview

[State Bd. of Health v. Apache Powder Co., 21 Ariz. App. 156, 517 P.2d 114, 1973 Ariz. App. LEXIS 842 \(Ariz. Ct. App. 1973\).](#)

Overview: *County Health Department had jurisdiction over air pollution sources in county subject to relinquishment to state, and air pollution source did not have vested right to regulation by county or right to notice of state's assumption of jurisdiction.*

- Former Ariz. Rev. Stat. § 36-1700(A) (now Ariz. Rev. Stat. § [49-401](#)) establishes the Legislature's declaration of policy as to air pollution control: The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all of the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the state department of health and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

[A.R.S. § 49-401.01](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 1. General Provisions (§§ 49-401 — 49-414.01)

49-401.01. Definitions

In this chapter, unless the context otherwise requires:

1. “Administrator” means the administrator of the United States environmental protection agency.
2. “Adverse effects to human health” means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.
3. “Adverse environmental effect” means any significant and widespread adverse effect that may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.
4. “Arizona Grand Canyon visibility transport commission class I areas” means the following four mandatory federal class I areas in this state that were the subject of recommendations made by the Grand Canyon visibility transport commission pursuant to the clean air act:
 - (a) Grand Canyon national park.
 - (b) Petrified Forest national park.
 - (c) Sycamore Canyon Wilderness.
 - (d) Mount Baldy Wilderness.
5. “Arizona mandatory federal class I areas” means the following eight national parks and wilderness areas that are designated as mandatory federal class I areas in this state pursuant to the clean air act and does not include the Arizona Grand Canyon visibility transport commission class I areas:
 - (a) Pine Mountain Wilderness.
 - (b) Mazatzal Wilderness.
 - (c) Sierra Ancha Wilderness.
 - (d) Superstition Wilderness.
 - (e) Saguaro Wilderness.
 - (f) Galiuro Wilderness.
 - (g) Chiricahua Wilderness.
 - (h) Chiricahua National Monument Wilderness.

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- 6.** “Attainment area” means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.
- 7.** “Begin actual construction” means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activity, which mark the initiation of the change:
- (a)** For purposes of title I, parts C and D and section 112 of the clean air act and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures but do not include any of the following, subject to [section 49-427](#), subsection D:
 - (i)** Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.
 - (ii)** Installation of access roads, driveways and parking lots.
 - (iii)** Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.
 - (iv)** Ordering and on-site storage of materials and equipment.
 - (b)** For purposes other than for those applicants prescribed in subdivision (a) of this paragraph, these activities do not include the following, subject to [section 49-427](#), subsection D:
 - (i)** Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.
 - (ii)** Installation of access roads, parking lots, driveways and storage areas.
 - (iii)** Ordering and on-site storage of materials and equipment.
 - (iv)** Installation of underground pipework, including water, sewer, electric and telecommunications utilities.
 - (v)** Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impact the design of any emissions unit or associated air pollution control equipment.
 - (vi)** Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impact the design of any emissions unit or associated air pollution control equipment.
- 8.** “Building”, “structure”, “facility” or “installation” means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group that has the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.
- 9.** “Clean air act” means the clean air act of 1963 (P.L. 88-206; [42 United States Code sections 7401 through 7671](#)) as amended by the clean air act amendments of 1990 (P.L. 101-549).
- 10.** “Commence” means, as applied to construction of a source:
- (a)** For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

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- (i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.
 - (ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.
 - (b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.
- 11.** “Construction” means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.
- 12.** “Conventional air pollutant” means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.
- 13.** “Federally listed hazardous air pollutant” means any air pollutant adopted pursuant to [section 49-426.03](#), subsection A and not deleted pursuant to that subsection.
- 14.** “Grand Canyon visibility transport commission” means the visibility transport commission established pursuant to section 169B of the clean air act for the region affecting the visibility of the Grand Canyon national park.
- 15.** “Grand Canyon visibility transport commission class I areas” means the following sixteen mandatory federal class I areas in the region of Grand Canyon national park that were the subject of recommendations by the Grand Canyon visibility transport commission pursuant to the clean air act:
- (a) Grand Canyon national park in Arizona.
 - (b) Sycamore Canyon Wilderness in Arizona.
 - (c) Petrified Forest national park in Arizona.
 - (d) Mount Baldy Wilderness in Arizona.
 - (e) San Pedro Parks Wilderness in New Mexico.
 - (f) Mesa Verde national park in Colorado.
 - (g) Weminuche Wilderness in Colorado.
 - (h) Black Canyon of the Gunnison Wilderness in Colorado.
 - (i) West Elk Wilderness in Colorado.
 - (j) Maroon Bells-Snowmass Wilderness in Colorado.
 - (k) Flat Tops Wilderness in Colorado.
 - (l) Arches national park in Utah.
 - (m) Canyonlands national park in Utah.
 - (n) Capitol Reef national park in Utah.
 - (o) Bryce Canyon national park in Utah.
 - (p) Zion national park in Utah.
- 16.** “Hazardous air pollutant” means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to [section 49-426.04](#), subsection A and has not deleted pursuant to [section 49-426.04](#), subsection B.

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- 17.** “Hazardous air pollutant reasonably available control technology” means an emissions standard for hazardous air pollutants that the director, acting pursuant to [section 49-426.06](#), subsection C, or the control officer, acting pursuant to [section 49-480.04](#), subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality health and environmental impacts and energy requirements. For the purposes of this definition, an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.
- 18.** “Maintenance area” means any nonattainment area that has been redesignated by the administrator to attainment status.
- 19.** “Major source” means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title I, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.
- 20.** “Mandatory federal class I areas” means those national parks, monuments and wilderness areas that are included in [40 Code of Federal Regulations sections 81.400](#) through [81.436](#) pursuant to the clean air act.
- 21.** “Maximum achievable control technology” means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures that:
- (a)** Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.
 - (b)** Enclose systems or processes to eliminate emissions.
 - (c)** Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.
 - (d)** Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.
 - (e)** Are a combination of the above.
- 22.** “Minor source” means any stationary or portable source that is not a major source.
- 23.** “Mobile source” means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.
- 24.** “Modification” or “modify” means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source’s potential to emit before and after the modification. The following exemptions apply:
- (a)** A physical or operational change does not include routine maintenance, repair or replacement.
 - (b)** An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any federally enforceable permit condition or other permit condition that is enforceable as a practical matter.

- (c) A change in ownership at a source is not considered a modification.
- 25.** “National ambient air quality standard” means the ambient air pollutant concentration limits established by the administrator pursuant to [42 United States Code section 7409](#).
- 26.** “Nonattainment area” means any area in this state that is designated as prescribed by [section 49-405](#) and where violations of national ambient air quality standards have been measured.
- 27.** “Nonattainment area plan” means an air pollution control plan developed in accordance with [42 United States Code sections 7501](#) through [7515](#).
- 28.** “Permitting authority” means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to [section 49-480](#), subsection A.
- 29.** “Planning agency” means an organization designated by the governor pursuant to [42 United States Code section 7504](#).
- 30.** “Portable source” means any stationary source that is capable of being transported and operated in more than one county of this state.
- 31.** “Potential to emit” means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter.
- 32.** “Primary standard attainment date” means the date defined within a nonattainment area plan in accordance with [42 United States Code sections 7401](#) through [7515](#) or applicable regulations adopted by the United States environmental protection agency by January 1, 1999 and after which date primary national ambient air quality standards may not be violated.
- 33.** “Reasonable further progress” means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.
- 34.** “Source” means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution.
- 35.** “State implementation plan” means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to [42 United States Code section 7410](#).
- 36.** “Stationary source” means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.
- 37.** “Unclassifiable area” means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

History

Last legislative year: 2014.

Recent legislative history: Laws 1999, Ch. 295, § [40](#); Laws 2002, Ch. 251, § [1](#); Laws 2010, 2nd Reg. Sess., Ch. 287, § [16](#); Laws 2010, 2nd Reg. Sess., Ch. 315, § [1](#); Laws 2014, 2nd Reg. Sess., Ch. 267, § [1](#).

Annotations

Notes

Prior Law

[Laws 1998, 2nd Reg. Sess., Ch. 217, § 14.](#)

[Laws 1997, 1st Reg. Sess., Ch. 175, § 1.](#)

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End of Document

[A.R.S. § 49-402](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 1. General Provisions (§§ 49-401 — 49-414.01)

49-402. State and county control

- A.** The department shall have original jurisdiction over such sources, permits and violations that pertain to:
1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.
 2. Smelting of metal ore.
 3. Petroleum refineries.
 4. Coal fired electrical generating stations.
 5. Portland cement plants.
 6. Air pollution by portable sources.
 7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.
 8. Sources that are subject to title V of the clean air act and that are located in a county for which the administrator has disapproved that county's title V permit program if the department has a title V program that has been approved by the administrator. On approval of that county's title V permit program by the administrator, the county shall resume jurisdiction over those sources.
- B.** Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and has provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as the director asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted, and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.
- C.** Portable sources under jurisdiction of the department under subsection A, paragraph 6 of this section may be required to file notice with the director and the control officer who has jurisdiction over the geographic area that includes the new location before beginning operations at that new location.
- D.** Notwithstanding any other law, a permit issued to a state regulated source shall include the emission standard or standard of performance adopted pursuant to [section 49-479](#), if such standards are more stringent than those adopted by the director and if such standards are specifically identified as applicable to the permitted source or a component of the permitted source. Such standards shall be applied to sources

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identified in subsection A, paragraph 2, 3, 4 or 5 of this section only if the standard is formally proposed for adoption as part of the state implementation plan.

E. The regional planning agency for each county which contains a vehicle emissions control area shall develop plan revisions containing transportation related air quality control measures designed to attain and maintain primary and secondary ambient air quality standards as prescribed by and within the time frames specified in the clean air act. In developing the plan revisions, the regional planning agency shall consider all of the following:

1. Mandatory employee parking fees.
2. Park and ride programs.
3. Removal of on-street parking.
4. Ride share programs.
5. Mass transit alternatives.
6. Expansion of public transportation systems.
7. Optimizing freeway ramp metering.
8. Coordinating traffic signal systems.
9. Reduction of traffic congestion at major intersections.
10. Site specific transportation control measures.
11. Reversible lanes.
12. Fixed lanes for buses and carpools.
13. Encouragement of pedestrian travel.
14. Encouragement of bicycle travel.
15. Development of bicycle travel facilities.
16. Employer incentives regarding ride share programs.
17. Modification of work schedules.
18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment or maintenance areas.
19. Use of alternative fuels.
20. Use of emission control devices on public diesel powered vehicles.
21. Paving of roads.
22. Restricting off-road vehicle travel.
23. Construction site air pollution control.
24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

History

Last legislative year: 2002.

Recent legislative history: Laws 1999, Ch. 295, § [41](#); Laws 2002, Ch. 110, § [1](#).

Annotations

Notes

Prior Law

[Laws 1994, 2nd Reg. Sess., Ch. 353, § 21.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 8.](#)

Additional Cases of Historical Interest (1955 — 1984)

Administrative Law: Informal Agency Actions

Administrative Law: Judicial Review: Standards of Review: Abuse of Discretion

Administrative Law: Separation of Powers: Jurisdiction

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

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Environmental Law: Air Quality: Enforcement: General Overview

Environmental Law: Air Quality: Operating Permits

Environmental Law: Litigation & Administrative Proceedings: Jurisdiction & Procedure

Governments: Local Governments: Duties & Powers

Governments: State & Territorial Governments: Employees & Officials

Additional Cases of Historical Interest (1955 — 1984)

Administrative Law: Informal Agency Actions

[State Bd. of Health v. Apache Powder Co., 21 Ariz. App. 156, 517 P.2d 114, 1973 Ariz. App. LEXIS 842 \(Ariz. Ct. App. 1973\).](#)

Overview: *County Health Department had jurisdiction over air pollution sources in county subject to relinquishment to state, and air pollution source did not have vested right to regulation by county or right to notice of state's assumption of jurisdiction.*

- When the Legislature grants an administrative agency authority to perform a discretionary act and the agency exercises that discretion, it is acting in an administrative and not judicial manner. The decision to assert jurisdiction over a local pollution source pursuant to former Ariz. Rev. Stat. § 36-1706(B) (now Ariz. Rev. Stat. § [49-402](#)) being strictly an internal administrative decision between the State Director of Air Pollution Control and the State Board of Health, there is no right vested in an air pollution source to be within the jurisdiction of county control which demands administrative due process prior to its relinquishment.

Administrative Law: Judicial Review: Standards of Review: Abuse of Discretion

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Administrative Law: Separation of Powers: Jurisdiction

[Ashton Co. v. Jacobson, 19 Ariz. App. 371, 507 P.2d 983, 1973 Ariz. App. LEXIS 536 \(Ariz. Ct. App. 1973\).](#)

Overview: *The director of an agency vested with original jurisdiction of air pollution control was by statute the sole arbiter of whether to impose criminal sanctions; thus, denial of a motion to quash an information filed by the county attorney was error.*

- Former Ariz. Rev. Stat. § 36-1709 (now Ariz. Rev. Stat. § [49-461](#)) authorizes the director of the division of air pollution control to file a complaint and former Ariz. Rev. Stat. § 36-1706 (now Ariz. Rev. Stat. § [49-402](#)) vests original jurisdiction and control in the state division over violations pertaining to mobile machinery and equipment such as is involved in the instant case. The court believes, construing the Act as a whole, that it evinces a legislative purpose that enforcement of matters confined to the original jurisdiction of the state division be left to that administrative body. In other words, in order to ensure the accomplishment of the Air Pollution Act's avowed purpose, i.e., regulation of air polluting activities in a manner that insures the health, safety and general welfare of all of the citizens of the state, the state director should be the sole arbiter of whether or not to impose criminal sanctions. That the legislature did not intend for this decision to be made by the county attorney is further borne out by the fact that former Ariz. Rev. Stat. § 36-1718.01 (now Ariz. Rev. Stat. § [49-467](#)) permits him to prosecute for violations of other criminal statutes.

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

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Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

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- Former Ariz. Rev. Stat. § 36-1706 (now Ariz. Rev. Stat. § [49-402](#)) delineates the respective state and county authority. As to air pollution by mobile machinery and equipment capable of being operated in more than one county, the division of air pollution control in the Arizona State Department of Health and the state hearing board are vested with “original jurisdiction and control” over air pollution matters, permits, and violations pertaining to such machinery and equipment. It further provides for additional assertion of state jurisdiction and control when ordered by the state director and that such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted until relinquished.
- Former Ariz. Rev. Stat. § 36-1709 (now Ariz. Rev. Stat. § [49-461](#)) authorizes the director of the division of air pollution control to file a complaint and former Ariz. Rev. Stat. § 36-1706 (now Ariz. Rev. Stat. § [49-402](#)) vests original jurisdiction and control in the state division over violations pertaining to mobile machinery and equipment such as is involved in the instant case. The court believes, construing the Act as a whole, that it evinces a legislative purpose that enforcement of matters confined to the original jurisdiction of the state division be left to that administrative body. In other words, in order to ensure the accomplishment of the Air Pollution Act’s avowed purpose, i.e., regulation of air polluting activities in a manner that insures the health, safety and general welfare of all of the citizens of the state, the state director should be the sole arbiter of whether or not to impose criminal sanctions. That the legislature did not intend for this decision to be made by the county attorney is further borne out by the fact that former Ariz. Rev. Stat. § 36-1718.01 (now Ariz. Rev. Stat. § [49-467](#)) permits him to prosecute for violations of other criminal statutes.

Environmental Law: Air Quality: Enforcement: General Overview

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Environmental Law: Air Quality: Operating Permits

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- Former Ariz. Rev. Stat. § 36-1706(B) (now Ariz. Rev. Stat. § [49-402](#)) defines the limits of county jurisdiction: except as specified in subsection A of this section, jurisdiction and control of air pollution shall be by the county or multi-county air quality control region pursuant to the provisions of article 8, chapter 6, of this title. The county or multi-county air quality control region shall relinquish jurisdiction and control over such air pollution matters, air pollution sources, installation permits, operating permits, conditional permits and violations as the director of the division, with the prior approval of the state board of health given at a public meeting, designates and at such times as he asserts jurisdiction and control at the state level. The order of the director which asserts state jurisdiction and control shall specify the matters, geographical area, or air pollution source or sources over which the division shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted and the provisions of this chapter, shall govern, except as provided in this chapter, until jurisdiction and control is surrendered by the division of such county or region.

Environmental Law: Litigation & Administrative Proceedings: Jurisdiction & Procedure

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Governments: Local Governments: Duties & Powers

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shall then be the sole and exclusive jurisdiction and control to the extent asserted and the provisions of this chapter, shall govern, except as provided in this chapter, until jurisdiction and control is surrendered by the division of such county or region.

Governments: State & Territorial Governments: Employees & Officials

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- Former Ariz. Rev. Stat. § 36-1706 (now Ariz. Rev. Stat. § [49-402](#)) delineates the respective state and county authority. As to air pollution by mobile machinery and equipment capable of being operated in more than one county, the division of air pollution control in the Arizona State Department of Health and the state hearing board are vested with “original jurisdiction and control” over air pollution matters, permits, and violations pertaining to such machinery and equipment. It further provides for additional assertion of state jurisdiction and control when ordered by the state director and that such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted until relinquished.

[A.R.S. § 49-404](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

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49-404. State implementation plan

- A.** The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.
- B.** The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.
- C.** The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

History

Last legislative year: 1999.

Recent legislative history: Laws 1999, Ch. 295, § [42](#).

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 9.](#)

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[A.R.S. § 49-405](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

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49-405. Attainment area designations

- A.** The governor may designate the status and classification of areas of this state with respect to attainment of national ambient air quality standards.
- B.** The director shall adopt rules that both:
1. Describe the geographic extent of attainment, nonattainment or unclassifiable areas of this state for all pollutants for which a national ambient air quality standard exists.
 2. Establish procedures and criteria for changing the designations of areas that include all of the following:
 - (a) Technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries.
 - (b) Provisions for review of and public comment on proposed changes to area designations.
 - (c) All area designations adopted by the administrator as of May 30, 1992.
- C.** On promulgation by the administrator of new or revised national ambient air quality standards for pollutants, the department shall develop proposed recommendations regarding designations for geographic areas of this state as being in attainment or nonattainment or unclassifiable with respect to that standard. The proposed recommendations shall be provided to the governor to assist the governor in submitting recommendations to the administrator pursuant to [42 United States Code section 7407\(d\)\(1\)\(A\)](#). The department shall develop the proposed recommendations as follows:
1. No earlier than five months before the date by which the governor must make the recommendations and no later than four months before that date, the department shall complete a draft of the proposed recommendations and a technical support document that explains the scientific and other bases for the draft proposal.
 2. No earlier than five months before the date by which the governor must make the recommendations and no later than four months before that date, the department shall post the draft proposed recommendations and technical support document on the department's website. The department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the proposed recommendations and to any person who had previously requested actual notice of the draft documents. Actual notice of the posting may be provided by electronic or other means.
 3. The website posting and actual notices prescribed in paragraph 2 of this subsection shall include notice that until the close of the comment period, any person may submit written comments to the department regarding the draft proposed recommendations and technical support document. The

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notice shall also include the date, time and location of a public hearing for the department to receive verbal comments and answer questions concerning the draft proposal. The written comment period shall close and the hearing shall be held no later than forty-six days before the date by which the governor must make the recommendations.

4. After the close of the comment period and after the public hearing and not later than one month before the date by which the governor must make the recommendations, the department shall finalize the proposed recommendations and technical support document and submit them to the governor. The department's final proposed recommendations and technical support document shall:

(a) Consider the comments received by the department pursuant to paragraph 3 of this subsection. For any area that is proposed to be designated a nonattainment area in the final proposed recommendations, the department shall with the submittal to the governor include a responsiveness summary that explains with reasonable particularity the department's consideration of and responses to comments received pursuant to paragraph 3 of this subsection.

(b) Be posted on the department's website within five days after the department's submittal to the governor. The posting shall include any responsiveness summary, and the department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the final proposed recommendations and to any person who had previously requested actual notice of the documents. Actual notice of the posting may be provided by electronic or other means.

D. The department shall post on its website a copy of the governor's recommendations within five days after the recommendations are submitted to the administrator.

E. If the administrator requires the governor's recommendations to be submitted six months after promulgation of the new or revised national ambient air quality standards or earlier, the time frames prescribed in subsections C and D shall be reduced by one-half.

History

Last legislative year: 2010.

Recent legislative history: Laws 2010, 2nd Reg. Sess., Ch. 315, § [2](#).

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 9](#).

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[A.R.S. § 49-422](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 2. State Air Pollution Control (§§ 49-421 — 49-467)

49-422. Powers and duties

- A.** In addition to any other powers vested in it by law, the department may:
- 1.** Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to [sections 35-146](#) and [35-147](#), in the account of the department.
 - 2.** Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.
 - 3.** Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:
 - (a)** Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.
 - (b)** Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.
 - (c)** Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.
- B.** The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to [section 49-424](#) or [section 49-425](#), subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.
- C.** For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:
- 1.** The actual or potential emissions or air pollution may adversely affect public health or the environment.

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2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.
3. An adequate scientific basis for the monitoring, sampling or quantification method exists.
4. The monitoring, sampling or quantification method is reasonably accurate.
5. The cost of the method is reasonable in light of the use to be made of the data.

D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.

F. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:

1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.
2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.
3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility.

History

Last legislative year: 2011.

Recent legislative history: Laws 2000, Ch. 193, § [574](#); Laws 2000, Ch. 353, § [4](#); Laws 2007, Ch. 153, § [6](#); Laws 2011, 1st Reg. Sess., Ch. 291, § [2](#).

Annotations

Notes

Prior Law

[Laws 1991, 1st Reg. Sess., Ch. 283, § 4.](#)

JUDICIAL DECISIONS

Appeal.

Interpreting subsection D as saying that the board of water quality appeals *should* promulgate its rules of procedure by January 1, 1988, and that, therefore, the board's failure to act by this date is not fatal and will not invalidate the rules ultimately adopted best carries out the express legislative purpose of allowing appeals to the board under this section. *Watahomigie v. Arizona Bd. of Water Quality Appeals*, 181 Ariz. 20, 887 P.2d 550, 170 Ariz. Adv. Rep. 26, 1994 Ariz. App. LEXIS 151 (Ariz. Ct. App. 1994).

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[A.R.S. § 49-424](#)

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49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.
2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.
3. Establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to [section 49-406](#), subsection A and the county air pollution control department or district.
4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.
5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.
6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by [section 49-432](#).
7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.
8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.

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9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.
10. Compile and publish from time to time reports, data and statistics with respect to those matters studied and investigated by the department.
11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment or maintenance area and any other PM-10 nonattainment or maintenance areas that are designated in this state from and after December 31, 2011. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:
- (a) Projected meteorological conditions for the PM-10 nonattainment or maintenance area, including all of the following:
 - (i) Wind speed and direction.
 - (ii) Stagnation.
 - (iii) Recent precipitation.
 - (iv) Potential for precipitation.
 - (b) Existing concentrations of air pollution at the time of the forecast.
 - (c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

History

Last legislative year: 2014.

Recent legislative history: Laws 2011, 1st Reg. Sess., Ch. 214, § [1](#); Laws 2014, 2nd Reg. Sess., Ch. 86, § [1](#).

Annotations

Notes

Prior Law

Laws 1996, 7th Sp. Sess., Ch. 6, § 29.

Laws 1993, 6th Sp. Sess., Ch 1, § 22.

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 10.](#)

Editor's note.

For legislative findings and intent, see Laws 2011, 1st Reg. Sess., Ch. 214, § [5](#).

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[A.R.S. § 49-425](#)

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49-425. Rules; hearing

- A.** The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.
- B.** No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.
- C.** The department shall enforce the rules adopted by the director.
- D.** All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 11.](#)

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49-426. Permits; duties of director; exceptions; applications; objections; fees

A. A permit shall:

1. Be issued by the director in compliance with the terms of this section.
2. Be required for any person seeking a compliance extension pursuant to [section 49-426.03](#), subsection B, paragraph 3 and section 112(a)(5) of the clean air act and for any person beginning actual construction of or operating any source, except as prescribed in subsection B of this section or [section 49-426.01](#).

B. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, at a location or property other than a one or two family residence, is rated at less than one million British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not required to be included in the permit. The director shall not adopt such rules unless the director makes a written finding with supporting facts that the exempted source, class of sources, pollutant-emitting activities or emissions units will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit under title V of the clean air act.

C. Every application for a permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. The director shall establish by rule requirements for permit applications, including the standard application form for title V sources. The director shall establish by rule requirements for applications for general permits. An application for a permit issued pursuant to title V of the clean air act shall include a compliance plan that describes how the applicant will comply with all of the applicable requirements of this chapter and the clean air act, including a schedule of compliance and a schedule under which progress reports will be submitted to the director at least every six months. The director may require that such application include all sources that are used or to be used by the applicant in a certain process or a single facility or location. Before acting on an application for a permit, the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, on such application and shall notify the applicant in writing of the proposed approval or denial of such application, except that the director may have a reasonable period of time in which to gather information, inspect premises, and issue such permits. The director shall adopt rules that establish procedures for determining when applications are complete, for processing applications and for reviewing permit actions. The director shall also establish by rule criteria for determining reasonable times for processing permit applications. Rules adopted pursuant to this subsection for permits issued pursuant to title V of the clean air act shall conform to the requirements of section 505(a) of the clean air act.

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D. The director shall give notice of a proposed permit for a source required to obtain a permit pursuant to title V of the clean air act once each week for two consecutive weeks in two newspapers of general circulation in the county in which the source is or will be located. The notice shall describe the proposed permit and air contaminants to be emitted and shall state that any person may submit comments on the proposed permit and may request a public hearing. The director shall require the applicant at the time of the first notice to post the site where the source is or may be located. If permitted by federal, state and local law, the posting shall be prominently placed at a site that is under the applicant's legal control and that is adjacent to the nearest public roadway. The posting shall be visible to the public using the public roadway and shall contain the information in the notice that is published by the director. If a public hearing is requested, the director shall require the applicant to place an additional posting that provides notice of the public hearing. A posting shall be maintained until the public comment period on the proposed permit is closed. The director shall make available to the public notices of proposed permits. Each public notice that is issued under this chapter shall be mailed to the permit applicant, to the affected federal, state and local agencies and to those persons who have requested in writing copies of proposed permit action notices. During the public comment period, any person may submit a request to the department to conduct a public hearing for the purpose of receiving oral or written comments on the proposed permit. A written comment shall state the name and mailing address of the person, shall be signed by the person, his agent or his attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the proposed permit meets the criteria for issuance prescribed in this section or in [section 49-427](#). The department shall consider and prepare written responses to all comments received during the public comment period including comments made at a public hearing conducted by the department. At the time a final permit decision is made, copies of the department's responses shall be made available to the applicant and any person who commented on the proposed permit.

E. Permits or revisions issued pursuant to this section or [section 49-426.01](#) may be issued subject to such terms and conditions as are consistent with the requirements of this article, article 1 of this chapter and the clean air act and are found by the director to be necessary, following public notice and an opportunity for a public hearing as provided in subsection D or H of this section or in [section 49-426.01](#), and subject to payment of a reasonable fee to be determined as follows:

1. For a source that is required to obtain a permit pursuant to title V of the clean air act, the director shall establish by rule a system of fees that is consistent with and equivalent to that prescribed by section 502 of the clean air act. These rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for the immediately preceding calendar year exceeds the consumer price index for calendar year 1989.
2. For a facility that is required to obtain a permit pursuant to this chapter but that is not required to obtain a permit pursuant to title V of the clean air act, the director shall determine a fee based on the total actual cost of processing the permit application, but not exceeding twenty-five thousand dollars.

The director shall establish an annual inspection fee, not to exceed the average cost of inspection. The director shall adopt, by rule, criteria for determining fees and for public hearings.

F. Permits issued pursuant to this section shall be issued for a period of five years.

G. Except as provided in subsection H of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the director. Any permit issued by the director under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.
2. The frequency and types of fuel testing to be conducted by the person.
3. The frequency and type of emissions testing or monitoring to be conducted by the person.
4. Requirements for record keeping and reporting.

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5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning off-specification used oil fuel, hazardous waste or hazardous waste fuel.

H. The director may issue a general permit for a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions and if the following conditions are met:

1. A general permit shall comply with all of the requirements for permits prescribed by this section except for the requirements of subsection D of this section and shall be consistent with the clean air act.
2. The director shall give notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county. The notice shall describe the proposed general permit, the general class of sources that would be subject to the proposed permit and the air contaminants to be emitted. The notice shall also state that any person may submit comments on the proposed general permit and may request a public hearing. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued. Grounds for comment are limited to whether the proposed general permit meets the criteria for issuance prescribed in this section or [section 49-427](#).
3. On issuance of a general permit any person seeking to permit a source under this subsection shall submit an application pursuant to subsection C of this section.
4. If the director approves an application to be permitted under a general permit, the director shall provide notice of the approval in a newspaper of general circulation in the county in which the source is or will be located.
5. If a person violates a general permit, the director may require the source to obtain a permit pursuant to subsection A of this section.
6. A general permit may be revoked or revised at any time by the director if necessary to comply with this chapter. If the director revokes or revises a general permit, the director shall notify all persons whose sources are affected by the revocation or revision and shall include notice of procedures to obtain a permit pursuant to subsection A of this section or notice of procedures for compliance with the revisions.
7. The director by rule shall adopt procedures for the issuance of general permits.
8. The director may adopt conditions in a general permit applicable to sources located in a specified geographic area either independently of or upon petition by a county air pollution control officer.

I. Permits issued pursuant to this section for a source required to obtain a permit under title V of the clean air act shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.
2. Enforceable emission limitations and standards.
3. A schedule for compliance, if applicable.
4. The requirement to submit at least every six months the results of any required monitoring.
5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

J. The director may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

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K. If an applicant has submitted a timely and complete application for a permit required under this section, but final action has not been taken on that application, failure to obtain a permit shall not be a violation of this chapter unless the delay in final action is due to the failure of the applicant to submit information required or requested to process the application. This subsection does not apply to any person required to obtain a permit before commencing construction of a source as required under this section or any person seeking a permit revision as provided under [section 49-426.01](#).

L. The director may issue a single permit authorizing emissions from similar operations at multiple temporary locations, if the permit includes conditions that will assure compliance with all applicable requirements of this chapter and the clean air act at all locations. Any permit issued pursuant to this subsection shall require the applicant to notify the director in advance of each change in location. In issuing a single permit, the director may require a separate permit fee for operations at each location.

M. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the director shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The director shall require any revisions as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

N. Any permit issued pursuant to the requirements of this article and title V of the clean air act to a unit subject to the provisions of title IV of the clean air act shall include conditions prohibiting all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or by the designated representative of the owners or operators.
2. Amounts in excess of applicable emission rates.
3. The use of any allowance prior to the year for which it was allocated.
4. Contravention of any other provision of the permit.

O. The director shall adopt a rule specifying the notice, public participation requirements and other permit issuance procedures for permits that are not issued pursuant to title V of the clean air act.

P. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the director shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

History

Last legislative year: 1997.

Annotations

Notes

Prior Law

[Laws 1997, 1st Reg. Sess., Ch. 175, § 2](#); [Laws 1997, 1st Reg. Sess., Ch. 178, § 5](#).

[Laws 1996, 2nd Reg. Sess., Ch. 88, § 1](#); [Laws 1996, 2nd Reg. Sess., Ch. 258, § 5](#); [Laws 1996, 2nd Reg. Sess., Ch. 364, § 1](#).

[Laws 1993, 1st Reg. Sess., Ch. 77, § 24.](#)

[Laws 1991, 1st Reg. Sess., Ch. 115, § 1; Laws 1991, 1st Reg. Sess., Ch. 220, § 5; Laws 1991, 1st Reg. Sess., Ch. 283, § 5.](#)

[Laws 1990, 2nd Reg. Sess., Ch. 42, § 7.](#)

[Laws 1989, 1st Reg. Sess. Ch. 286, § 1.](#)

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49-426.01. Permits; changes within a source; revisions

A. The director shall establish by rule provisions to allow changes within a source required to obtain a permit under title V of the clean air act without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.
2. The changes do not result in an emission that is greater than the emissions allowed under the permit.
3. The source provides the director with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.
4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section for title V sources. Rules adopted pursuant to this section at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act and may prescribe a different time limit for notifications associated with emergency conditions.

B. A permit issued pursuant to [section 49-426](#) may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or termination or a notification filed pursuant to subsection A of this section does not stay an effective permit condition. The director may require that the applicant provide in writing within a reasonable time any information that the director identifies as necessary for the director to determine if cause exists for revising, revoking and reissuing, or terminating the permit or for determining compliance with permit conditions.

C. The director shall establish by rule procedures related to public and departmental review of changes to a permitted source. For title V sources, these rules at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act. For changes to sources that are not required to obtain a permit under title V of the clean air act, the necessity for and level of public and departmental review of a change shall be determined as prescribed by this chapter and the environmental significance of the change.

History

Last legislative year: 1996.

Annotations

Notes

Prior Law

[Laws 1996, 2nd Reg. Sess., Ch. 88, § 2.](#)

[Laws 1993, 1st Reg. Sess., Ch. 77, § 24.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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[A.R.S. § 49-426.08](#)

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49-426.08. Research program on hazardous air pollutants

A. In cooperation with the department of health services, the United States environmental protection agency and the national academy of sciences, the department of environmental quality shall undertake a comprehensive research program to evaluate the existing risk to public health related to hazardous air pollution and to provide options and recommendations for programs to control the release of hazardous substances into the ambient air. In developing the research program, the department shall prepare a research plan and subject that plan to national peer review. The research program shall be funded by monies from the air quality fund established pursuant to [section 49-551](#) and shall include all of the following:

1. Identification of hazardous substances that are or may be emitted into the ambient air in this state and that present, through inhalation or other routes of exposure, a threat of adverse health effects or adverse environmental effects whether through ambient concentration, bioaccumulation, deposition or otherwise.
2. Identification and evaluation of methods for conducting ambient air monitoring, measuring emissions and performing related analyses.
3. A statewide survey to determine, through direct measurement and appropriate estimation techniques, concentrations of those hazardous substances in the ambient air and to estimate source contributions to ambient concentrations from permitted, nonpermitted and natural sources as well as background concentrations.
4. A statewide survey to identify permitted and nonpermitted sources of these substances and to gather information necessary to quantify emissions.
5. Identification and evaluation of alternative risk assessment methodologies.
6. Evaluation of alternative methods to perform atmospheric modeling and determine receptor-source relationships.
7. An assessment of residual risk after the implementation of controls during the terms of the research program.
8. An evaluation of estimated actual risk from exposure to those substances in this state.
9. An evaluation of the feasibility of, need for and potential methods for establishing ambient air quality standards or health based guidelines for those substances.
10. A public education program to provide information and increase public awareness of hazardous air pollutants and the research program.
11. Other data that the director deems useful or necessary for the purpose of developing the research program.

B. Not later than September 1, 1995, the department shall publish a report of its findings and recommendations resulting from the research program conducted pursuant to this section. The report shall include recommendations as to what changes, if any, are needed to current law to protect public health and the environment from the effects of exposure to hazardous air pollution and shall consider the cost of achieving such changes and any non-air quality health and environmental impacts and energy requirements that may result from the changes. The director shall submit the report to the governor, the president of the senate and the speaker of the house of representatives and shall submit the report for national peer review. The director shall conduct meetings throughout this state in order to present the report to members of the general public and to receive comments.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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49-426.07. Imminent and substantial endangerment

Notwithstanding any permit granted pursuant to [section 49-426.03](#) or [49-426.06](#), the director may seek injunctive relief as provided in [section 49-462](#) on receipt of evidence that a source or combination of sources is presenting an imminent and substantial endangerment to public health or the environment.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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[A.R.S. § 49-426.06](#)

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49-426.06. State program for control of hazardous air pollutants

- A.** After publication of the report prescribed by [section 49-426.08](#), subsection B, the director shall by rule establish a state program for the control of hazardous air pollutants that meets the requirements of this section. The program established pursuant to this section shall apply to the following sources:
1. Sources that emit or have the potential to emit with controls ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.
 2. Sources that are within a category designated pursuant to [section 49-426.05](#) and that emit or have the potential to emit with controls one ton per year or more of any hazardous air pollutant or two and one-half tons per year of any combination of hazardous air pollutants.
- B.** After rules adopted pursuant to subsection A of this section become effective pursuant to [section 41-1032](#), a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision that complies with [section 49-426](#) and subsection C or D of this section. For purposes of determining whether a change constitutes a modification, the director shall by rule establish appropriate de minimis amounts for hazardous air pollutants that are not federally listed hazardous air pollutants. In establishing de minimis amounts, the director shall consider any relevant guidelines or criteria promulgated by the administrator. A physical change to a source or change in the method of operation of a source is not a modification subject to this section if the change satisfies any of the following conditions:
1. The change complies with section 112(g)(1) of the clean air act.
 2. The change, together with any other changes implemented or planned by the source, qualifies the source for an alternative emission limitation pursuant to section 112(i)(5) of the clean air act.
 3. The change is required under a standard imposed pursuant to section 112(d) or 112(f) of the clean air act and the change is implemented after the administrator promulgates the standard.
- C.** A permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program under subsection A, paragraph 1 of this section shall impose the maximum achievable control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of maximum achievable control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. A permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for the pollutant but shall instead require

A.R.S. § 49-426.06

compliance with a design, equipment, work practice or operational standard, or a combination thereof. Standards imposed pursuant to this subsection shall apply only to hazardous air pollutants emitted in amounts exceeding the de minimis amounts established by the administrator or by the director pursuant to subsection B of this section. The director shall not impose a standard under this subsection that would require the application of measures that are incompatible with measures required under a standard imposed pursuant to [section 49-426.03](#), subsection B.

D. If the owner or operator of a new source or modification subject to this section establishes that the imposition of maximum achievable control technology or hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects by conducting a scientifically sound risk management analysis and submitting the results to the director with the permit application for the new source or modification, the director shall exempt the source from the imposition of such technology. The risk management analysis may take into account the following factors:

1. The estimated actual exposure of persons living in the airshed of the source.
2. Available epidemiological or other health studies.
3. Risks presented by background concentrations of hazardous air pollutants.
4. Uncertainties in risk assessment methodology or other health assessment techniques.
5. Health or environmental consequences from efforts to reduce the risk.
6. The technological and commercial availability of control methods beyond those otherwise required for the source and the cost of such methods.

E. Where maximum achievable control technology or hazardous air pollutant reasonably available control technology has been established in a general permit for a defined class of sources pursuant to subsection C of this section and [section 49-426](#), subsection H, the owner or operator of a source within that class may obtain a variance from the standard by complying with subsection D of this section at the time the source applies to be permitted under the general permit. If the owner or operator makes the demonstration required by subsection D of this section and otherwise qualifies for the general permit, the director shall, in accordance with the procedures established pursuant to [section 49-426](#), approve the application and issue a permit granting a variance from the specific provisions of the general permit relating to the standard. Except as otherwise modified by the variance, the general permit shall govern the source.

F. If the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection B of this section.

G. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

H. For purposes of subsection A of this section, in determining potential to emit, the director shall consider controls that are enforceable under any federal law or regulation, state or local law or rule or that are inherent in the design of the source.

I. In determining whether emissions from a source or modification exceed the thresholds prescribed by subsection A or B of this section, the director shall exclude particulate matter emissions that consist of natural crustal material and are produced either by natural forces, such as wind or erosion, or by anthropogenic activities, such as agricultural operations, excavation, blasting, drilling, handling, storage, earth moving, crushing, grinding or traffic over paved or unpaved roads, or other similar activities. Nothing in this subsection shall preclude the regulation of emissions of crustal materials as particulate matter pursuant to other sections of this chapter.

History

Last legislative year: 1996.

Annotations

Notes

Prior Law

[Laws 1996, 2nd Reg. Sess., Ch. 364, § 2.](#)

[Laws 1995, 1st Reg. Sess., Ch. 233, § 5.](#)

Laws 1993, 6th Sp. Sess., Ch 1, § 32.

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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[A.R.S. § 49-426.05](#)

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49-426.05. Designation of sources of hazardous air pollutants

A. The director may by rule designate a category of sources that are subject to the state program for control of hazardous air pollutants established pursuant to [section 49-426.06](#). In order to designate a category of sources pursuant to this section, the director shall find that emissions of hazardous air pollutants from sources in the category individually or in the aggregate result in adverse effects to human health or adverse environmental effects. In determining whether emissions from a category of sources result in adverse effects to human health or adverse environmental effects, the director shall consider the following:

1. The number of persons likely to be exposed to emissions from sources in the category.
2. Whether the category should be limited to sources with the potential to emit hazardous air pollutants in amounts exceeding the thresholds set forth in [section 49-426.06](#), subsection A, paragraph 2.
3. Whether based on the criteria set forth in this subsection, the category should be limited to sources located in a particular geographic area. The director shall to the maximum extent practicable define source categories so that they cover only those sources for which the finding required by this subsection has been made.

B. In addition to the other authority provided by this chapter, the director may require persons who own or operate sources in a category that the director reasonably believes may qualify for designation pursuant to subsection A of this section to provide the director with notification of the types and amounts of hazardous air pollutants emitted by those sources. The owner or operator of the source shall provide readily available data regarding emissions from the source but shall not be required to conduct performance tests, sampling or monitoring in order to respond to a request under this subsection. Inaccuracies in any notification provided pursuant to this subsection shall not be violations of this chapter, if the inaccuracies result from good faith efforts to identify hazardous air pollutants emitted by the source or to estimate the amount of hazardous air pollutants emitted by the source.

C. When a new source that is within a category that has not been designated pursuant to subsection A of this section submits an application for a permit pursuant to [section 49-426](#), the director may suspend action on the application pending the designation of the category pursuant to subsection A of this section if all of the following conditions are satisfied:

1. The director makes the finding required by subsection A of this section for the category to which the source belongs.
2. The director provides notice of the director's intent to suspend action on the application to the applicant on or before the date that a completeness determination is due under [section 49-426](#).
3. The applicant does not elect to comply with [section 49-426.06](#), subsection C or D.

D. A decision by the director to suspend action on a permit application pursuant to subsection C of this section is appealable pursuant to [section 49-428](#).

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

Laws 1993, 6th Sp. Sess., Ch 1, § 32.

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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[A.R.S. § 49-426.04](#)

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49-426.04. State list of hazardous air pollutants

- A.** The state list of hazardous air pollutants that are subject to regulation consists of all of the following:
- 1.** Hazardous air pollutants that are designated by the director by rule if the director finds all of the following:
 - (a)** There is scientifically reliable evidence on the health or environmental effects of the pollutant adequate to support the designation. The director shall rely on technical protocols appropriate for the development of the list of hazardous air pollutants and shall base the designation on credible medical and toxicological evidence that has been subjected to peer review. Evidence shall be considered scientifically reliable only if it demonstrates adverse effects to human health or adverse environmental effects from an air pollutant at concentrations that are likely to occur in the environment as a result of emissions of the pollutant into the ambient air.
 - (b)** Emissions, ambient concentrations, bioaccumulation or deposition of the pollutant result in adverse effects to human health or adverse environmental effects.
 - (c)** An adequate and reliable methodology exists for quantifying emissions and ambient concentrations of the pollutant.
 - 2.** Federally listed hazardous air pollutants.
- B.** Except in the case of federally listed hazardous air pollutants, the director may by rule rescind the designation of an air pollutant as a hazardous air pollutant if the director finds that any of the criteria specified in subsection A is not satisfied.
- C.** Any person may petition the director to designate any air pollutant as a hazardous air pollutant pursuant to subsection A. The director shall within six months of the receipt of such a petition begin the rule making process to designate the pollutant as a hazardous air pollutant pursuant to subsection A, if the petitioner demonstrates or the director finds that all of the criteria specified in subsection A are satisfied.
- D.** Any person may petition the director to rescind the designation of an air pollutant as a hazardous air pollutant pursuant to subsection B. The director shall within six months of the receipt of such a petition begin the rule making process to rescind the designation of the air pollutant as a hazardous air pollutant pursuant to subsection B, if the petitioner demonstrates or the director finds that any of the criteria specified in subsection A is not satisfied.
- E.** The director shall not designate a conventional air pollutant as a hazardous air pollutant. This subsection shall not apply to any of the following pollutants:
- 1.** Any pollutant that independently meets the criteria of subsection A and is a precursor to a conventional air pollutant.
 - 2.** Any pollutant that is in a class of conventional air pollutants.

History

Last legislative year: 1995.

Annotations

Notes

Prior Law

[Laws 1995, 1st Reg. Sess., Ch. 233, § 4.](#)

Laws 1993, 6th Sp. Sess., Ch 1, § 32.

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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[A.R.S. § 49-426.03](#)

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49-426.03. Enforcement of federal hazardous air pollutant program; definitions

A. The list of hazardous air pollutants in section 112(b)(1) of the clean air act is adopted as the list of federally listed hazardous air pollutants that will be subject to the program adopted pursuant to subsection B of this section. Within one year after the administrator adds or deletes a pollutant pursuant to section 112(b)(2) or (3) of the clean air act the director shall adopt those revisions for the list adopted pursuant to this subsection unless the director finds that there is no scientific evidence to support the revision.

B. The director shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. After the date specified by the administrator in rules adopted pursuant to section 112(g)(1)(B) of the clean air act, no person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the director determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, the terms “major source” and “modification” have the meanings set forth in section 112(a) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the director pursuant to this subsection become effective pursuant to [section 41-1032](#). A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.
2. After the date specified by the administrator in rules adopted pursuant to section 112(g)(1)(B) of the clean air act and until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the director shall determine the maximum achievable control technology for the modification of new major source on a case-by-case basis. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.
3. If an existing source submits an application pursuant to [section 49-426](#) which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the director shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation

shall apply for a period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required to submit a permit application for such source pursuant to [section 49-426](#), and the director, acting in accordance with the procedures adopted pursuant to [section 49-426](#), shall be required to issue a permit establishing maximum achievable control technology for the affected source on a case-by-case basis or, in the alternative, an alternative emission limitation pursuant to paragraph 3 of this subsection. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

5. When the administrator adopts and makes effective standards pursuant to section 112(d) or 112(f) of the clean air act the director shall adopt those standards in the same manner as prescribed by the administrator.

6. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for that pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination of those standards. The provision adopted pursuant to this paragraph shall not apply to sources or modifications that commence construction after the permit program established pursuant to [section 49-426](#) becomes effective under section 502(h) of the clean air act.

C. Where the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall be adopted by the director and shall apply to the regulation of those source categories under subsection B of this section.

D. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

E. When the administrator makes one of the following findings pursuant to section 112(n)(1)(A) of the clean air act the finding is effective for purposes of the state's administration and enforcement of the federal hazardous air pollutant program in the same manner as prescribed by the administrator:

1. A finding that regulation is not appropriate or necessary.
2. A finding that alternative control strategies should be applied.

History

Last legislative year: 1995.

Annotations

Notes

Prior Law

[Laws 1995, 1st Reg. Sess., Ch. 233, § 3.](#)

A.R.S. § 49-426.03

Laws 1993, 6th Sp. Sess., Ch 1, § 32.

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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[A.R.S. § 49-426.02](#)

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49-426.02. Permit shield

The director shall establish by rule conditions under which compliance with a permit or permit revision issued pursuant to this chapter constitutes compliance with the applicable requirements of this chapter and the clean air act.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 16.](#)

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49-427. Grant or denial of applications; revisions

- A.** The director shall deny a permit or revision if the applicant does not show that every such source is so designed, controlled or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of this article and the rules adopted by the director.
- B.** Before acting on an application for a permit, the director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the source described in the application. In the event of such a requirement, the director shall notify the applicant in writing of the type and characteristics of such facilities.
- C.** In acting on an application for a permit renewal, if the director finds that such a source has been constructed not in accordance with any prior permit or revision issued pursuant to [section 49-426.01](#), the director shall require the person to obtain a permit revision or shall deny the application for such permit. The director shall not accept any further application for a source so constructed until the director finds that such source has been reconstructed in accordance with the prior permit or a revision, or until a revision to the permit has been obtained.
- D.** An applicant's performance of any activities that are excluded from the definition of "begin actual construction" under [section 49-401.01](#), paragraph 7, subdivision (a) or (b) shall be at the applicant's risk and shall not reduce the applicant's obligations under this chapter or rules adopted pursuant to this chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under [section 49-401.01](#), paragraph 7, subdivision (a) or (b) had not occurred.
- E.** After a decision on a permit or revision, the director shall notify the applicant and any person who filed a comment to the permit pursuant to [section 49-426](#) or the revision pursuant to [section 49-426.01](#) in writing of the decision, and if the permit is denied, the reasons for such denial. Service of this notification may be made in person or by first class mail. The director shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the director as reasons for such denial.

History

Last legislative year: 2010.

Recent legislative history: Laws 1992, Ch. 299, § [17](#); Laws 2010, 2nd Reg. Sess., Ch. 315, § [3](#).

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 17.](#)

[Laws 1990, 2nd Reg. Sess., Ch. 42, § 8.](#)

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49-428. Appeals of permit actions

A. Within thirty days after notice is given by the director of approval, denial or revocation of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to [section 49-426](#), subsection D, or on the conditional order pursuant to [section 49-438](#), subsection C, may appeal the decision as an appealable agency action pursuant to title 41, chapter 6, article 10.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the director alleging that the director has failed to act in a timely manner as provided in [section 49-426](#), subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the director. The court has jurisdiction to require the director to act without additional delay.

History

Last legislative year: 2000.

Recent legislative history: Laws 2000, Ch. 353, § [6](#).

Annotations

Notes

Prior Law

[Laws 1998, 2nd Reg. Sess., Ch. 57, § 113.](#)

[Laws 1997, 1st Reg. Sess., Ch. 221, § 227.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 18.](#)

[Laws 1990, 2nd Reg. Sess., Ch. 42, § 9.](#)

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[A.R.S. § 49-429](#)

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49-429. Permit transfers; notice; appeal

- A.** A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one source to another.
- B.** Subsection A shall not apply to mobile or portable source which is transferred from one location to another after notification to the department of the transfer.
- C.** A permit may be transferred from one person to another whether by operation of law or otherwise if the person who holds the permit notifies the director in writing before the transfer. The notice shall be in writing and shall include the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the director may determine to be necessary by rule. The director shall prescribe procedures for this notice.
- D.** If the director determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the director's denial, including the reasons for the denial, shall be issued within ten working days of the director's receipt of the notice of proposed transfer.
- E.** Denial of a permit transfer may be appealed as an appealable agency action pursuant to title 41, chapter 6, article 10.

History

Last legislative year: 2000.

Recent legislative history: Laws 2000, Ch. 353, § [7](#).

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 19.](#)

End of Document

[A.R.S. § 49-430](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 2. State Air Pollution Control (§§ 49-421 — 49-467)

49-430. Posting of permit

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

History

Last legislative year: 1986.

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[A.R.S. § 49-431](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

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49-431. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of [section 49-426](#). If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the department and shall furnish a copy of such notice to the county air pollution control officer and the department.

History

Last legislative year: 1986.

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[A.R.S. § 49-432](#)

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49-432. Classification and reporting; confidentiality of records

- A.** The director, by rule, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the director.
- B.** The owner, lessee or operator of a source under the jurisdiction of the department shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable, necessary, and required to determine compliance in a manner acceptable to the director, and shall supply monitoring information as directed in writing by the director. Such devices shall be available for inspection by the director, or his deputies, during all reasonable times.
- C.** The department shall make available to the public any records, reports or information obtained from any person pursuant to this chapter, including records, reports or information obtained or prepared by the director or a department employee, except that the information or any particular part of the information shall be considered confidential on either of the following:
1. Notice from the person accompanying the information or a particular part of the information that the information, if made public, would divulge the person's trade secrets as defined in [section 49-201](#) or other information that is likely to cause substantial harm to the person's competitive position.
 2. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action filed under this title in superior court.
- D.** If the director on his own or following a request for disclosure disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.
- E.** Notwithstanding subsection C, the department shall make available to the public the following information obtained from any person pursuant to this chapter:
1. The name and address of any permit applicant or permittee.
 2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.
 3. The existence or level of a concentration of an air pollutant in the environment.

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F. Notwithstanding subsection C, the director may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the director or department employees to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.
2. Employees of the United States environmental protection agency if the information is necessary or required to administer and implement or comply with federal statutes or regulations.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 20.](#)

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49-435. Hearings on orders of abatement

An order of abatement issued by the director shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to [section 49-461](#) unless the person or persons named in the order have appealed the order of abatement as an appealable agency action pursuant to title 41, chapter 6, article 10.

History

Last legislative year: 2000.

Recent legislative history: Laws 2000, Ch. 353, § [8](#).

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[A.R.S. § 49-433](#)

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49-433. Special inspection warrant

- A.** The director and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior or structures used as private residences.
- B.** Upon showing by the affidavit of the director or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.
- C.** The warrant shall be in substantially the following form:

“County of _____, state of Arizona to the director or any deputy director in the state of Arizona, proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of _____ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if such premises comply with (section _____ of the Arizona Revised Statutes) and/or (section _____ of regulation or ordinance). You are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable. Date, signature and title of office.”

The endorsement on the warrant shall be in substantially the following form:

“Received by me _____, 19_____, at _____ o'clock _____.

(Name of director or deputy director).”

The return of officer shall be in substantially the following form:

“I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).

Dated this _____ day of _____,
19_____ (Name of director or deputy director).”

- D.** The warrant may be served by the director or his deputies mentioned in its directions, but by no other person except in aid of the director or his deputies, on his requiring it, the director or his deputies being present and acting in its execution.
- E.** A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.
- F.** Any person who wilfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense.

History

Last legislative year: 1986.

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[A.R.S. § 49-437](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 2. State Air Pollution Control (§§ 49-421 — 49-467)

49-437. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the director makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.
2. Either of the following is true:
 - (a) There has been a breakdown of equipment or upset of operations beyond the control of the petitioner; the source was in compliance before the breakdown or upset; and the breakdown or upset may be corrected within a reasonable time.
 - (b) There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

B. The director shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the director shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the director shall conform to the procedures established for permit revisions pursuant to [section 49-426.01](#).

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 24.](#)

End of Document

[A.R.S. § 49-438](#)

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49-438. Petition for conditional order; publication; public hearing

- A.** A person who seeks a conditional order shall file a petition with the director.
- B.** If the issuance of the conditional order requires a public hearing, the director shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.
- C.** Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in [section 49-444](#). The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in [section 49-437](#).

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 25.](#)

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[A.R.S. § 49-439](#)

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49-439. Decisions on petitions for conditional order; terms and conditions

- A.** Within thirty days after the conclusion of the hearing held pursuant to [section 49-438](#), subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the director shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.
- B.** The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include, but not be limited to:
1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.
 2. A requirement that necessary construction shall begin as expeditiously as practicable.
 3. Such written reports as may be required.
 4. The right to make periodic inspection of the facilities for which the conditional order is granted.
- C.** A reasonable fee as may be prescribed by the director shall be deposited in the air pollution control permit fund established in [section 49-555](#).

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 26.](#)

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[A.R.S. § 49-440](#)

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49-440. Term of conditional order; effective date

- A.** A conditional order issued by the director shall be valid for such period as the director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.
- B.** A holder of a conditional order may petition the director for renewals of such order. The total term of such renewals and the initial period of such order shall not exceed three years from the date of initial issuance of such order. Such petition may be filed at any time not more than sixty days nor less than thirty days prior to the expiration of such order. The director, within thirty days of receipt of such petition, shall renew the conditional order for one year if the petitioner is in compliance with and conforming to the terms and conditions imposed pursuant to [section 49-439](#). The director may refuse to renew the conditional order, if after a public hearing held within thirty days of receipt of such petition the director finds that the petitioner is not in compliance with and conforming to the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance with and conforming to such terms and conditions, the director may renew such conditional order for a total term of two additional years if the director finds that such failure to comply and conform is due to conditions beyond the control of such petitioner.
- C.** If the director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this section, except that the total term of the renewal shall not exceed two years.
- D.** Except as provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the director shall be effective when issued if:
- 1.** The conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(1) of the clean air act, and shall become effective upon approval by the administrator.
 - 2.** The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator.

History

Last legislative year: 1995.

Annotations

Notes

Prior Law

[Laws 1995, 1st Reg. Sess., Ch. 235, § 2; Laws 1995, 1st Reg. Sess., Ch. 234, § 2.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 27.](#)

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[A.R.S. § 49-441](#)

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49-441. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the director may seek to revoke or suspend the conditional order granted. In such event, the director shall serve notice of such violation on the holder of the conditional order in the manner provided in [section 49-444](#). The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of the hearing shall be within thirty days from the date the notice is served upon the holder of the conditional order.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 28.](#)

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[A.R.S. § 49-443](#)

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49-443. Court appeals; procedures

- A.** Except as provided in [section 41-1092.08](#), subsection H, all final administrative decisions relating to permit actions, permit transfers or orders of abatement are subject to judicial review pursuant to title 12, chapter 7, article 6.
- B.** When an appeal is taken from a final administrative decision pursuant to title 41, chapter 6, article 10, the order or decision shall remain in effect pending final determination of the matter, unless stayed by the court, on a hearing after notice to the director and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting the stay.
- C.** An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

History

Last legislative year: 2000.

Recent legislative history: Laws 2000, Ch. 113, § [190](#); Laws 2000, Ch. 353, § [11](#).

Annotations

Notes

Prior Law

[Laws 1997, 1st Reg. Sess., Ch. 221, § 228.](#)

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[A.R.S. § 49-447](#)

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49-447. Motor vehicle and combustion engine emission; standards

The director shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of [sections 28-955](#) and 49-542.

History

Last legislative year: 1997.

Annotations

Notes

Prior Law

Laws 1997, 1st Reg. Sess., Ch. 1, § 494.

Laws 1993, 6th Sp. Sess., Ch 1, § 26; Laws 1993, 1st Reg. Sess., Ch. 178, § 28.

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[A.R.S. § 49-455](#)

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49-455. Permit administration fund

- A.** A permit administration fund is established consisting of fees and interest collected pursuant to this article and [section 27-515](#). The director shall administer the fund subject to annual legislative appropriation. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in [section 35-313](#), and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of [section 35-190](#) relating to lapsing of appropriations.
- B.** Monies in the fund collected pursuant to [sections 49-426](#) and [49-426.01](#) shall be used for the following:
1. In the case of fees collected pursuant to [section 49-426](#), subsection E, paragraph 1, all reasonable direct and indirect costs required to develop and administer the permit program requirements of title V of the clean air act.
 2. In the case of other fees, administering permits or revisions issued pursuant to [section 49-426](#) or [49-426.01](#) or conducting inspections.
- C.** Monies in the fund collected pursuant to [section 27-515](#), subsection B, paragraph 5 shall be used to prepare, reproduce and distribute publications pursuant to that paragraph.
- D.** No more than five percent of the monies in the fund may be used for the collection of monies, unless otherwise provided under title V of the clean air act.
- E.** No more than five percent of the monies in the fund may be used for general administration of the fund unless otherwise provided under title V of the clean air act.

History

Last legislative year: 2000.

Recent legislative history: Laws 2000, Ch. 193, § [575](#); [Laws 2016, 2nd Reg. Sess., Ch. 128, § 124](#).

Annotations

Notes

Prior Law

[Laws 1996, 2nd Reg. Sess., Ch. 102, § 67](#).

A.R.S. § 49-455

[Laws 1993, 1st Reg. Sess., Ch. 77, § 1](#); [Laws 1993, 1st Reg. Sess., Ch. 77, § 24](#); [Laws 1993, 1st Reg. Sess., Ch. 77, § 25](#).

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 32](#); [Laws 1992, 2nd Reg. Sess., Ch. 291, § 9](#).

[Laws 1991, 1st Reg. Sess., Ch. 283, § 10](#).

Amendment notes.

The 2016 amendment added “and section 27-515” in the first sentence of (A); deleted former (C), which read: “Monies in the fund collected pursuant to section 27-515, subsection B, paragraph 5 shall be used to prepare, reproduce and distribute publications pursuant to that paragraph”; redesignated former (C) and (D) as (D) and (E); and made stylistic changes.

Retroactive effective date.

By [Laws 2016, 2nd Reg. Sess., Ch. 128, § 138](#), effective retroactively to June 30, 2016.

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[A.R.S. § 49-464](#)

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49-464. Violation; classification; penalties; definition

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to [42 United States Code section 11002\(a\)\(2\)](#) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator or director has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.
2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the director pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the director to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material after considering the following criteria:

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1. The effect of the permit condition on public health and the environment.
2. The effect of the permit condition on the department's ability to enforce the permit program.
3. The effect of noncompliance with the permit condition on emissions.
4. The effect of the permit condition on the director's ability to determine a source's compliance status.

The director shall adopt the rules required by this subsection and [section 49-514](#), subsection G by November 1, 1993.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the director is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the director pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.
2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.
3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.
4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. The attorney general may enforce the provisions of this section.

O. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty of the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other aggravating and mitigating factors as the court deems relevant.

A.R.S. § 49-464

P. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.
2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

Q. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the director within twenty-four hours after the source first learned of the violation.
2. The owner or operator of the source provided written notification to the director containing all of the following information within seventy-two hours following the verbal or facsimile notification:
 - (a) Confirmation of the violation for which verbal or facsimile notification was provided.
 - (b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

R. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described in this subsection shall be deemed to be advice that no permit was necessary for purposes of this subsection.

S. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

T. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

U. All civil or criminal penalties or fines assessed pursuant to this section shall be deposited, pursuant to [sections 35-146](#) and [35-147](#), in the state general fund.

V. For purposes of this section, "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. Emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director.

History

Last legislative year: 2000.

Recent legislative history: Laws 2000, Ch. 193, § [577](#).

Annotations

Notes

Prior Law

[Laws 1996, 2nd Reg. Sess., Ch. 102, § 69.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 34.](#)

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[A.R.S. § 49-479](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 3. County Air Pollution Control (§§ 49-471 — 49-516)

49-479. Rules; hearing

A. The board of supervisors shall adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the territorial limits of the county or multi-county air quality control region in order to control air pollution, which rules, except as provided in subsection C shall contain standards at least equal to or more restrictive than those adopted by the director. In fixing such standards, the board or region shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.
2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.
3. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule may be enacted or amended except after the board of supervisors first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. A county may adopt or amend a rule, emission standard, or standard of performance that is as stringent or more stringent than a rule, emission standard or standard of performance for similar sources adopted by the director only if the county complies with the applicable provisions of [section 49-112](#).

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

History

Last legislative year: 1994.

Annotations

Notes

Prior Law

[Laws 1994, 2nd Reg. Sess., Ch. 297, § 3.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 36.](#)

JUDICIAL DECISIONS

Enforcement.

The state must enforce a “forty pound rule” for volatile organic compound emissions promulgated under this section, even though it originated at the county level since the federal clean air act provides that a state or political subdivision may not enforce any emission standard or limitation which is less stringent than the standard or limitation under the state implementation plan. [Olson v. State, 166 Ariz. 455, 803 P.2d 448, 75 Ariz. Adv. Rep. 94, 1990 Ariz. App. LEXIS 425 \(Ariz. Ct. App. 1990\).](#)

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[A.R.S. § 49-514](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 3. County Air Pollution Control (§§ 49-471 — 49-516)

49-514. Violation; classification; definition

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to [42 U.S.C. section 11002\(a\)\(2\)](#) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator, director or control officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.
2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the control officer pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the control officer to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For

A.R.S. § 49-514

purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material pursuant to [section 49-464](#), subsection G.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the control officer is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the control officer pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.
2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.
3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.
4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty of the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other aggravating and mitigating factor as the court deems relevant.

O. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.
2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

A.R.S. § 49-514

P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the control officer within twenty-four hours after the source first learned of the violation.
2. The owner or operator of the source provided written notification to the control officer containing all of the following information within seventy-two hours following the verbal or facsimile notification:
 - (a) Confirmation of the violation for which verbal or facsimile notification was provided.
 - (b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

Q. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.

R. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

S. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

T. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director or control officer.

History

Last legislative year: 1992.

Annotations

Notes

Prior Law

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 56.](#)

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[A.R.S. § 49-541](#)

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

LexisNexis® Arizona Annotated Revised Statutes > Title 49 The Environment (Chs. 1 — 10) > Chapter 3 Air Quality (Arts. 1 — 8) > Article 5. Annual Emissions Inspection of Motor Vehicles (§§ 49-541 — 49-558.01)

49-541. Definitions

In this article, unless the context otherwise requires:

1. “Area A” means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. “Area B” means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

A.R.S. § 49-541

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of [section 49-546](#) and has passed inspection.
4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.
5. "Conditioning mode" means either a fast idle test or a loaded test.
6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.
7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.
8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.
9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.
10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.
11. "Gross weight" has the same meaning prescribed in [section 28-5431](#).
12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to [section 49-545](#).
13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.
14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.
15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.
16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.
17. "Vehicle emissions control area" means area A or area B.

History

Last legislative year: 2014.

Recent legislative history: Laws 1999, Ch. 295, § [44](#); Laws 2001, Ch. 371, § [8](#); Laws 2007, Ch. 171, § [3](#); Laws 2014, 2nd Reg. Sess., Ch. 89, § [1](#).

Annotations

Notes

Prior Law

[Laws 1998, 2nd Reg. Sess., Ch. 217, § 21.](#)

Laws 1997, 1st Reg. Sess., Ch. 1, § 495.

Laws 1993, 6th Sp. Sess., Ch 1, § 3; Laws 1993, 6th Sp. Sess., Ch 1, § 13; Laws 1993, 6th Sp. Sess., Ch 1, § 24; Laws 1993, 6th Sp. Sess., Ch 1, § 25; [Laws 1993, 1st Reg Sess., Ch. 196, § 1.](#)

[Laws 1992, 2nd Reg. Sess., Ch. 299, § 57.](#)

Research References & Practice Aids

Hierarchy Notes:

[A.R.S. Title 49, Ch. 3, Art. 5](#)

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DEPARTMENT OF PUBLIC SAFETY (F19-0806)

Title 13, Chapter 13, Articles 1-2, Department of Public Safety - School Buses



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: June 25, 2019

SUBJECT: ARIZONA DEPARTMENT OF PUBLIC SAFETY (F19-0806)
Title 13, Chapter 13, Article 1, School Bus Minimum Standards, and Article 2,
Minimum Standards for School Buses Operated on Alternative Fuel.

Summary

This Five Year Review Report (5YRR) from the Arizona Department of Public Safety (Department) relates to all rules in Title 13, Chapter 13, Articles 1 and 2 governing Department of Public Safety School busses. The rules address the following:

- **Article 1: School Bus Minimum Standards;**
- **Article 2: Minimum Standards for School Buses Operated on Alternative Fuel**

The Department did not complete the course of action indicated in the agency's previous 5YRR. While many of the rules in Articles 1 and 2 did not require any action, the Department did not complete the identified course of action for the following rules: R13-13-105, R13-13-106, R13-13-107, R13-13-112. The Department notes being unable to complete the previously proposed course of action due to previous rulemaking moratoriums delaying action for the Department and for the Arizona School Bus Advisory Council.

Proposed Action

For all rules in Articles 1 and 2, the Department is withholding rulemaking activity until such time that the Arizona School Bus Advisory Council provides final recommendations to the Department. The Department notes that although there are no proposed changes for rules R13-13-103, R13-13-110, R13-13-201, and R13-13-202, the Department still proposes waiting for any recommendations from the Advisory Council. Further, in regard to Article 2, the Department recommends amendments to incorporate new changes for insurance requirements, minimum standards for alternative fuel systems, standards for converted CNG and LPG systems, inspection and maintenance requirements, and out of service criteria.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the economic impact of Article 1 does not differ significantly from what was originally determined in the economic, small business, and consumer impact statement (EIS) from 2008.

The Department states that the economic impact of Article 2 does not differ significantly from what was originally determined in the economic, small business, and consumer impact statement (EIS) from 2000.

The stakeholders include the Department, the Arizona School Bus Advisory Council, school districts, school bus drivers, and students.

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

The Department states that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Department states that the benefits of increased public safety outweigh the costs to the State.

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

Yes. The Department indicates that it has received numerous written criticisms of the rules over the last five years regarding the following rules: R13-13-102, R13-13-104, R13-13-105, and R13-13-107. The Department had adequately responded to those comments and criticisms.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that generally, the rules are effective in achieving their objectives. The Department identifies that R13-13-105, R13-13-106, R13-13-107, R13-13-108, R13-13-112 could be amended to improve effectiveness.

The Department also indicates that the rules are generally consistent with other rules and statutes. The Department notes that R13-13-109 and R13-13-101 should be updated to reflect statutory changes and R13-13-112 should be amended to reflect the Attorney General's Agency Handbook

The Department states that many of the rules as they are written are not clear, concise and understandable. The Department intends to clarify the following rules in order to make the rules more concise, understandable, and clear: R13-13-105, R13-13-106, R13-13-107, and R13-13-108. The Department indicates that most of the above rules can be made more clear, concise, understandable, and effective by changing wording, updating statutory references, combining sections of rules, and removing unnecessary verbiage.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department concluded that with the exception of Paragraph B of R13-13-112, all current 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. Where the Department indicates there is a corresponding federal law for certain rules, the Department states that those rules are not more stringent than federal law or are authorized to exceed the requirements of federal law pursuant to A.R.S. § 28-900(C).

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?**

For those rules in Articles 1 and 2 adopted after July 29, 2010, the Department certifies that A.R.S. § 41-1037(A)(3) provides an exception to the general permit because a general permit is not feasible and would not meet the applicable minimum safety standards.

9. **Conclusion**

Council staff finds that the rules are generally clear, concise, understandable, and effective. As indicated above in the report, the Department intends to withhold rulemaking activity until such time that the Arizona School Bus Advisory Council provides final recommendations to the Department. The Department indicated that the

Arizona School Bus Advisory Council is beyond their control and estimates two years until the final recommendations are provided. The Department intends to begin rulemaking activity when recommendations are provided and notes that the Advisory Council has begun taking action. Council staff recommends approval of the report.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

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"Courteous Vigilance"

DOUGLAS A. DUCEY FRANK L. MILSTEAD
Governor Director

May 22, 2019

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

Dear Ms. Sornsin:

Pursuant to Arizona Revised Statute § 41-1056 and R1-6-301, the Department of Public Safety submits for your approval a five-year review report of its rules listed in Title 13 *Public Safety*, Chapter 13 *Department of Public Safety-School Buses*.

The Department reviewed all of the rules in Articles 1 and 2 and does not intend for any of the rules to expire under A.R.S. § 41-1056(J) and none of the rules were rescheduled under A.R.S. § 41-1056(H).

The Department does not have any active Substantive Policy Statements for this chapter and therefore is in compliance with A.R.S. § 41-1091.

If you have any questions regarding this report, please contact Mr. Paul Swietek, Research and Planning Unit at (602) 223-2049 or pswietek@azdps.gov.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank L. Milstead", written over a horizontal line.

Frank L. Milstead, Colonel
Director

Enclosure



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE **13 – PUBLIC SAFETY**

CHAPTER **13 – DEPARTMENT OF PUBLIC SAFETY-SCHOOL BUSES**

ARTICLES **1 – SCHOOL BUS MINIMUM STANDARDS**
 2 – MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON
 ALTERNATIVE FUEL

May 22, 2019

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INTRODUCTION

Under House Bill 2362, Fifty-first Legislature Second Regular Session 2014, which became law on July 24, 2014, A.R.S. §§ 28-900, 28-984, and 28-3228 were amended to remove responsibility from the Department of Administration for oversight and rulemaking authority related to the rules. In its place, the Department of Public Safety is now responsible for rulemaking authority and is statutorily required pursuant to A.R.S. §§ 28-900(A) and 28-3228(C) to consult with the Arizona School Bus Advisory Council (SBAC) on all rulemaking activities. Prior to July 2014, state law required the Department of Administration and Department of Transportation to have oversight of school bus rules where the Department of Public Safety only enforced the rules promulgated by the other two agencies. The rules formerly existed under A.A.C. Title 17 Transportation, Chapter 9 Department of Administration – School Buses and were recodified on July 25, 2014 by the Secretary of State (20 A.A.R. 2083, August 8, 2014), to A.A.C. Title 13 Public Safety, Chapter 13 Department of Public Safety – School Buses.

Under the Department of Administration’s rulemaking authority, most of the rules in Article 1 were initially made in 1996 and substantially revised in 2001, 2005, and 2008 with a new economic impact statement in May 2008. The rules in Article 2, which deal with minimum standards for school buses operated on compressed natural gas, were last amended with a new economic impact statement in 2000. The Department of Public Safety has conducted three minor rulemakings since receiving statutory authority for the rules. The first rulemaking was in 2015 removing a prohibition on scissor doors, and the second and third in 2018 removing a fuel tank capacity requirement and requiring drivers to obtain a valid identity-verified fingerprint clearance card equivalent to teachers and other school employees.

In 2018, the SBAC formed three working groups to address major updates to the rules. The three working groups were divided into driver certification minimum standards, bus chassis/body/fuels minimum standards and special needs. The working groups assembled and recruited team members during 2018 and began work in 2019 under the five-year review process in A.R.S. § 41-1056. Having identified the substantial scope of the amendments and to maintain the

cohesiveness of the SBAC working groups, the Department recognized the need to conduct a concurrent rulemaking and filed a rulemaking waiver request with the Governor's Office in February 2019. The waiver was approved and the Department filed a *Notice of Docket Opening* with the Secretary of State on March 19, 2019 which appeared in the *Administrative Register* 25 A.A.R. 894, April 12, 2019.

The Department under its statutory requirement to first consult with the SBAC, is withholding from conducting any rulemakings until the SBAC approves and submits a rulemaking recommendation package to the Department for consideration.

This five-year report lists areas where the Department may probably make amendments or recommends no changes; however, the Department cannot commit to the identified changes indicated in this report until the SBAC and the Department have consulted and a *Notice of Proposed Rulemaking* is made. The timeline is open ended due to the unknown time needed for the SBAC working groups to complete their work; the SBAC's availability to conduct public meetings, place the amendments on a consent agenda, and submit the rule recommendation package to the Department; and, the Department's time needed to review the package and reconcile adoptions or rejections.

The Department has approximately 15,504 school bus drivers currently certified and initially inspects approximately 7,500 (plus an additional approximate 30% reinspection) of school buses annually.

Within this report, the following abbreviations are used repeatedly:

- CVSA means Commercial Vehicle Safety Alliance; a recognized organization to improve standards, inspections and enforcement.
- FMVSS means National Traffic Highway Safety Administration, Federal Motor Vehicle Safety Standards; a federal government entity.

- NSTSP means National Congress on School Transportation, National School Transportation Specifications and Procedures; a recognized organization to set standards for school transport vehicles and operational practices.

ANALYSIS OF INDIVIDUAL RULES

R13-13-101 DEFINITIONS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules as necessary to improve the safety and welfare of school bus passengers.
- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules that establish minimum standards for the certification of school bus drivers.

2. Objective

The objective of this rule is to define words that are used in the rules.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule requires updates to the definitions to comply with:

- A.R.S. § 28-959(E) regarding *safety glass*.
- A.R.S. § 15-101(4), (21), (22) and (23) regarding *charter school, private school, school and school district*.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years
The Department received no written criticism of the rules during the last five years.
8. Estimated Economic, Small Business and Consumer Impact of the Rule
The Department determined the EIS at the time of the rulemaking is still relevant.
9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule as the previous report did not recommend changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined the rule is consistent with applicable federal law cited in the rule. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
This rule does not require the issuance of a regulatory permit, license, or agency authorization.
14. Current Five-Year Review Process Course of Action
As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-102 CERTIFICATION OF SCHOOL BUS DRIVERS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules as necessary to improve the safety and welfare of school bus passengers.
- A.R.S. § 28-900(A)(3), (4) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules setting procedures for the operation of school buses or other criteria necessary and appropriate to ensure the safe operation of school buses.

2. Objective

The objective of this rule is to establish the minimum standards for the certification process to become a school bus driver.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Health and Safety Institute (HSI) criticized the lack of restricted verbiage regarding first aid and CPR curriculum. The current verbiage 'allows' certified instructors to create and teach their own curriculum. HSI stated the standards should be adjusted to restrict

instructors from developing their own curriculum and issuing their own cards due to liability and to ensure quality to protect the health and safety of children riding school buses. The Department's position is the minimum requirements in Paragraph G are sufficient and recommend no changes. School districts can set curriculum and training that is stricter than the minimum standards.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The previous report mentioned improvements to the certification of the driver regarding crimes against children and the arrest of a driver for relevant violations and how it would affect the driver's certification. This rule was amended by final rulemaking in 24 A.A.R. 2306, August 17, 2018 to require drivers to have an identity-verified fingerprint clearance card which addresses these issues.

School districts criticized Paragraph K because it does not allow a physical performance test of a school bus driver at any time. The Department's position is Paragraph D specifies the physical performance test minimum standards and recommends no changes. School districts can set physical performance standards that are stricter than the minimum standards in Paragraphs D and K.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public.

12. Determination of the Rule's Stringency Against Federal Law

The Department determined the rule is consistent with applicable federal law. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

The rule was adopted by final rulemaking on July 24, 2018. A.R.S. § 41-1037(A)(2), (3) provides the Department an exception to the general permit requirement. A general permit is not feasible and would not meet the applicable safety requirements for individual driver certifications.

14. Current Five-Year Review Process Course of Action

As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-103 QUALIFICATION OF CLASSROOM AND BEHIND-THE-WHEEL INSTRUCTORS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules as necessary to improve the safety and welfare of school bus passengers.
- A.R.S. § 28-900(A)(4) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules setting procedures for any other criteria necessary and appropriate to ensure the safe operation of school buses.

2. Objective

The objective of this rule is to establish the qualification for the certification of classroom and behind-the-wheel instructors.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule as the previous report did not recommend any changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined the rule is consistent with federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rule was adopted by final rulemaking on May 8, 2008 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(2), (3) provides the Department an exception to the general permit requirement. A general permit is not feasible and would not meet the applicable safety requirements for individual driver certifications.
14. Current Five-Year Review Process Course of Action
There are no proposed changes to this rule; therefore, there is no proposed course of action. However as noted in the Introduction, the Arizona School Bus Advisory Council may make future rulemaking recommendations.

R13-13-104 MINIMUM STANDARDS FOR SCHOOL BUS OPERATION

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states that the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules as necessary to improve the safety and welfare of school bus passengers.
- A.R.S. § 28-900(A)(3), (4) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules setting procedures for the operation of school buses or other criteria necessary and appropriate to ensure the safe operation of school buses.

2. Objective

The objective of this rule is to establish the minimum standards for the safe operation of a school bus by a school, a school bus driver and passenger.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

To maintain consistency with state statutes the Department determined the rule requires amendments for:

- A.R.S. § 28-7901(10) for *safety rest area* in Paragraph B.8.b.
- A.R.S. § 11-1024(M)(5) for *service animal* in Paragraph D.18.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received criticism from The Trust regarding administering medication to a student by the school bus driver in an event of an emergency. A school district was strongly urging a special needs driver to administer medication rectally in the event of an emergency. The Department contends Paragraph D.16 establishes the minimum standards for the carrying, consuming and administering of a dangerous or narcotic drug by allowing individual school districts to set policy and practice for its trained employees. The Department recommends no changes.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No action is necessary for the rule. No previous five-year report exists, therefore, there are no previous actions to act on.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.

12. Determination of the Rule's Stringency Against Federal Law

The Department determined the rule is consistent with federal law. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

The rule was adopted by final rulemaking on May 8, 2008 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(2), (3) provides the Department an exception to the general permit requirement. A general permit is not feasible and would not meet the applicable safety requirements for individual driver certifications.

14. Current Five-Year Review Process Course of Action

As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-105 SPECIAL NEEDS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules to improve the safety and welfare of bus passengers by minimizing the probability of accidents and minimize serious bodily injury in the event of an accident.

2. Objective

The objective of this rule is to establish the minimum standards for the body of a school bus used to transport disabled passengers including those who use a wheelchair to reduce the probability of serious injury to passengers and minimize serious bodily injury to passengers in the event of an accident.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule may require the following amendments to be more effective:

- Wheelchair lift specifications- Lifts shall meet the specifications established in 49 CFR 571.403 and 571.404;
- Service door entrance padding. (NSTSP, p. 77J);
- Update service door entrance 'visible signal' device to 'audible or visible' signal device. Cleanup and remove unnecessary text. (NSTSP, p. 77);
- Circuit breakers-location language update. (NSTSP, p. 72(D) (10));
- Wheelchair lift documentation/use instructions. (NSTSP, p. 72);
- Wheelchair and wheelchair-passenger securement- Consider adding language to address "button style" anchorage systems, (ISO 10542/SAE J2249-NSTSP, p. 74/FMVSS 571.222);

- Occupant restraint adjustment system device language. (CFR 571.222, S5.4.3, S5.4.4., p. 75.C);
- Add FMVSS 222 and SAE J2249 to satisfy wheelchair language updates. NSTSP, p. 74(A)(1);

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule needs amendments to improve clarity, conciseness and understandability as indicated in Item 3 above.

7. Written Criticisms of the Rule Received in the Last Five Years

There were criticisms in the previous report related to language changes to *wheelchair unfolding* versus *falling*; shoulder-belt height adjuster extensions for wheelchair passengers, battery size and securing; and language specifying wheel-chair passenger shoulder restraint anchorage. See Item #14.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The previous five-year report indicated updates may be needed. See Item #7 above.

Previous rulemaking moratoriums delayed the Department and the Arizona School Bus Advisory Council in addressing changes to the rules. See Item #14.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.

12. Determination of the Rule's Stringency Against Federal Law

The Department determined the rule is consistent with or exceeds applicable federal law with the exception of the details in Item 3 above. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

The rule was adopted by final rulemaking on January 24, 2016. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus.

14. Current Five-Year Review Process Course of Action

As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-106 MINIMUM STANDARDS FOR SCHOOL BUS CHASSIS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules to improve the safety and welfare of bus passengers by minimizing the probability of accidents and minimize serious bodily injury in the event of an accident.

2. Objective

The objective of this rule is to establish the minimum standards for the chassis and related systems of a school bus in order to minimize the probability of accidents and minimize serious bodily injury in the event of an accident.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule may require the following amendments to be more effective:

- Back-up alarm- Update minimum dBA language. (NSTSP, p. 28);
- Brakes- Extensive updates to current recognized federal standards and consolidation of air brake adjustment limits (393.46); specs for pad liners; update emergency brake system air loss limits (393.43); update audible and visible warning device language and minimum pressure (393.51); visual inspection requirements. Reference NSTSP, pg. 29(c); ABS (FMVSS 105/393.55, FMVSS 121/393.55); 49CFR 393.46, 393.43, 393.51, 393.55, FMVSS 121;
- ABS systems (49 CFR 393.55/FMVSS 105 & 121);
- Clutch- Remove language and unnecessary text;
- Remove front bumper specs and move to R13-13-107;
- Color- Add 'body' to language (NSTSP, p. 31);

- Remove cooling system specs;
- Electrical system/Alternator- Update capacities and language. (NSTSP, p. 35);
- Wiring, Section iii.-Eliminate panel lights and rheostat control language (Duplicated in R13-13-106 (18)(C));
- Remove engine horsepower specs- Not mentioned in NSTSP specs/Unnecessary text;
- Frame-Combine sections (c) and (h) to eliminate unnecessary blocks of text;
- Instruments and instrument panel-Update brake system signal reference from R13-13-106(4)(f) to R13-13-106(4)(g);
- Remove oil filter specs;
- Update ‘steering wheel movement’ to ‘steering wheel lash’, and reference 49 CFR 393.209 spec chart;
- Update steering system Section (G). Change ‘connecting arm’ to ‘pitman arm’ (393.209);
- Tires and wheels- Combine Sections (c) and (d) and change language to include all tires should be of the same size diameter (NSTSP, p. 63);
- Suspension- Update section (i) and eliminate section (ii);
- Tires and wheels- Combine sections (c) and (d) and specify all tires shall be of the same size. (NSTSP, p. 63).

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule needs amendments to improve clarity, conciseness and understandability as indicated in Item 3 above.

7. Written Criticisms of the Rule Received in the Last Five Years
The Department received no written criticism of the rules during the last five years.
8. Estimated Economic, Small Business and Consumer Impact of the Rule
The Department determined the EIS at the time of the rulemaking is still relevant.
9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
The previous five-year report indicated updates may be needed to establish minimum brake pad thickness for school buses 29 U.S.C. Part 393 and the Commercial Vehicle Safety Alliance *North American Standard Out of Service Criteria* and to allow a bus to be equipped with an odometer that accrues mileage in other than tenths of a mile if the bus has a trip meter. Previous rulemaking moratoriums delayed the Department and the Arizona School Bus Advisory Council in addressing changes to the rules. See Item #14.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined the rule is consistent with or exceeds applicable federal law with the exception of the details in Item 3 above. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rule was adopted by final expedited rulemaking on July 24, 2018. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus.

14. Current Five-Year Review Process Course of Action

As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-107 MINIMUM STANDARDS FOR SCHOOL BUS BODY

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states that the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules to improve the safety and welfare of bus passengers by minimizing the probability of accidents and minimize serious bodily injury in the event of an accident.

2. Objective

The objective of this rule is to establish the minimum standards for the body and related systems of a school bus in order to minimize the probability of accidents and minimize serious bodily injury in the event of an accident.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule needs the following amendments to be more effective:

- Air Conditioning- Eliminate subsection 'f' as this is not applicable to air conditioning systems. Refer to Exhaust System, R13-13-106(13)(a);
- Battery- Eliminate excess text and add battery compartment door cover latching system. (NSTSP, p. 34);
- Belt Cutter- Eliminate excess text (accessibility);
- Color- Remove excess text and reflectance/chromaticity chart. (NHTSA Guideline #17);
- Crossing Control Arm- Remove section R13-13-107(7)(i) as Standard J1133 applies to a stop arm and not a crossing control arm;
- Defrosters- Update Standards J381 reference to '2009' and consider eliminating Standards J382 as it's not incorporated in the national standard (NSTSP, p. 33);

- Emergency Exits- Consider updating language to state “shall comply with design and performance requirements of FMVSS No. 571.217 and NSTSP, p39. Update emergency exit labeling color to black or red;
- Heating System- Update Standard J2233 to February 2011 or most current;
- Lamps and Signals- Update FMCSR reference date to latest publication;
- Mirrors- Update 49 CFR 571.111 reference date to January 2011 or most current;
- Noise Suppression Switch- Section should contain similar language described in R13-13-104(B)(15)(b) and should not require the deactivation of emergency communication device/radios. R13-13-104(B)(15)(b) requires all radios be turned off.;
- Seats- R13-13-107(26)(c)-Update 49 CRF 571.222 reference date;
- Step Treads- update ‘metal plate’ backing to “a durable backing material”. (NSTSP, p. 61);
- Tailpipe- Move to R13-13-106 (Chassis Exhaust System); combine sections ‘a’ and ‘b’. Update section ‘a’ to mirror language in the national standard NSTSP, p. 41, Exhaust System, Section (C);
- Undercoating- Update Section 34(a) to reflect SAE Standard J1959 instead of TT-C-520B. Remove Section 34(b);
- Windows- Update unobstructed opening to nine inches high and at least 22 inches wide (NSTSP, p. 66).

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule needs amendments to improve clarity, conciseness and understandability as indicated in Item 3 above.

7. Written Criticisms of the Rule Received in the Last Five Years

A vendor criticized the lack of wiring specifications for two-way radios due to safety reasons. It was further related that wiring two-way radios to a power source so they are operable without an ignition key should be allowable due to the potential for emergency situations occurring when the ignition switch is off or the noise suppression switch is activated. See Item #14 below.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The previous five-year report indicated updates may be needed to establish a standard for polymer backed stair treads instead of the currently allowed metal backing if permitted by NSTSP and FMVSS 302 standards. The reference to R17-4-610 needs removal as it expired on June 28, 2013. Previous rulemaking moratoriums delayed the Department and the Arizona School Bus Advisory Council in addressing changes to the rules. See Item #14 below.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.

12. Determination of the Rule's Stringency Against Federal Law

The Department determined the rule is consistent with or exceeds applicable federal law with the exception of the details in Item 3 above. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

The rule was adopted by final rulemaking on January 24, 2016. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus.

14. Current Five-Year Review Process Course of Action

As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-108 INSPECTION, MAINTENANCE AND ALTERATION

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules to improve the safety and welfare of bus passengers by minimizing the probability of accidents and minimize serious bodily injury in the event of an accident.

2. Objective

The objective of this rule is to establish inspection requirements before a school bus is introduced into Arizona to transport passengers and for determining the presence of major and minor defects on existing Arizona school buses.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule needs the following amendments to be more effective:

- R13-13-108(A): Update DPS bus identification number decal to be maintained with the bus for the duration of its service life in Arizona. Remove excess and outdated text. Update all language to incorporate out-of-service defects only and eliminate minor defects for the purpose of simplifying language and eliminating excess and unnecessary text.
- R13-13-108(B)- Update introduction dates to May 31, 2008, to reflect consistency with R13-13-105 thru R13-13-107;
- R13-13-108(B): Update introduction dates from February 16, 1996 to May 31, 2008. This will provide consistency with sections R13-13-105 thru R13-13-107, which were updated during the 'scissor door' rule change;
- Eliminate minor defect table and designate 'major' defects as an 'out-of-service defect'. Purpose is to eliminate excess and unnecessary text incorporated

elsewhere in the administrative code, which can be addressed as general defects. Update all language contained in R13-13-108 to reference ‘major defects’ as out of service defects (OOS) and eliminate ‘minor’ defects, which would be referenced as a defect other than an OOS requiring repair within 15 days. These changes are recommended and modeled after OOS defect reporting processes established for CMV’s by the FMCSA/CVSA;

- Update the inspection item defect table to incorporate and reference the current CVSA out-of-service criteria for major components to include brake systems, exhaust systems, steering, and suspension components;
- Brakes, compressed air- Update needed for low air pressure warning device activation at 55psi. Change needed if CVSA OOS criteria is not incorporated and referenced. (49 CFR 393.51(C));
- Update emergency brake system activation to 20-45 pounds psi (49 CFR 393.43)
- Add natural gas/propane (CNG/LPG) OOS criteria (CVSA OOS Criteria-Fuel Systems/NSTSP pg. 43-44/NFPA 58/FMVSS 303 and 304);
- Update interior seat language to address diminished padding material (FMVSS 571.222/NSTSP pg. 83);
- Incorporate OOS criteria for LED lamps. (NSTSP, pg. 88);
- Update outdated ‘major defect criteria’ referencing tire variances of more than one tire size between axles (should all be the same size);
- Update language throughout the defect table to eliminate excess text and to more clearly specify the OOS criteria;
- Merge ‘seats’ with ‘interior seats’ in the inspection item table to reduce unnecessary text and duplication.
- R13-13-108(E)- Update systematic inspection, repair, and maintenance to include Sections R13-13-105 thru R13-13-107, and Article 2, Alternative Fuels.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement
The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.
6. Clarity, Conciseness, Understandability of the Rule
The Department determined the rule needs amendments to improve clarity, conciseness and understandability as indicated in Item 3 above.
7. Written Criticisms of the Rule Received in the Last Five Years
The Department received no written criticism of the rules during the last five years.
8. Estimated Economic, Small Business and Consumer Impact of the Rule
The Department determined the EIS at the time of the rulemaking is still relevant.
9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule. The previous five-year report did not recommend any changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined the rule is consistent with or exceeds applicable federal law with the exception of the details in Item 3 above. A.R.S. § 28-900(C) permits the Department to adopt rules that are more stringent than federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rule was adopted by final rulemaking on January 24, 2016. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus.

14. Current Five-Year Review Process Course of Action

As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-109 TIME-FRAMES FOR MAKING CERTIFICATION DETERMINATIONS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states that the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the Arizona School Bus Advisory Council shall adopt rules as necessary to improve the safety and welfare of school bus passengers.

2. Objective

The objective of this rule is to establish time frame requirements for making certification determination.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

To maintain consistency with state statutes and other rules the Department determined the rule requires updates to the definitions to include:

For certification as a school bus driver, the time-frames required by A.R.S. § 41-1072 et seq. are:

1. Administrative completeness review time-frame: 45 days
2. Overall time-frame: 60 days
3. Substantive review time-frame: 15 days

The current rule references in Paragraph A are out of order from the statute by first listing overall time-frame then the administrative completeness resulting in statutory references throughout the rule to be out of sequence.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule
The Department determined the rule is clear, concise, and understandable.
7. Written Criticisms of the Rule Received in the Last Five Years
The Department received no written criticism of the rules during the last five years.
8. Estimated Economic, Small Business and Consumer Impact of the Rule
The Department determined the EIS at the time of the rulemaking is still relevant.
9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule. The previous five-year report did not recommend any changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined there is no corresponding federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rules were adopted by final rulemaking on March 5, 2005 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus driver.
14. Current Five-Year Review Process Course of Action
As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

R13-13-110 FIRST-AID EQUIPMENT

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.
- A.R.S. § 28-900(A)(3), (4) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules setting procedures for the operation of school buses or other criteria necessary and appropriate to ensure the safe operation of school buses.

2. Objective

The objective of this rule is to establish the minimum supplies that must be in first-aid and body-fluid clean up kits on a school bus in order to ensure the safety and welfare of school bus passengers.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No action is necessary for the rule. The previous five-year report did not recommend any changes.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.

12. Determination of the Rule's Stringency Against Federal Law

The Department determined there is no corresponding federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

The rule was adopted by final rulemaking on May 8, 2008 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus driver.

14. Current Five-Year Review Process Course of Action

There are no proposed changes to this rule; therefore, there is no proposed course of action. However as noted in the Introduction, the Arizona School Bus Advisory Council may make future rulemaking recommendations.

R13-13-111 REHEARING OR REVIEW OF DECISION

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules as necessary to improve the safety of school buses.
- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules that establish standards for the certification of school bus drivers.

2. Objective

The objective of this rule is to provide a rehearing or review of its decision by the Office of Administrative Hearings.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule. The previous five-year report did not recommend any changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined there is no corresponding federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rules were adopted by final rulemaking on June 13, 2001 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus and school bus driver.
14. Current Five-Year Review Process Course of Action
There are no proposed changes to this rule; therefore, there is no proposed course of action. However as noted in the Introduction, the Arizona School Bus Advisory Council may make future rulemaking recommendations.

R13-13-112 ENFORCEMENT AUDITS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules as necessary to improve the safety of school buses.
- A.R.S. § 28-3228 states the Department of Public Safety in consultation with the School Bus Advisory Council shall adopt rules that establish standards for the certification of school bus drivers.

2. Objective

The objective of this rule is to establish minimum standards to conduct audits to enforce this Chapter.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is not effective. See Item #4 below.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department does not have statutory authority to enter an employer's place of business to conduct an audit without permission. The Attorney General's Agency Handbook Section 12.3.3.2 states that an agency cannot enter a business and inspect its premises and books without the business' consent unless the Department has statutory authority. Paragraph B should be amended to read "The Department may enter an employer's or owner's place of business upon receiving written consent to conduct an audit." Based on that change, the remainder of the rule will be evaluated.

5. Rule Enforcement

The rules are currently being enforced as written with the exception of Paragraph B. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule
The Department determined the rule is clear, concise, and understandable.
7. Written Criticisms of the Rule Received in the Last Five Years
The Department received no written criticism of the rules during the last five years.
8. Estimated Economic, Small Business and Consumer Impact of the Rule
The Department determined the EIS at the time of the rulemaking is still relevant.
9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
The information in Item #4 above was indicated in the previous five-year review report. Previous rulemaking moratoriums delayed the Department and the Arizona School Bus Advisory Council in addressing changes to the rules. See Item #14 below.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined there is no corresponding federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rules were adopted by final rulemaking on March 5, 2005 and recodified on July 25, 2014, but do not require the issuance of a regulatory permit, license, or agency authorization.
14. Current Five-Year Review Process Course of Action
As noted in the Introduction, the Department is withholding rulemaking activity until such time the Arizona School Bus Advisory Council provides final recommendations to the Department.

ARTICLE 2: MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON ALTERNATIVE FUEL

Article 2 currently only allows for compressed natural gas fuel systems as an alternative fuel. With recent increased use and improvements to hybrid propulsion systems in both private and commercial/fleet vehicles, the article needs updating to address other modern fuel/electric systems as applied to school buses. The Department recommends amendments to Article 2 to incorporate new sections for insurance requirements; minimum standards for alternative fuel systems (LPG/High Voltage Electric); standards for converted CNG and LPG systems; inspection and maintenance requirements; and out-of-service criteria. (NSTSP pg. 118/FMVSS 571.303-571.304/NFPA 58)

R13-13-201 MINIMUM STANDARDS FOR COMPRESSED NATURAL GAS FUEL SYSTEMS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules to improve the safety and welfare of bus passengers by minimizing the probability of accidents and minimize serious bodily injury in the event of an accident.

2. Objective

The objective of this rule is to establish the minimum standards for insurance, installation and the integrity of compressed natural gas fuel systems for the purpose of minimizing the probability of accidents and minimizing serious bodily injury in the event of an accident.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules
The Department determined the rule is consistent with state statutes and other rules.
5. Rule Enforcement
The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.
6. Clarity, Conciseness, Understandability of the Rule
The Department determined the rule is clear, concise, and understandable.
7. Written Criticisms of the Rule Received in the Last Five Years
The Department received no written criticism of the rules during the last five years.
8. Estimated Economic, Small Business and Consumer Impact of the Rule
The Department determined the EIS at the time of the rulemaking is still relevant.
9. Analysis of the State's Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule. The previous five-year report did not recommend any changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule's Stringency Against Federal Law
The Department determined there is no corresponding federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rules were adopted by final rulemaking on October 3, 2000 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus.

14. Current Five-Year Review Process Course of Action

There are no proposed changes to this rule; therefore, there is no proposed course of action. However as noted in the Introduction, the Arizona School Bus Advisory Council may make future rulemaking recommendations.

R13-13-202 INSPECTION AND MAINTENANCE OF COMPRESSED NATURAL GAS FUEL SYSTEMS

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states the Department in consultation with the Arizona School Bus Advisory Council shall adopt rules to improve the safety and welfare of bus passengers by minimizing the probability of accidents and minimize serious bodily injury in the event of an accident.

2. Objective

The objective of this rule is to establish minimum standards for the inspection and maintenance of compressed natural gas fuel systems for the purpose of minimizing the probability of accidents and minimizing serious bodily injury in the event of an accident.

3. Effectiveness of the Rule in Achieving the Objective

The Department determined the rule is effective.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule is consistent with state statutes and other rules.

5. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant.

9. Analysis of the State’s Business Competitiveness as Compared to Other States
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action
No action is necessary for the rule. The previous five-year report did not recommend any changes.
11. Determination of Probable Benefits Outweighing the Probable Costs
The Department determined the benefits of the rules outweigh the costs to the State and that the rules impose the least burden and cost to the regulated public.
12. Determination of the Rule’s Stringency Against Federal Law
The Department determined there is no corresponding federal law.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.
The rules were adopted by final rulemaking on October 3, 2000 and recodified on July 25, 2014. A.R.S. § 41-1037(A)(3) provides the Department an exception to the general permit. A general permit is not feasible and would not meet the applicable minimum safety standards inspections for each individual school bus.
14. Current Five-Year Review Process Course of Action
There are no proposed changes to this rule; therefore, there is no proposed course of action. However as noted in the Introduction, the Arizona School Bus Advisory Council may make future rulemaking recommendations.

28-900. School bus rules

A. The department of public safety in consultation with the school bus advisory council established by section 28-3053 shall adopt rules as necessary to improve the safety and welfare of school bus passengers by minimizing the probability of accidents involving school buses and school bus passengers and by minimizing the risk of serious bodily injury to school bus passengers in the event of an accident.

B. The rules may include:

1. Minimum standards for the design and equipment of school buses.
2. Minimum standards for the periodic inspection and maintenance of school buses.
3. Procedures for the operation of school buses.
4. Other criteria as deemed by the department of public safety and the school bus advisory council to be necessary and appropriate to ensure the safe operation of school buses.

C. The rules shall provide, if applicable, minimum standards equal to or more restrictive than those adopted by the United States department of transportation in accordance with 23 United States Code and rules adopted pursuant to 23 United States Code.

D. Notwithstanding a rule adopted by the department of public safety with respect to exterior color of a school bus, in order to reduce the interior temperature of a school bus, the exterior top of a school bus may be painted white, but the white area shall not extend beyond the center clearance lights, front and rear, and shall not extend below a line five inches above the top of the side windows.

E. An officer or employee of any school district who violates any of the rules or who fails to include the obligation to comply with the rules in any contract executed by the officer or employee on behalf of a school district is guilty of misconduct and is subject to removal from office or employment. Any person who operates a school bus under contract with a school district and who fails to comply with any of the rules is in breach of contract, and the school district shall cancel the contract after notice and a hearing by the responsible officers of the school district.

F. The department of public safety shall enforce the rules adopted pursuant to this section.

28-3228. School bus drivers; requirements; rules; cancellation

A. A person shall not operate a school bus transporting school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety.

B. To be certified as a school bus driver a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of public safety in consultation with the school bus advisory council established by section 28-3053.
2. Complete an initial instructional course on school bus driver safety and training including behind the wheel training.

C. The department of public safety in consultation with the school bus advisory council established by section 28-3053 shall adopt rules that establish minimum standards for the certification of school bus drivers. In cooperation with local school districts, the department of public safety shall provide for school bus driver safety and training courses. The standards established shall:

1. Include requirements concerning moral character, knowledge of school bus operation, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus or that might endanger the health or safety of school bus passengers, knowledge of first aid, establishment of school bus safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of public safety and the school bus advisory council established by section 28-3053 prescribe for the protection of the public.
2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the ability of the applicant to safely operate a school bus.
3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

D. Each person who applies for a school bus driver certificate shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 and shall submit an identity verified fingerprint card as described in section 15-106 that the department of public safety shall use to process the fingerprint clearance card as outlined in section 15-106.

E. A person who is issued a school bus driver certificate shall maintain a valid identity verified fingerprint clearance card for the duration of any school bus driver certification period.

F. The department of public safety shall suspend a school bus driver certificate if the fingerprint clearance card is invalid, suspended, canceled or revoked.

G. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

H. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

I. The department of public safety shall enforce the rules adopted pursuant to this section.

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
9. 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.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.
3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for

such assistance subject to legislative appropriation controls.

4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.
13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

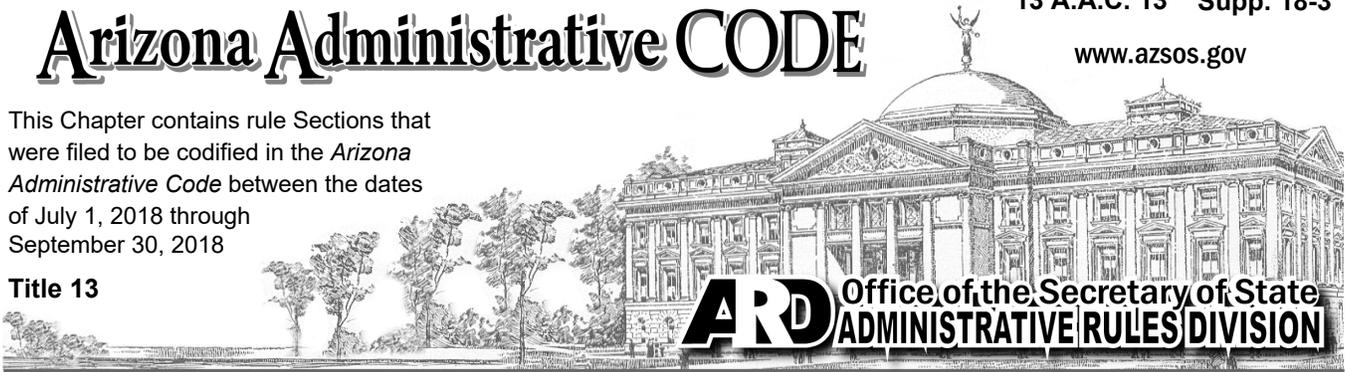
Arizona Administrative CODE

13 A.A.C. 13 Supp. 18-3

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This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

Title 13



ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 13. PUBLIC SAFETY

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY - SCHOOL BUSES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

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Questions about these rules? Contact:

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The release of this Chapter in Supp. 18-3 replaces Supp. 15-4, 35 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 13. PUBLIC SAFETY

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY - SCHOOL BUSES

Editor's Note: When this Chapter was recodified, the Department included Sections R13-13-111 and R13-13-112 in its conversion table but did not include the text of these Sections. Therefore, the Section text was not included in the recodification in Supp. 14-3. The text of these Sections have been added in Supp. 18-3 to reflect the Department's original intent to recodify these two Sections. Exhibits A and B were inadvertently recodified in Supp. 14-3. It was the Department's intent not to recodify these Exhibits therefore they have been removed in Supp. 18-3.

Editor's Note: This Chapter was recodified from 17 A.A.C. 9 under A.R.S. § 41-1011(C) at 20 A.A.R. 2083. Section cross-references were revised to conform to this Chapter's numbering scheme (Supp. 14-3). Original rules filed under 17 A.A.C. 9 were adopted by the Department of Administration in consultation with the Department of Public Safety and the School Bus Advisory Council at 2 A.A.R. 1141 (Supp. 96-1).

ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

Article 1, consisting of new Sections R13-13-101 through R13-13-112, recodified from 17 A.A.C. 9, Article 1, R17-9-101 through R17-9-112, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

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ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS**R13-13-101. Definitions**

In this Chapter, unless otherwise specified:

“Accident” means any unexpected occurrence involving a moving or non-moving school bus that results in any bodily injury or fatality to a passenger or non-passenger, damage to personal or real property outside the school bus, or damage to the school bus that affects the integrity of the school bus or results in a major defect as described in R13-13-108(B).

“Alternately flashing signal lamps” means a system of red or red and amber lamps that are mounted horizontally to both the front and rear of the school bus body and used to inform the public that the school bus is preparing to stop or has stopped to load or unload passengers. Alternately flashing signal lamps can be either a four-lamp system as described in R13-13-107(17)(c)(i) or an eight-lamp system as described in R13-13-9-107(c)(ii).

“Alteration” means any addition, modification, or removal of any equipment or component after a school bus is inspected by the Department, which may affect the operations of the school bus; compliance with the statutes or rules applicable to school buses; or the health, safety, or welfare of any individual.

“Applicant” means an individual who submits an application to the Department to obtain a certificate to operate a school bus.

“ASE” means National Institute of Automotive Service Excellence.

“Auxiliary fan” means a device mounted inside the school bus body used to supplement the heating, defrosting, or air-conditioning systems by circulating air in the school bus.

“Behind-the-wheel instructor” means an individual qualified under R13-13-103 to provide behind-the-wheel training to applicants.

“Behind-the-wheel training” means the complete physical control of a school bus by an applicant while accompanied by and under direct observation of a behind-the-wheel instructor.

“Belt cutter” means a hand-held instrument containing a blade used to sever a seat belt or a wheelchair-securement device.

“Certificate” means a written authorization issued by the Department to operate a school bus in Arizona.

“Chassis” means the part of a school bus that consists of all base components, including the frame, front and rear suspension, exhaust system, brakes, engine, engine hood or cover, transmission, front and rear axles, front fenders, drive train and shaft, fuel system, engine air intake and filter, clutch and accelerator pedals, steering wheel, tires, heating and cooling system, battery, and controls and instruments to operate the school bus.

“Chassis cowl” means those parts of a Type C school bus that are located in front of the cowl and attached before a school bus manufacturer adds the school bus body.

“Citation” has the same meaning as at A.R.S. § 28-1872.

“Classroom instructor” means an individual qualified under R13-13-103 to provide classroom training to:

Applicants to operate a school bus,

Individuals becoming qualified to teach classroom training,

Individuals becoming qualified to teach techniques of behind-the-wheel training, or

School bus drivers taking refresher training.

“Classroom training” means the courses required by the Department of an applicant before the applicant is certified or of an individual seeking qualification as a classroom or behind-the-wheel instructor.

“Commercial driver license” has the same meaning as at A.R.S. § 28-3001.

“Controlled substances and alcohol testing” means a determination of an applicant’s or school bus driver’s use of marijuana, cocaine, phencyclidine, opiates, amphetamines, and alcohol prescribed by 49 CFR 382, October 2006 (no later amendments or editions), and conducted in accordance with the procedures at 49 CFR 40, October 2006 (no later amendments or editions), both published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department; and a determination of an applicant’s or school bus driver’s use of marijuana, cocaine, phencyclidine, opiates, amphetamines, barbiturates, benzodiazepines, methadone, and propoxphene as required by these rules and conducted in accordance with a procedure that is generally accepted in the scientific community to be accurate and reliable.

“Cowl” means the portion of the chassis in a Type C school bus that separates the school bus engine from the school bus driver’s compartment.

“Cutaway van” means a chassis to which a completed driver’s compartment is attached before a school bus manufacturer adds a school bus body.

“dB(A)” means decibels A scale, a term denoting that noise level has been adjusted to duplicate human hearing.

“Driver’s compartment” means the part of a school bus body that is separated from the passenger compartment by a barrier and contains the controls and instruments for the operation of the school bus.

“Emergency-brake system” means mechanical components used to slow or stop a school bus after a failure of the service-brake system.

“Emergency exit” means an opening in a school bus, including a door, push-out window, or roof hatch, used to unload passengers in the event of an occurrence that requires immediate evacuation of the school bus.

“Employer” means a private business or school district that hires applicants and certified school bus drivers to operate school buses.

“Fingerprint clearance card” has the same requirements as in A.R.S. § 41-1758.03.

“Frame” means the structural foundation upon which a school bus chassis is constructed.

“Frontage road” means a street that parallels an interstate highway and furnishes access to streets and property that would otherwise be unreachable from the interstate highway.

“Gross vehicle weight rating” means the value specified by the manufacturer as the maximum total loaded weight of a school bus, calculated in accordance with R13-13-106(27).

“Health care professional” means:

A physician licensed to practice medicine under A.R.S. § 32-1401 et seq., osteopathy under A.R.S. § 32-1800 et seq., or chiropractic under A.R.S. § 32-900 et seq.;

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A physician licensed to practice medicine, osteopathy, or chiropractic in a state contiguous to Arizona;

A physician employed by the United States government and licensed by a state or territory of the United States;

A physician assistant licensed under A.R.S. § 32-2501 et seq.; or

A registered nurse practitioner licensed under A.R.S. § 32-1601 et seq.

“Highway” has the same meaning as at A.R.S. § 28-101.

“Identification” means the signs, lettering, or numbers placed on the interior or exterior of a school bus body, including the glass areas, but does not include the lettering, numbers, or logos of a manufacturer or distributor of the manufacturer’s product.

“Identity verified fingerprint clearance card” has the same requirements as A.R.S. § 15-106.

“Ignition power-deactivation switch” means a device that when set causes the engine of a motor vehicle to stop operating if the transmission is placed into gear or the parking-brake system is released.

“Interstate highway” means the designation given by the federal government to the system of highways connecting two or more states of the United States.

“Lamp” means a device that is covered by a lens and used to produce artificial light.

“Major defect” means a condition that exists to the interior or exterior of a school bus that causes the Department or owner to place the school bus out of service while the defect is being corrected.

“Manufacturer” means an entity engaged in the manufacturing or assembling of a school bus chassis, school bus body, or school bus chassis and body.

“Medical practitioner” has the same meaning as at A.R.S. § 32-1901.

“Minor defect” means a condition that exists to the interior or exterior of a school bus that is not a major defect and allows the school bus to remain in operation while the defect is being corrected.

“Off-duty” means the time a school bus driver is not on-duty.

“On-duty” means the period between the time a school bus driver begins to work for the employer or is required to be ready to work for the employer until the time the school bus driver is relieved from work and all responsibility for performing work for the employer. The time on-duty is used only to determine when a school bus driver must be provided time off-duty. Time on-duty may be compensated by the employer or an entity other than the employer or may be uncompensated. On-duty includes:

All time at an employer’s place of business, waiting to be dispatched;

All time performing an operations check of a school bus in accordance with R13-13-108, or servicing or conditioning a school bus;

All time driving a school bus, including loading or unloading the school bus, and remaining in readiness to drive a school bus;

All time, at the direction of the employer, travelling but not driving a school bus or assuming any other responsibility to the employer. If the school bus driver is afforded at least eight consecutive hours off-duty upon arrival at the school

bus driver’s destination after travelling but not driving a school bus or assuming any other responsibility to the employer, the school bus driver shall be considered off-duty for the entire period travelling but not driving the school bus or assuming any other responsibility to the employer;

All time repairing, obtaining assistance, or remaining in attendance upon a disabled school bus;

All time preparing required reports and records;

All time providing a breath or urine sample, including travel time to and from the collection site, to comply with the testing requirements of this Chapter;

All time performing any other work for the employer; and

All time performing any compensated work for any entity other than the employer.

“Out of service” means a school bus cannot be used to transport passengers.

“Owner” means the public or governmental agency or institution or private company in whose name a school bus is titled.

“Parking-brake system” means mechanical components used to prevent the movement of a school bus while loading or unloading a passenger or when the school bus is parked.

“Passenger” means an individual who rides in a school bus but does not participate in the operation of the school bus.

“Passenger compartment” means that part of the school bus body that is separated from the school bus driver’s compartment by a barrier and holds the passengers to be transported.

“Physical examination” means an evaluation of an applicant’s or school bus driver’s medical status performed by a health care professional according to this Article.

“Physical examination form” means the Arizona Department of Transportation, Motor Vehicle Division, Medical Examination Report, which is used to record the results of a physical examination and may be obtained from the Department or Arizona Department of Transportation, Motor Vehicle Division.

“Physical performance test” means an evaluation of an applicant’s or school bus driver’s reflexes, agility, and strength performed according to this Article.

“Physical performance test form” means the document used to record the results of a physical performance test and may be obtained from the Department.

“Push-out window” means safety glass enclosed in a frame on a school bus that moves to the outside of the school bus when force is applied to the window from inside the school bus.

“Refresher training” means the courses required by the Department of each school bus driver to maintain certification as a school bus driver in Arizona.

“Restraining barrier” means a structure located in front of any school bus seat that restricts the forward motion of a passenger.

“Rub rail” means a horizontal steel bar attached to the outside of a school bus body used to reinforce the sides of the school bus.

“Safety glass” has the same meaning as at A.R.S. § 28-959(F).

“School” means a school as defined by A.R.S. § 15-101(19), accommodation school as defined by A.R.S. § 15-101(1), charter school as defined by A.R.S. § 15-101(3), or private school as defined by A.R.S. § 15-101(18).

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“School bus” has the same meaning as at A.R.S. § 28-101.

“School bus body” means a structure assembled upon a chassis designed to carry a school bus driver and passengers.

“School bus driver” means an individual who is certified by the Department as meeting the requirements at A.R.S. § 28-3228 and R13-13-102 to operate a school bus in Arizona.

“School district” has the same meaning as at A.R.S. § 15-101 (20).

“Service-brake system” means mechanical components used to slow or stop a school bus.

“Service door” means a metal structure used to close the opening of a service entrance.

“Service entrance” means an opening in a school bus used to load or unload passengers.

“Special needs school bus” means a school bus that is designed to transport disabled passengers, some of whom may use a wheelchair, and is constructed with a service entrance and a special-service entrance.

“Special-service entrance” means an opening in a school bus that accommodates a wheelchair lift for the loading or unloading of a passenger who uses a wheelchair.

“Special-service entrance door” means a metal structure used to close the opening of a special-service entrance.

“Street” has the same meaning as at A.R.S. § 28-101.

“Traffic control signal” has the same meaning as at A.R.S. § 28-601.

“Training” means the instruction, courses, classes, or workshops provided by the Department or the employer that are required to obtain or maintain certification as a school bus driver or qualification as a classroom or behind-the-wheel instructor, or qualification to administer the physical performance test in Arizona.

“Transport” or “transporting” means a school bus driver sets a school bus in motion to carry passengers or objects authorized by the school district to be carried in a school bus.

“Type A school bus” means a conversion bus constructed utilizing a cutaway front section vehicle with a left side driver’s door. This definition includes two classifications: Type A-1, with a Gross Vehicle Weight Rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 pounds and less than or equal to 21,500 pounds.

“Type B school bus” means a school bus constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B-1, with a GVWR of 10,000 pounds or less, and Type B-2, with a GVWR greater than 10,000 pounds.

“Type C school bus,” also known as a conventional style school bus, means a school bus constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. A Type C school bus may have a cutaway truck chassis or truck chassis with cab with or without a left side door and with a GVWR greater than 21,500 pounds.

“Type D school bus,” also known as a rear engine or front engine transit-style school bus, means a school bus constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

“Van” means a covered or enclosed truck.

“Wheelchair” means a mobility aid consisting of a frame, seat, and three or four wheels, which is used to support and carry a disabled passenger.

“Wheelchair lift” means an electric hydraulic mechanism and platform in a school bus used to raise and lower a passenger in a wheelchair.

“Wheelchair-lift platform” means a horizontal surface upon which a wheelchair sits while being raised or lowered.

“Wheelchair-passenger restraint” means a combination of a pelvic and an upper torso restraint, including buckles and fasteners, designed to secure a passenger in a wheelchair within a school bus.

“Wheelchair-passenger restraint anchorage” means equipment for fastening wheelchair-passenger restraints to the interior of a school bus.

“Wheelchair-securement anchorage” means equipment for fastening a wheelchair-securement device to a school bus floor.

“Wheelchair-securement device” means a strap or webbing, including buckles and fasteners, used for fastening a wheelchair to a wheelchair-securement anchorage.

“Wheelchair-securement system” means components used to fasten a wheelchair to the interior of a school bus, including a wheelchair-securement anchorage and a wheelchair-securement device.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-101 recodified from R17-9-101 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 2306, effective July 24, 2018 (Supp. 18-3).

R13-13-102. Certification of School Bus Drivers

A. Certification requirements: An individual shall not operate a school bus in Arizona without being certified by the Department. An applicant for certification shall:

1. Be a minimum of 18 years of age;
2. Possess a valid identity verified fingerprint clearance card.
3. Submit all of the following to the Department through the employer:
 - a. An application signed and dated by the applicant that states the applicant’s:
 - i. Name, home address, and home phone number;
 - ii. Any alias ever used by the applicant;
 - iii. Social Security number;
 - iv. Date of birth;
 - v. Arizona commercial driver license number;
 - vi. Date of previous application for certification, if any;
 - vii. Intended employer’s name;
 - viii. Convictions for a felony or misdemeanor, if any, in this state or any other state;
 - ix. Total points accumulated against the applicant’s driving record during the two years immediately preceding the date of application using the point system contained in A.A.C. R17-4-404; and

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- x. Identity verified fingerprint clearance card number.
 - b. Completed physical examination form, completed physical performance test form, and results of controlled substances testing; and
 - c. A verification made under penalty of perjury that all submitted information is true and complete;
4. Possess a current Arizona commercial driver license under A.R.S. § 28- 3101;
 5. Possess any Arizona driver license endorsement required under A.R.S. § 28-3103;
 6. Meet the driving record requirements listed in this Article; and
 7. Complete the training requirements listed in this Article.
- B. Physical examination**
1. An applicant or school bus driver shall submit to a physical examination that is conducted by a health care professional in accordance with the physical examination form. An applicant or school bus driver is qualified to be certified as a school bus driver only if the health care professional conducts the physical examination in accordance with the physical examination form and concludes that the applicant or school bus driver has no condition that would interfere with the applicant's or school bus driver's ability to:
 - a. Operate a school bus safely,
 - b. Evacuate a school bus during an emergency or during a drill required under R13-13-104(D), and
 - c. Perform the operations checks required under R13-13-108(D).
 2. An applicant or school bus driver who is insulin dependent shall obtain the waiver described in A.A.C. R17-5-208.
 3. An applicant shall submit the completed physical examination form and, if applicable, a copy of the waiver required under subsection (B)(2), to the Department through the employer.
 4. The initial physical examination of an applicant, conducted in accordance with the physical examination form, expires 24 months from the date of the physical examination unless a shorter time is specified by the health care professional who administers the physical examination. A school bus driver shall submit to a physical examination before the expiration date of the previous physical examination and send the completed physical examination form to the Department through the employer before the end of the month in which the previous physical examination expires.
 5. If a health care professional determines that further testing of an applicant or school bus driver is needed by an ophthalmologist or optometrist, the health care professional shall refer the applicant or school bus driver to:
 - a. An ophthalmologist licensed under A.R.S. § 32-1401 et seq.,
 - b. An optometrist licensed under A.R.S. § 32-1701 et seq.,
 - c. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by a state contiguous to Arizona, or
 - d. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by any state or territory of the United States and employed by the United States government.
 6. In addition to the physical examinations required by this Article, the Department or the employer may require a physical examination of an applicant or school bus driver for an impairment that would affect the ability to perform the activities listed in subsection (B)(1). The Department or employer shall base its decision to require an additional physical examination upon consideration of the appearance or actions of the applicant or school bus driver or of medical information received by the Department regarding the applicant or school bus driver. The applicant or school bus driver shall submit results of a physical examination conducted under this subsection to the Department through the employer within 30 days of the date of the physical examination.
- C. Controlled substances and alcohol testing**
1. An applicant or school bus driver shall submit to alcohol and controlled substances testing as required by A.R.S. § 28-3228(C)(2) and as prescribed by this Article and 49 CFR 382 October 2006 (no later amendments or editions). The testing shall be conducted in accordance with the procedures at 49 CFR 40 October 2006 (no later amendments or editions), both published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department, except for the changes in 49 CFR 40 and 49 CFR 382 listed in subsections (C)(1)(a) through (C)(1)(i).
 - a. 49 CFR 40.3
 - i. "Employee," means an applicant or a school bus driver as defined at R13-13-101.
 - ii. "Employer" has the same meaning as at R13-13-101.
 - b. 49 CFR 382.107
 - i. "Commercial motor vehicle" has the same meaning as at A.R.S. § 28-3001(3).
 - ii. "Driver" means a school bus driver as defined at R13-13-101.
 - iii. "Employer" has the same meaning as at R13-13-101.
 - iv. "Performing a safety-sensitive function" means any time during which a school bus driver is on-duty except when the school bus driver is being compensated by an entity other than the employer.
 - v. "Safety-sensitive function" means any activity for which a school bus driver is on-duty except when the school bus driver is performing an activity for and being compensated by an entity other than the employer.
 - c. 49 CFR 382.207. In both sentences, the word "four" is changed to "eight."
 - d. 49 CFR 382.301(b), (c), and (d): Delete these subsections.
 - e. 49 CFR 382.303(a) and (b): Change the word "occurrence" to "accident," as defined in R13-13-101, and delete the words "operating on a public road in commerce."
 - f. 49 CFR 382.303(a)(1) and (b)(1): Delete the words " , if the accident involved the loss of human life"
 - g. 49 CFR 382.303(a)(2) and (b)(2): Delete the words " , if the accident involved:"
 - h. 49 CFR 382.303(a)(2)(i) and (ii) and (b)(2)(i) and (ii): Delete these subsections.
 - i. 49 CFR 382.303(c): In the table, in the column headed "Test must be performed by employer," change "No" to "Yes."
 2. In addition to the testing required by 49 CFR 382, an applicant shall submit to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodi-

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- azepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.
3. In addition to the testing required by 49 CFR 382, a school bus driver shall submit annually to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.
 4. The employer shall ensure that a school bus driver is tested for use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, or propoxyphene or alcohol when required to do so by these rules or when requested by the Department.
 5. The employer shall submit any and all negative results of testing done under subsection (C) to the Department within 30 days of the date of testing or within 12 months of the school bus driver's previous test, whichever is sooner, by providing the Department a copy of the report submitted to the employer by the entity that conducted the testing.
 6. The employer shall immediately notify the Department by telephone of any and all positive results of testing done under subsection (C) and shall submit to the Department within five days a copy of the report submitted to the employer by the entity that conducted the testing.
- D. Physical performance test**
1. An applicant shall pass a physical performance test that consists of the following eight standards:
 - a. Climbing and descending the steps of a school bus three times in 30 seconds;
 - b. Alternately activating the throttle and the service-brake system of a school bus 10 times in 10 seconds;
 - c. Depressing and holding the clutch, if applicable, and service-brake system of a school bus for three seconds, five consecutive times;
 - d. Opening and closing a manually operated service door three times without stopping. If the school bus has an automatic service door, operate the manual override of the service door;
 - e. Operating at least two hand controls, one on each side of the steering wheel, within eight seconds while maintaining control of a moving school bus;
 - f. Starting in a seat-belted position, exit a school bus from the rear-most floor-level emergency exit within 20 seconds;
 - g. Carrying or dragging a 125-pound object 30 feet in 30 seconds; and
 - h. Lowering a 30-pound object from a floor-level emergency exit to the ground and lifting the same object from the ground to the school bus floor.
 2. A school bus driver who is certified on the effective date of this subsection shall pass the physical performance test within one year from the effective date of this subsection.
 3. A school bus driver shall pass the physical performance test again no later than 24 months after previously passing the physical performance test.
 4. An applicant or school bus driver who fails the physical performance test may take the test again after 24 hours. An applicant or school bus driver may take the physical performance test no more than three times in 90 days. If an applicant fails the physical performance test on the third attempt, the Department shall not further consider the applicant for certification unless the applicant complies again with the requirements of this Section.
 5. The employer shall ensure that a school bus driver who fails the physical performance test does not operate a school bus until the school bus driver passes the physical performance test.
 6. If a school bus driver takes and fails the physical performance test three times, the Department shall cancel the school bus driver's certification.
 7. An employer shall ensure that the physical performance test is administered by a person who has completed Department-authorized training, using the largest type of school bus that an applicant or school bus driver may be required to operate.
 8. A person who administers the physical performance test shall either pass or fail the applicant or school bus driver taking the test, complete the physical performance test form, and submit the completed form to the Department and the employer within seven days of the physical performance test.
- E. Driving record**
1. During the 24 months before the date of application or during any 24-month period while certified as a school bus driver, an applicant or school bus driver shall not accumulate eight or more points against a driving record in this state using the point system contained in A.A.C. R17-4-404.
 2. During the 10 years before the date of application, an applicant shall not have repeatedly received citations for violation of traffic law.
- F. Training requirements of a school bus driver**
1. Before being certified by the Department as a school bus driver, an applicant shall complete a minimum of 14 hours of classroom training in the following:
 - a. State and federal traffic laws,
 - b. Behind-the-wheel driving operations,
 - c. School bus driver's responsibilities to passengers and school,
 - d. Inspections and operations checks,
 - e. Records and reports,
 - f. Special needs transportation, and
 - g. Accidents and emergencies.
 2. An employer shall ensure that classroom training is taught by a classroom instructor who is qualified under R13-13-103.
 3. At least seven days before classroom training, the classroom instructor shall notify the Department in writing of the date, time, and location of classroom training. The classroom instructor shall notify the Department by any means available at least 24 hours before the date, time, or location of classroom training is changed or canceled.
 4. After completion of classroom training, the classroom instructor shall administer to the applicant a written examination standardized by the Department.
 - a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in subsection (F)(1).
 - b. Each question has a value of two points. To pass the examination an applicant shall receive a score that equals or exceeds 80% of the total possible score.
 - c. If an applicant is unable to read or speak English, the employer shall arrange to have the examination administered orally to the applicant in the language with which the applicant is most familiar.
 - d. If an applicant does not pass the examination on the first attempt, the applicant may take an examination two more times within 12 months of the first

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- attempt. A different examination shall be administered to an applicant who is taking an examination for the second or third time. The period between examinations shall be a minimum of 24 hours. If the applicant fails the examination on the third attempt, the applicant shall be considered further only if the applicant complies again with the requirements in this Section.
5. The classroom instructor shall submit the following information in a written report to the Department and the employer within seven days from the date of the conclusion of a classroom training course:
 - a. Instructor's name,
 - b. Instructor's identification number,
 - c. Date of training,
 - d. Location of training,
 - e. Number of hours of training taught by the classroom instructor,
 - f. Each applicant's name, and
 - g. Each applicant's examination score.
 6. In addition to the report required under subsection (F)(5), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a classroom training course, a classroom-training course log that includes:
 - a. Instructor's name,
 - b. Instructor's identification number,
 - c. Date of the training course,
 - d. Name of each applicant attending the training course,
 - e. Subject matter taught in each hour, and
 - f. Which hours of training were attended by each applicant.
 7. In addition to the classroom training, an applicant shall complete behind-the-wheel training consisting of a minimum of 20 hours operating a school bus in Arizona.
 - a. An employer shall ensure that behind-the-wheel training is taught by a behind-the-wheel instructor who is qualified under R13-13-103.
 - b. During behind-the-wheel training, a behind-the-wheel instructor shall be present and observing the applicant while the applicant is operating the school bus.
 - c. The employer shall ensure that no one except the applicant, behind-the-wheel instructor, employer, and Department employees are aboard the school bus while the applicant actually operates the school bus.
 - d. The behind-the-wheel instructor shall maintain and submit to the employer within seven days from the conclusion of the applicant's behind-the-wheel training, a behind-the-wheel training log that includes:
 - i. Instructor's name,
 - ii. Instructor's identification number,
 - iii. Applicant's name,
 - iv. Date of each behind-the-wheel training session, and
 - v. Actual number of hours at each training session that the applicant operates a school bus.
 - e. At the conclusion of behind-the-wheel training, the behind-the-wheel instructor shall use a copy of the Proof of Completion of Behind-the-wheel Training and Driving Test form to administer to the applicant the driving test described on the form. The driving test shall measure the applicant's ability to operate a school bus safely and in a manner consistent with state law. The behind-the-wheel instructor shall either pass or fail the applicant and submit the completed form to the Department and the employer within seven days of the driving test.
- G. First aid and cardiopulmonary resuscitation**
1. Before being certified, an applicant shall complete classroom instruction in cardiopulmonary resuscitation and basic first aid. The instruction in cardiopulmonary resuscitation shall include performing cardiopulmonary resuscitation on adults, children, and infants.
 2. The instruction shall be conducted by an individual currently certified as an instructor in first aid and cardiopulmonary resuscitation by a program approved by a nationally recognized organization such as the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, or Arizona Bureau of Mines; by an emergency medical technician licensed in Arizona; or by an agency of the U.S. government.
 3. An applicant shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card issued to the applicant or other written documentation as proof of completion of the first-aid and cardiopulmonary resuscitation training.
 4. A school bus driver shall renew first-aid and cardiopulmonary resuscitation training before expiration of the current training. Renewal instruction shall be provided by an individual described in subsection (G)(2). The school bus driver shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card or other written documentation as proof of renewal of training.
- H. The Department shall process an application for certification as a school bus driver under R13-13-109.**
- I. Refresher training**
1. A school bus driver shall have refresher training no later than 24 months following completion of the training required by subsection (F). Refresher training shall consist of a minimum of 6 1/2 hours of classroom training in the topics listed in subsection (F)(1).
 2. After completing the first refresher training, the school bus driver shall complete a minimum of 6 1/2 hours of classroom training in the topics listed in subsection (F)(1) every 24 months following the last refresher training.
 3. An employer shall ensure that refresher training is taught by a classroom instructor who is qualified under R13-13-103.
 4. A classroom instructor shall teach refresher training and shall submit the following information in a written report to the Department and the employer within seven days from completion of the refresher training:
 - a. Instructor's name,
 - b. Instructor's identification number,
 - c. Date of training,
 - d. Location of training,
 - e. Number of hours of training taught by the classroom instructor,
 - f. Each school bus driver's name, and
 - g. Each school bus driver's certification number.
 5. In addition to the report required under subsection (I)(4), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a refresher training course, a refresher-training course log that includes:
 - a. Instructor's name,

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- b. Instructor's identification number,
 - c. Date of the refresher training course,
 - d. Name and certification number of each school bus driver attending the refresher training course,
 - e. Subject matter taught in each hour, and
 - f. Which hours of refresher training were attended by each school bus driver.
- J. Records**
1. The employer shall maintain qualification and training records of an applicant who is certified and of a school bus driver who terminates employment, and qualification records of an applicant who is denied certification, for 24 months from the date of certification, termination of employment, or denial of certification.
 2. The employer shall maintain records of testing required under subsection (C) in accordance with 49 CFR 382.401, October 2006 (no later amendments or editions), published at the U. S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department. In this subsection, "controlled substances," as used in 49 CFR 382.401, means marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene.
 3. The employer shall transfer the records of a school bus driver to a subsequent employer upon written request by the subsequent employer or school bus driver.
 4. Qualification records include:
 - a. Application,
 - b. Driving record,
 - c. Copy of physical examination form, and
 - d. Physical performance test form.
 5. Training records include:
 - a. A copy of the classroom-training course log required under subsection (F)(6) that shows the applicant's attendance,
 - b. A copy of the refresher-training course log required under subsection (I)(5) that shows the school bus driver's attendance,
 - c. The classroom training examination score,
 - d. The applicant's behind-the-wheel training log,
 - e. The Proof of Completion of Behind-the-wheel Training and Driving Test form,
 - f. A copy of the first-aid card and cardiopulmonary resuscitation card or other written documentation of completion of first-aid and cardiopulmonary resuscitation training, and
 - g. A copy of the school bus driver certification card issued by the Department.
- K. Denial, cancellation, or suspension of certificate**
1. Based on an assessment of the totality of the circumstances, the Department may deny a certificate to an applicant or may cancel or suspend a certificate of a school bus driver for:
 - a. Failing to meet or comply with the requirements of this Article;
 - b. Being convicted of or subject to an outstanding warrant for any felony;
 - c. Being convicted of or subject to an outstanding warrant for any misdemeanor reasonably related to the occupation of a school bus driver including, but not limited to:
 - i. Citation for any moving motor vehicle violation, including but not limited to, violations of A.R.S. § 28-1591 et seq.;
 - ii. Driving under the influence (A.R.S. § 28-1381 et seq.);
 - iii. Any sexual offense (A.R.S. § 13-1401 et seq.);
 - iv. Any abuse of a child (A.R.S. § 13-3623); or
 - v. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.).
 - d. Demonstrating behavior that endangers the educational welfare or personal safety of students, teachers, or school bus drivers or other co-workers;
 - e. Providing false, incomplete, or misleading information to the Department;
 - f. Driving or being in actual physical control of a school bus under a circumstance listed in A.R.S. § 28-1381(A);
 - g. Under A.R.S. §§ 28-3301 through 28-3322, having a commercial driver license canceled, suspended, revoked, or denied; or
 - h. Having a verified positive result to any controlled substance or alcohol test required by subsections (C)(1), (2), or (3), at any time.
 2. The Department shall cancel or suspend a certificate of a school bus driver for:
 - a. Having a fingerprint clearance card that is invalid, suspended, canceled or revoked pursuant to A.R.S. § 28-3228 and A.R.S. Title 41, Chapter 12, Article 3.1; or
 - b. Operating a school bus in violation of A.R.S. § 41-1758.03(D) or A.R.S. § 41-1758.07(D) which preclude a person from driving any vehicle to transport employees or clients of the employer as part of the person's employment including students, teachers or other co-workers.
 3. Any conviction, violation, warrant, or other misconduct described in this Section shall be considered, whether or not the school bus driver was operating a school bus at the time of the conviction, violation, warrant, or other misconduct.
 4. An applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended may request a hearing within 30 days from the date of receipt of the notice of the denial, cancellation, or suspension. The hearing shall be conducted according to the procedures contained in A.R.S. Title 41, Chapter 6, Article 10.
 5. The Department shall inform an applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended of the amount of time that must elapse before the applicant or the school bus driver may reapply for certification. The Department shall include this information in the notice of denial, cancellation, or suspension and the notice of final order, if any, served on the applicant or school bus driver. In determining the amount of time that must elapse before reapplication, the Department shall consider:
 - a. The seriousness of the offense leading to denial, cancellation, or suspension;
 - b. The frequency with which the offense occurred; and
 - c. The amount of time required to correct the offense.
- L. If a school bus driver is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a school bus driver transfers employment from one employer to a second employer, within 14 days of the transfer the second employer shall provide written notice to the Department of the:**
1. School bus driver's name,
 2. School bus driver's certification number,

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3. Name of the transferring employer, and
4. Effective date of the transfer.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-102 recodified from R17-9-102 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 2306, effective July 24, 2018 (Supp. 18-3).

R13-13-103. Qualification of Classroom and Behind-the-wheel Instructors**A.** To be qualified as a classroom instructor, an individual shall:

1. Submit to the Department through the employer, the following two letters:
 - a. A letter from, signed, and dated by the individual that states the individual's:
 - i. Name, home address, and home phone number;
 - ii. Social Security number;
 - iii. Date of birth;
 - iv. Current employer's name, address, and phone number;
 - v. Dates of all previous letters submitted under this subsection; and
 - b. A letter from the current employer recommending that the individual be considered as a classroom instructor; and
2. Pass a written examination standardized by the Department:
 - a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R13-13-102(F)(1).
 - b. Each question has a value of two points. To pass the examination, an individual shall receive a score that equals or exceeds 90% of the total possible score.
 - c. If an individual taking the written examination is unable to read or speak English, the employer shall arrange to have the examination administered orally in the language with which the individual is most familiar.
 - d. If an individual does not pass the examination, the individual may take a second examination that is different from the first examination.
 - e. If an individual fails to pass the second examination, the individual may receive further consideration by submitting again the letters required by subsection (A)(1) and taking the written examination required by this subsection.
 - f. The employer shall submit each individual's examination score to the Department within seven days from the date of the examination.

B. To remain qualified as a classroom instructor, a classroom instructor shall teach a minimum of 12 hours of classroom or refresher training every 24 months from the date the classroom instructor is first recognized by the Department as qualified.**C.** To be qualified as a behind-the-wheel instructor, an individual shall:

1. Be certified continuously as a school bus driver in Arizona for the 12 months immediately before submitting the letters described in subsection (C)(2) and be

employed as a certified school bus driver at the time of qualification as a behind-the-wheel instructor;

2. Submit to the Department through the employer, the following two letters:

- a. A letter from, signed, and dated by the individual that states the individual's:
 - i. Name, home address, and home phone number;
 - ii. Social Security number;
 - iii. Commercial driver license number;
 - iv. Current employer's name, address, and phone number;
 - v. Dates of all previous letters submitted under this subsection; and
- b. A letter from the current employer recommending that the individual be considered as a behind-the-wheel instructor; and

3. Pass a written examination standardized by the Department.

- a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R13-13-102(F)(1).
- b. Each question has a value of two points. To pass the examination, an individual shall receive a score that equals or exceeds 80% of the total possible score.
- c. If an individual is unable to read or speak English, the employer shall arrange to have the examination administered orally in the language with which the individual is most familiar.
- d. If an individual does not pass the examination, the individual may take a second examination that is different from the first examination.
- e. If an individual fails to pass the second examination, the individual may receive further consideration by submitting again the letters required by subsection (C)(2) and taking the written examination required by this subsection.
- f. The employer shall submit each individual's examination score to the Department within seven days from the date of the examination.

D. To remain qualified as a behind-the-wheel instructor, a behind-the-wheel instructor shall maintain certification as a school bus driver in this state and teach a minimum of 12 hours of behind-the-wheel training every 24 months from the date the behind-the-wheel instructor is first recognized by the Department as qualified.**E.** Records

1. The employer shall maintain the following records for each classroom and behind-the-wheel instructor for 24 months from the date the instructor is first recognized by the Department as qualified.
 - a. Letter submitted under subsection (A)(1)(a) or (C)(2)(a),
 - b. Letter of recommendation submitted under subsection (A)(1)(b) or (C)(2)(b), and
 - c. Examination score.
2. The Department shall maintain the documents required under R13-13-102(F)(5) and (I)(4) for 24 months.

F. The Department shall not recognize an individual as qualified to be a classroom or behind-the-wheel instructor if the individual:

1. Fails to meet or comply with the requirements of this Article;
2. Is convicted of or subject to an outstanding warrant for a felony;

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3. Is convicted of or subject to an outstanding warrant for a misdemeanor reasonably related to the occupation of a school bus driver, including:
 - a. Civil traffic violation (A.R.S. § 28-1591 et seq.);
 - b. Driving under the influence (A.R.S. § 28-1381 et seq.);
 - c. Any sexual offense (A.R.S. § 13-1401 et seq.);
 - d. Any abuse of a child (A.R.S. § 13-3623); or
 - e. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.);
 4. Provides false, incomplete, or misleading information to the Department;
 5. Drives or is in actual physical control of a school bus under a circumstance listed in A.R.S. § 28-1381(A); or
 6. Under A.R.S. §§ 28-3301 through 28-3322, has a commercial driver's license canceled, suspended, revoked, or denied.
- G.** If a classroom or behind-the-wheel instructor is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a classroom or behind-the-wheel instructor transfers employment from one employer to a second employer, within seven days of the transfer the second employer shall provide written notice to the Department of the:
1. Name of the classroom or behind-the-wheel instructor,
 2. Identification number of the classroom or behind-the-wheel instructor,
 3. Name of the transferring employer, and
 4. Effective date of the transfer.
- Historical Note**
- Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-103 recodified from R17-9-103 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).
- R13-13-104. Minimum Standards for School Bus Operation**
- A.** A school bus driver shall perform operations checks of a school bus as required by R13-13-108.
- B.** Loading or unloading of passengers:
1. As of February 16, 1996, an eight-lamp system as described in R13-13-107(17) shall be installed on a school bus before it is introduced into Arizona. When preparing to stop a school bus on a street or highway, the school bus driver shall activate the alternately flashing amber lamps of an eight-lamp system or the alternately flashing red lamps of a four-lamp system for a minimum distance of 100 feet, in accordance with A.R.S. § 28-930(B). Whenever the school bus is stopped on a street or highway to load or unload passengers, the school bus driver shall deactivate the alternately flashing amber lamps and activate the alternately flashing red lamps of an eight-lamp system, and extend the stop arm and open the service door.
 2. When a school bus driver stops the school bus to load or unload passengers, the school bus driver shall set the parking brake and place the transmission in neutral.
 3. The distance between stops for the purpose of loading or unloading passengers shall be no less than 600 feet, unless the school determines that more frequent stops are necessary for safety. The school bus driver shall stop the school bus as near the right edge of the traveled portion of the street or highway as possible.
 4. A school bus driver shall not load or unload passengers on the traffic side of the bus.
 5. When a school bus driver loads or unloads passengers who must cross a street or highway at a location other than an intersection, the passengers shall cross at least 10 feet in front of the front bumper of the school bus. The school bus driver shall not permit passengers who must cross a street or highway to be unloaded from the school bus until all traffic to the front and rear of the school bus is stopped. The school bus driver shall not move the school bus until all passengers have crossed the street or highway.
 6. In intersections that use lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 100 feet of the traffic control signal so the passengers may cross with the traffic control signal, either before or after the school bus proceeds.
 7. In intersections without lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 50 feet of the intersection so the passengers may cross at the intersection, either before or after the school bus proceeds.
 8. A school bus driver shall not stop a school bus on an interstate highway for the purpose of loading or unloading passengers, except that:
 - a. A school bus stop may be established on a frontage road that parallels an interstate highway if no passenger is allowed to cross a divided highway.
 - b. A school bus may stop in a safety rest area as defined by A.R.S. § 28-7901(8) that is part of or adjacent to an interstate highway.
 9. A school bus driver shall load or unload passengers on school grounds only in an area designated by the school and marked with a sign as a school bus loading area.
 10. During loading or unloading of passengers at a designated school bus loading area at a school, the school shall restrict the loading area to school buses, passengers, and school employees assisting in the loading or unloading of passengers.
 11. A school shall allow passengers in a designated school bus loading area only when the passengers are being loaded on or unloaded from a school bus.
 12. A school shall designate all school bus loading areas at locations that prevent backing of the school bus.
 13. In areas at a school not designated as a school bus loading area, a school bus driver shall not back upon or adjacent to the school grounds unless an individual authorized by the school bus driver directs the backing procedure while standing at the rear of the school bus in a position visible to the school bus driver. This provision does not apply to a school bus garage or school bus storage area where passengers are not allowed.
 14. Immediately before a school bus driver engages in backing a school bus, the school bus driver shall sound the horn to warn motorists and pedestrians of the backing procedure. This provision does not apply if the school bus is equipped with an alarm that operates automatically when the school bus is backing.
 15. In addition to the requirements for railroad grade crossings contained in A.R.S. § 28-853, a school bus driver shall comply with the following:
 - a. Use hazard warning lights as described in A.R.S. § 28-947(D) within a minimum of 100 feet of a rail-

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- road grade crossing to warn motorists of an intended stop.
- b. Shut off any radio, compact-disc player, and other source of sound within 50 feet of a railroad grade crossing.
 - c. Stop the school bus, with or without passengers aboard, at a railroad grade crossing when traffic at the railroad grade crossing is not directed by a police officer.
 - d. While stopped at a railroad grade crossing at which traffic is not directed by a police officer, activate the noise suppression switch, completely open the service door and the window to the left of the driver and, by hearing and sight, determine that it is safe to cross. Before proceeding, close the service door. Deactivate the noise suppression switch after crossing the tracks.
 - e. Do not stop to load or unload passengers within 200 feet of a railroad grade crossing. This provision does not prohibit stops at a railroad station or on a highway that parallels the railroad tracks.
16. When a school bus driver loads a wheelchair passenger on a school bus, the school bus driver shall secure both the wheelchair and the wheelchair passenger using the systems described in R13-13-105(E).
- C.** An employer shall not allow or require a school bus driver to drive a school bus nor shall a school bus driver drive a school bus:
1. For more than 10 hours after having been off-duty for a minimum of eight consecutive hours;
 2. For any period after having been on-duty for 15 hours after having been off-duty for a minimum of eight consecutive hours;
 3. After having been on-duty 60 hours in any seven consecutive days if the employer does not operate school buses for seven consecutive days; or
 4. After having been on-duty 70 hours in any eight consecutive days if the employer operates school buses every day of the week.
- D.** Other requirements:
1. A school bus driver shall wear a seat belt whenever the school bus is in motion.
 2. While operating a school bus, a school bus driver shall wear closed-toe, closed-heel shoes that will not interfere with driving the school bus safely or performing other duties of the school bus driver.
 3. A school bus driver shall comply with all state traffic laws while operating a school bus except that the school bus driver shall not exceed 65 miles per hour or the posted speed limit, whichever is less, when operating the school bus on an interstate highway.
 4. Any person boarding or attempting to board a school bus, whether or not a passenger, shall comply with all instructions given by a school bus driver. If a passenger or a non-passenger boards or attempts to board a school bus and refuses to comply with the school bus driver's instructions, the school bus driver may seek emergency assistance to remove the passenger or non-passenger from the school bus, or prevent the passenger or non-passenger from boarding.
 5. All passengers shall sit with their backs against the seat backs, their legs facing towards the front of the school bus, and all parts of their bodies clear of all aisles whenever the school bus is in motion.
 6. A school bus driver shall not transport in a school bus more passengers than the rated capacity stated by the school bus manufacturer.
 7. A school bus driver shall close the service doors of a school bus before operating the school bus. The service doors shall remain closed whenever the school bus is in motion.
 8. A school bus driver shall not place the transmission in neutral or coast with the clutch disengaged on a downhill grade.
 9. The driver of a school bus equipped with a two-speed axle shall not shift the axle while descending any hill posted with grade warning signs.
 10. A school bus driver shall ensure that a school bus is not fueled in a closed building, while the school bus engine is running or while passengers are on board.
 11. A school bus driver or passenger shall not use tobacco in any form on a school bus.
 12. A school bus driver shall not carry on a school bus or consume any beverage containing any alcohol while on-duty with the employer or within eight hours before going on-duty with the employer.
 13. A school bus driver shall not eat or drink on a school bus unless the school bus is completely stopped.
 14. A school bus driver shall not at any time carry on a school bus or use a controlled substance.
 15. A passenger shall not carry on a school bus or consume while being transported in a school bus, any beverage containing any alcohol.
 16. A passenger shall not carry on a school bus or consume while being transported in a school bus, any dangerous or narcotic drug, as defined in A.R.S. § 13-3401, unless:
 - a. A medical practitioner authorized by the state to write a prescription for the dangerous or narcotic drug has prescribed the dangerous or narcotic drug for the passenger who is carrying or consuming it;
 - b. The school district governing board establishes written policies and procedures regarding the administration of a dangerous or narcotic drug by a trained district employee to a passenger who is being transported in a school bus; and
 - c. The parent or legal guardian of a passenger to whom a dangerous or narcotic drug is administered while being transported in a school bus provides prior written authorization for the dangerous or narcotic drug to be administered to the passenger by a trained district employee.
 17. A school bus driver shall not assume responsibility for transporting any medication, whether prescription or over-the-counter, that belongs to a passenger.
 18. A school bus driver shall not transport animals, insects, or reptiles in a school bus with the exception of service animals, as defined at A.R.S. § 11-1024(J), which assist disabled passengers.
 19. Except for eyeglasses, a passenger or school bus driver shall not carry or transport glass objects on a school bus.
 20. A school bus driver or passenger shall not carry on or transport in a school bus an explosive device, gun, knife, or other weapon as defined by school-district policy.
 21. A passenger shall not place any part of the passenger's body out of a school bus window or door except when exiting the school bus.
 22. When instruments or equipment related to musical or athletic events are transported on a school bus, the school bus driver shall transport them as follows:

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- a. Instruments or equipment shall not occupy seating space if needed for a passenger,
 - b. Instruments or equipment shall not be placed in the school bus driver's compartment or step-well of the school bus,
 - c. Instruments or equipment shall be under the passenger's control at all times or secured in the school bus, and
 - d. Instruments or equipment shall not block an aisle or emergency exit of the school bus at any time.
23. A passenger who carries onto a school bus an object other than an instrument or equipment related to musical or athletic events shall control the object at all times or secure the object in the school bus. If the passenger is not able to control or secure the object in the school bus, the passenger shall not carry the object onto the school bus.
 24. A school bus driver shall ensure that all objects inside the school bus are under a passenger's control or secured in a manner that prevents the objects from causing physical injury to others or affecting the safe operation of the school bus.
 25. A school bus driver shall not drive a school bus with a trailer or other vehicle attached to the school bus.
 26. A school bus driver shall stop the school bus and check the wheels and tires for wear, damage, and inflation after every two continuous hours of driving.
 27. All school buses shall have and school bus drivers shall use a two-way voice communication system. The two-way voice communication system shall only be used to assist the school bus driver with passenger transportation.
 28. Except as provided in subsection (D)(27), a school bus driver shall not use audio headsets, earphones, earplugs, Bluetooth devices, cellular phones, personal digital assistants, or other interactive wireless devices, whether or not hands-free, when the school bus is in operation.
 29. Except when complying with R13-13-108(D), if a school bus driver leaves the driver's compartment, the school bus driver shall set the parking-brake system, place a standard transmission in either first or reverse gear, place an automatic transmission in park or neutral, and turn off the ignition and remove the ignition key from an ignition that uses a key, or set the ignition power-deactivation switch of an ignition that does not use a key.
 30. Each time a school bus driver unloads passengers and it appears that no passengers remain on the school bus, the school bus driver shall inspect the interior of the school bus for passengers remaining and objects left on the school bus. If the school bus is equipped with a child alert notification system as described in R13-13-106(6), the school bus driver shall complete all procedures required by the child alert notification system, in addition to the school bus driver's inspection of the interior of the school bus.
 31. At least twice during every school year, a school shall conduct an evacuation drill of a school bus at the school that includes every passenger who rides a school bus and is in school on the day of the evacuation drill. At least 14 days before an evacuation drill, a school shall submit to the Department a written notice stating the date, time, and location of the evacuation drill. Each school bus driver shall participate in a minimum of two evacuation drills during every school year. Evacuation drills shall include:
 - a. Practice and instruction in the location, use, and operation of the emergency exits, fire extinguishers, first aid equipment, windows as a means of escape, and communication systems;
 - b. Practice and instruction in when and how to approach, load, unload, and move away from the school bus a minimum of 100 feet;
 - c. Instructions on how weather-related hazards affect emergency procedures; and
 - d. Instructions on the importance of orderly conduct.
 32. A white, flashing, strobe lamp as described in R13-13-107(17)(f) may be used only during conditions that produce low visibility or that are hazardous.
 33. An owner shall ensure that no lock, except as provided in R13-13-107(10)(h), is installed on any school bus emergency exit or service door.
 34. A school bus driver shall ensure that nothing obstructs or interferes with the use of any school bus emergency exit or service door.
 35. A school bus driver, passenger, or school administrator shall immediately report to the employer any violation of these rules or state statutes that the school bus driver, passenger, or school administrator reasonably believes threatens the health, safety, or welfare of a passenger.
- E. Reports and recordkeeping:**
1. Immediately following any accident involving a school bus, the school bus driver shall report the accident to the employer.
 2. Immediately upon receiving notification of any accident involving a school bus, the employer shall notify the Department of the accident by telephone. The employer shall submit written verification of the accident to the Department within 72 hours of the telephone notification.
 3. Immediately upon becoming aware of a violation of these rules or state statutes that a reasonable person could conclude caused injury to or threatened the health, safety, or welfare of a passenger, the employer shall notify the Department of the violation by telephone. The employer shall submit a written report of the violation to the Department within 72 hours of the telephone notification.
 4. No later than 14 days after an evacuation drill, a school district shall submit to the Department a written report of the evacuation drill identifying the school district, participating school, date, and number of participants.
 5. From the date on which a record is created, the employer shall maintain for three years the following written records for each school bus driver:
 - a. On a daily basis, the period of time each school bus driver is on-duty for the employer including the date, each start and quit time, and the total number of hours on-duty for the employer.
 - b. On a daily basis, the total number of hours on-duty for an entity other than the employer during the previous seven days.
 6. A school bus driver who performs any compensated work for an entity other than the employer shall provide the employer, in writing, the name and telephone number of the entity and the number of hours the school bus driver works each day for the entity.
 7. A school bus driver who receives a citation, whether on-duty or off-duty, shall immediately inform the employer by telephone about the citation and shall submit a copy of the citation to the employer within five days.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1).
 Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-

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13-104 recodified from R17-9-104 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-105. Special Needs Standards**A. General requirements:**

1. A school bus introduced to Arizona on or after May 31, 2008 used for transporting disabled passengers shall comply with the minimum standards applicable to school buses and the specifications contained in this Section. A school bus introduced to Arizona before May 31, 2008 used for transporting disabled passengers shall comply with the minimum standards in this Section or shall be maintained in accordance with the manufacturer's original specifications.
2. Any school bus that is used for transporting a passenger who uses a wheelchair shall be equipped with a wheelchair lift.
3. A wheelchair lift shall be located on the side of the bus body opposite the school bus driver. The wheelchair lift shall not be attached to the exterior sides of the school bus and shall be confined within the school bus body when not extended.
4. Any school bus that is used for transporting disabled passengers shall be equipped with a belt cutter that is accessible only to the school bus driver. The belt cutter shall be secured in a location within reach of the school bus driver while belted into the driver's seat. The school bus may be equipped with additional belt cutters. Additional belt cutters shall be accessible only to the school bus driver or adult aides or attendants.

B. Special-service entrance:

1. A school bus used for transporting disabled passengers shall have a special-service entrance of a width and depth to accommodate a wheelchair lift. The special-service entrance shall have a minimum clear opening of 30 inches horizontally to allow for the passage of a wheelchair.
2. The special-service entrance shall be located on the side of the bus opposite the school bus driver and far enough to the rear of the school bus to prevent the special-service entrance door from obstructing the service door when the special-service entrance door is open.
3. A drip molding shall be installed above the special-service entrance to divert water from the special-service entrance.
4. The frame surrounding the special-service entrance shall provide support and strength at least equal to at the conventional service and emergency doors.

C. Special-service entrance doors:

1. A school bus used for transporting passengers in wheelchairs shall provide a special-service entrance door not to exceed 50 inches in width.
2. Two doors may be used for a special-service entrance on a school bus, if the doors are equipped with a positive latching mechanism to prevent accidental opening.
3. The special-service entrance door shall be constructed to open toward the exterior of the school bus. A Type A school bus is exempt from this provision if its special-service entrance door is provided by the school bus chassis manufacturer.
4. The special-service entrance door shall have a fastening device attached to the school bus body to hold the special-service entrance door in an open position.
5. The special-service entrance door shall be weather-sealed by a waterproof cushion affixed to the door or door frame.

6. Door materials, panels, and structural strength of a special-service entrance door shall be equivalent to the standards contained in R13-13-107 for a service door and an emergency door. Color, rub rail extensions, if installed, lettering, and all exterior features shall match adjacent sections of the school bus body.

7. The window in the special-service entrance door shall be made of safety glass, mounted in a waterproof manner that is equal to the mounting of the other windows, and aligned with the side windows of the school bus.

8. A pressure switch shall be installed in the special-service entrance door frame that will actuate a visible signal located in the school bus driver's compartment when the ignition is in the "on" position to warn the school bus driver when the special-service entrance door is not closed.

9. A switch shall be installed in the special-service entrance door frame so the wheelchair lift will not operate when the special-service entrance door is closed.

D. Wheelchair lift:

1. A wheelchair lift shall be capable of lifting a minimum load of 800 pounds.
2. When the wheelchair-lift platform is raised to the maximum position, it shall be held in position by the wheelchairlift.
3. Controls shall be provided that enable an individual authorized by the school bus driver to activate the wheelchair lift from either inside or outside the school bus.
4. The wheelchair lift shall be equipped so it may be manually raised or lowered in the event of a power failure to the wheelchair lift.
5. The wheelchair lift shall contain a safety device to prevent the wheelchair-lift platform from falling.
6. The wheelchair lift shall be constructed so it allows the wheelchair-lift platform to rest completely on the ground.
7. All edges of the wheelchair-lift platform shall be designed to restrain the wheelchair and prevent the feet of an individual in the wheelchair from becoming caught during the raising or lowering process.
8. A barrier shall be attached along the outer non-loading edges of the wheelchair-lift platform that will prevent the wheelchair from rolling off the wheelchair-lift platform when the wheelchair-lift platform is placed in any position other than completely extended on ground level.
9. A self-adjusting, skid-resistant plate shall be installed on the loading edge of the wheelchair-lift platform to reduce the incline from the wheelchair-lift platform to ground level. This plate shall be used as a restraining barrier on the loading edge of the wheelchair-lift platform. The wheelchair-lift platform shall be skid-resistant.
10. A school bus may be provided with a battery to be used exclusively to operate the wheelchair lift. If a battery is installed for this purpose, an appropriate size circuit breaker meeting the wheelchair lift manufacturer's specifications shall be installed between the battery and the wheelchair lift motor. The circuit breaker shall be located as close to the power source as possible, but not within the school bus driver's compartment.
11. The wheelchair lift shall be equipped with an adjustable switch that limits the electrical power to the wheelchair-lift motor and a bypass valve to prevent pressure from building in the hydraulic system when the wheelchair-lift platform reaches the maximum up or down position.
12. A ramp may be carried on a school bus for use during an occurrence that requires evacuating the school bus. The

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ramp shall not be stored within the passenger compartment of the school bus.

E. Wheelchair and wheelchair-passenger securement:

1. Each wheelchair in a school bus shall be secured in a forward-facing position. Medical equipment and supplies required to accommodate a disabled passenger shall be secured in a school bus by means of alterations approved by the Department in accordance with R13-13-108(G).
2. Each wheelchair-securement system location in a school bus shall have a minimum clear floor area of 30 inches in width from the interior school bus wall to the aisle and a minimum of 48 inches in length. A wheelchair shall not be placed in a position that prevents passage through the special-service entrance.
3. Each wheelchair-securement system shall have four full-length tracks, with an L-track four-point tie-down configuration.
4. The wheelchair-securement system shall provide a minimum of four wheelchair-securement anchorages attached to the school bus floor with a minimum of two anchorages located at the rear of the space designated for a wheelchair and a minimum of two anchorages located at the front of the space.
5. The wheelchair-securement system shall provide a minimum of one wheelchair-securement device located in each of the rear anchorages and a minimum of one wheelchair-securement device located in each of the front anchorages.
6. A wheelchair space shall have a minimum of one wheelchair-passenger shoulder restraint anchorage attached to the interior wall of the school bus and a minimum of two wheelchair-passenger restraint anchorages located at the rear of the space.
7. Each wheelchair space shall have one wheelchair-passenger restraint. A school bus equipped with a wheelchair-passenger restraint shall have the following information available on the school bus:
 - a. A telephone number where information may be obtained about installation, repair, and parts; and
 - b. Instructions regarding use of the restraint, including a diagram showing the proper placement of the wheelchair and positioning of securement devices and occupant restraints, including correct belt angles.

F. Dome light: A dome light shall be placed in the interior ceiling of the school bus to illuminate the wheelchair lift area. The dome light shall be activated by a pressure switch located in the special-service entrance door or by a manually operated switch located in the interior of the school bus no more than one foot from the special-service entrance door. This switch shall be used exclusively for the dome light.

G. Aisles: All aisles leading to an emergency door from any wheelchair space shall be a minimum of 30 inches in width. The emergency door opening shall be a minimum of 30 inches in width.

H. Seating arrangements: All fixed seats in a special-needs school bus shall be forward facing.

I. Emblems: A school bus used for transporting disabled passengers shall display two International Symbol of Accessibility emblems. One emblem shall be placed below the upper window on the emergency door or below the window on the special-service entrance door, and the second emblem shall be placed below the windshield on the side of the bus or on the bumper opposite the school bus driver. The emblems shall be made of blue, reflective material and be a minimum of 6 inches and a maximum of 12 inches in width and height and

shall contain a reflective white wheelchair impression with a minimum of 1/8 inch reflective white border around the outer edges of the emblems.

J. Types A and B school buses used to transport disabled passengers shall comply with the specifications contained in this Section except:

1. A ramp may be installed in place of a wheelchair lift;
2. If a ramp is used, it shall be of a strength and rigidity to support a wheelchair, passenger, and an individual attending the wheelchair passenger. The ramp shall be equipped with a barrier on each longitudinal side to prevent the wheelchair from leaving the ramp;
3. The floor of the ramp shall be covered with nonskid material; and
4. A ramp shall not be carried in the passenger compartment of a school bus.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-105 recodified from R17-9-105 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4).

R13-13-106. Minimum Standards for School Bus Chassis

The chassis of a school bus introduced to Arizona on or after May 31, 2008 shall meet the requirements of this Section. The chassis of a school bus introduced to Arizona before May 31, 2008 shall meet the requirements of this Section or shall be maintained in accordance with the manufacturer's original specifications.

1. Air cleaner: An engine intake air cleaner shall be installed in the school bus that meets engine specifications defined by the school bus manufacturer.
2. Axles: The front and rear axles and suspension assemblies shall have a gross axle weight rating consistent with that stated by the chassis manufacturer on a notice located in the school bus driver's compartment.
3. Back-up alarm: If installed, an alarm that emits a warning sound when the school bus is backing shall conform to the following:
 - a. The alarm-signaling device shall be of electronic, solid state design and shall emit an audible sound of a minimum of 97 dB(A) measured at 4 feet, 0° access from the source of the sound.
 - b. The alarm-signaling device shall be wired into the backup light circuits and shall emit sound automatically when the gear shift lever is in "reverse" position.
 - c. The alarm-signaling device shall be attached to the school bus chassis or body behind the rear axle.
4. Brakes:
 - a. A school bus with a manufacturer-designed passenger capacity of 60 or less shall be equipped with a service-brake system that uses compressed air or hydraulic assist.
 - b. A school bus with a manufacturer-designed passenger capacity greater than 60 shall be equipped with a service-brake system that uses compressed air.
 - c. In addition to the service-brake system, a school bus shall be equipped with a parking-brake system to keep the school bus from moving when parked.

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- d. The service brakes in a compressed-air system shall be adjusted using the following criteria:

Type	Outside Diameter of Air Chamber	Brake Adjustment Limit
6	4 1/2 inches	1 1/4 inches
9	5 1/4 inches	1 3/8 inches
12	5 11/16 inches	1 3/8 inches
16	6 3/8 inches	1 3/4 inches
20	6 25/32 inches	1 3/4 inches
24	7 7/32 inches	1 3/4 inches
30	8 3/32 inches	2 inches
36	9 inches	2 1/4 inches

- e. The service brakes in a "long stroke" clamp type brake system shall be adjusted using the following criteria:

Type	Outside Diameter of Air Chamber	Brake Adjustment Limit
12	5 11/16 inches	1 3/4 inches
16	6 3/8 inches	2 inches
20	6 25/32 inches	2 inches
24	7 7/32 inches	2 inches
24*	7 7/32 inches	2 1/2 inches
30	8 3/32 inches	2 1/2 inches

*For 3" maximum stroke type 24 chambers

- f. The service-brake system in a compressed-air system shall contain an emergency-brake system that will activate when the air loss in the service-brake system reaches 20 to 40 pounds per square inch.
- g. A school bus using a compressed-air or hydraulic-assist service-brake system shall be equipped with a signal located in the school bus driver's compartment that emits a continuous audible or visible warning to the school bus driver when:
 - i. The air pressure available in a compressed-air braking system is 60 pounds per square inch or less, or
 - ii. There is a loss of fluid flow from the main hydraulic pump or loss of electric source powering the back-up system in a hydraulic-assist system.
- h. A school bus using a compressed-air service-brake system shall be equipped with one or two illuminated gauges located in the school bus driver's compartment that show the pounds per square inch of compressed air available for the operation of the brake.
- i. A compressed-air brake system with a dry reservoir shall have a one-way valve that will prevent the loss of compressed air between the dry reservoir and the source of compressed air.
- j. A brake system with a wet reservoir shall have a valve located at the bottom of the wet reservoir that operates automatically or can be operated remotely or manually to eject the moisture from the reservoir.
- k. Compressed-air or hydraulic-assist brake lines and booster-assist lines shall be installed in a manner that prevents heat, vibration, and chafing damage.
- l. The brake systems of Types C and D school buses shall be installed so the chassis components can be

- visually inspected to detect brake lining wear without removal of any of the chassis components.
- 5. Front bumper: The front bumper shall be positioned at the forward-most part of the school bus and extend to the outer edges of the school bus.
- 6. Child alert notification system: A school bus may be equipped with an electronic or mechanical child alert notification system. If a school bus is equipped with a child alert notification system, the device shall be installed in a manner that does not interfere with any other existing operating or electrical component. A child alert notification system in a school bus shall not have an override or bypass capability.
- 7. Clutch: The clutch torque capacity shall be equal to or greater than the engine torque output.
- 8. Color: The chassis, including wheels and front bumper, shall be painted black. The hood and fenders shall be painted National School Bus Yellow as described in R13-13-107(6).
- 9. Cooling system: A school bus shall be equipped with a cooling system that maintains the engine temperature operating range required to prevent damage to the school bus engine.
- 10. Drive shaft: Each section of the drive shaft to the rear driving axle shall be protected by a metal guard around its circumference to reduce the possibility of the drive shaft penetrating through the school bus floor or dropping to the ground.
- 11. Electrical system:
 - a. Battery:
 - i. The battery shall have a minimum cold-cranking capacity rating equal to the cranking current required by the engine for 30 seconds at 0° F. and a minimum reserve capacity rating of 120 minutes at 25 amperes.
 - ii. The battery shall have a higher capacity than specified in subsection (11)(a)(i) if optional equipment installed on the school bus requires the higher capacity.
 - iii. Because all batteries are to be secured in a sliding tray in the bus body as required by R13-13-107, chassis manufacturers shall mount batteries temporarily on the chassis frame, except that a van conversion or cutaway front-section chassis may be secured in accordance with the manufacturer's standard configuration. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack, and shall be of sufficient gauge to carry the required amperage.
 - b. Alternator:
 - i. All alternators shall conform to the recommended practices of Standard J180, January 2002 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, which is incorporated by reference and on file with the Department.
 - ii. All Type A-2 and Type B buses with a GVWR of 15,000 pounds or less shall have an alternator with a minimum of 130 amps.
 - iii. All Type A-2 and Type B buses with a GVWR over 15,000 pounds, and all Type C and D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting Standard J180, which is incorporated by reference in

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- subsection (b)(i), having a minimum output rating of 130 amps, and shall produce a minimum current output of 50% of the rating at engine idle speed. The alternator may be either pad-mounted or hinge-mounted.
- iv. Buses equipped with an electrically powered wheelchair lift or air conditioning may be equipped with a device that monitors the electrical system voltage and advances the engine idle speed when the voltage drops to, or below, a pre-set level.
 - v. A belt-driven alternator shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components.
 - vi. A direct-drive alternator may be installed instead of a belt-driven alternator.
 - vii. If the school bus is equipped with an air conditioning system, the alternator shall have a minimum charging rate of 160 amperes per hour.
 - viii. The alternator on a school bus shall contain a regulator to control the voltage to the battery.
- c. Wiring:
 - i. All wiring shall conform to the recommended practices of Standard J1292, October 1981 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
 - ii. All wiring shall use a standard color or number coding and each chassis shall contain a wiring diagram that details the wiring of the chassis.
 - iii. The chassis shall be equipped with a connection to provide electrical power to the school bus. The connection shall be located on the chassis cowl or on the engine compartment of a school bus designed without a chassis cowl. The connection shall contain terminals for the main 100 ampere body circuit, tail lamps, right-turn signal, left-turn signal, stop lamps, backup lamps, and instrument panel lights. The instrument panel lights shall have a rheostat control.
 12. Engine horsepower: The gross vehicle weight rating of a school bus shall not exceed 185 pounds for each engine horsepower as published by the manufacturer on a notice located on the school bus engine.
 13. Exhaust system:
 - a. The exhaust pipe, muffler, and tailpipe shall be located under the school bus body and attached to the chassis.
 - b. The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.
 - c. The exhaust system on a gasoline-powered chassis shall be insulated from the fuel tank and fuel tank connections by a shield at any point where the exhaust system is 12 inches or less from the fuel tank or fuel tank connections.
 14. Frame:
 - a. A school bus frame shall be of a design and strength capable of supporting the gross vehicle weight of the school bus.
 - b. A school bus frame shall not be altered for any purpose.
 - c. Holes in top or bottom flanges of frame rails are not permitted except as provided by the manufacturer. There shall be no welding to the frame rails except by the chassis or body manufacturer or the manufacturer's certified agent.
 - d. The school bus frame shall not be cracked, loose, sagging, or broken.
 - e. Brackets securing the cab or the body of the school bus to the frame shall not be loose, broken, or missing.
 - f. The frame rail flanges shall not be bent, cut, or notched, except as specified by the manufacturer.
 - g. All accessories mounted to the school bus shall be secured as specified by the manufacturer.
 - h. Holes shall not be drilled in the top or bottom rail flanges, except as specified by the manufacturer.
 15. Front fenders of a Type C school bus: The outer edges of the front fenders shall be wider than the outer edges of the front tires when the front wheels are in the straight-ahead position.
 16. Fuel system:
 - a. The fuel tank shall be vented to the outside of the school bus body so fuel spillage will not contact any part of the exhaust system.
 - b. On a Type B, Type C, or Type D school bus, no portion of the fuel system that is located outside of the engine compartment, except the filler tube, shall extend above the top of the chassis frame.
 - c. A fuel filter with replaceable element shall be installed between the fuel tank and engine.
 - d. The fuel line that supplies fuel to the engine shall be located at the top of the fuel tank.
 17. Horn: A school bus shall be equipped with at least one horn capable of producing a sound level between 82 and 102 dB(A) when tested according to the Standard J377, March 2001 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
 18. Instruments and instrument panel:
 - a. The chassis shall be equipped with the following instruments:
 - i. Speedometer;
 - ii. Odometer that will give accrued mileage to seven digits, including tenths of miles;
 - iii. Voltmeter or ammeter;
 - iv. Oil pressure gauge;
 - v. Water temperature gauge;
 - vi. Fuel gauge;
 - vii. Upper beam head lamp indicator;
 - viii. Brake system signal as required by R13-13-106(4)(f);
 - ix. Turn signal indicator; and
 - x. Air pressure or hydraulic gauge.
 - b. The instruments shall be mounted on the instrument panel in the school bus driver's compartment and visible to the school bus driver while seated in the driver's seat.
 - c. The instrument panel shall be equipped with a rheostat switch that controls the illumination to the instrument panel and the gear shift selector indicator.
 19. Oil filter: A replaceable element or cartridge-type oil filter shall be provided with a minimum capacity that meets or exceeds the capacity recommended by the manufacturer of the school bus engine.

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- 20. Openings: All openings in the floorboard and in the fire wall between the chassis and passenger compartment shall be sealed.
- 21. Splash guards:
 - a. A school bus shall be equipped with rear fender splash guards constructed of flexible rubberized material.
 - b. The splash guards shall be wide enough to cover the tire tread width, installed close enough to the tire tread surface to control side-throw of road surface material, and extend to within 8 inches of ground level.
- 22. Steering system:
 - a. Power steering is required on all school buses manufactured after January 1, 1984.
 - b. Bracing extending from the center of the steering wheel to the steering wheel ring shall not be cracked or missing.
 - c. The distance of movement of the steering wheel between two points of resistance shall not be greater than the following when measured with the engine running:

Steering wheel diameter	Power steering	Manual steering
16 in. or less	6 3/4 inches	4 1/2 in.
18 in.	7 1/8 inches	4 3/4 in.
20 in.	7 7/8 inches	5 1/4 in.
22 in.	8 5/8 inches	5 3/4 in.
 - d. There shall be clearance of at least 2 inches between the steering wheel and any object in the driver's compartment.
 - e. A non-adjustable steering column shall be fastened in a fixed position. An adjustable steering column shall be equipped with a locking mechanism.
 - f. The steering gear housing shall not have loose or missing mounting bolts. There shall not be cracks in the gear housing or its mounting brackets.
 - g. The connecting arm on the steering gear power source shall not be loose.
 - h. The steering wheel shall turn freely in both directions.
 - i. The steering system shall have a means for lubrication of all wear-points.
- 23. Suspension:
 - a. Shock absorbers:
 - i. A school bus shall be equipped with front and rear double-acting shock absorbers. Replacements to shock absorbers shall be made according to the specifications of the manufacturer's part number as stamped on the shock absorber.
 - ii. If a school bus is manufactured with tandem rear axles, rear shock absorbers are not required.
 - b. Suspension system:
 - i. Capacity of suspension assemblies shall be commensurate with the chassis manufacturer's gross vehicle weight rating.
 - ii. If leaf-type rear springs are used, they shall be a progressive rate or multi-stage design.
- 24. Tires and wheels:
 - a. Tires and wheels shall have an accumulated load rating at least equal to the gross vehicle weight rating.
 - b. Dual rear tires shall be provided on all school buses that have a gross vehicle weight rating of more than 10,000 pounds.

- c. Each tire on a particular axle shall be the same size.
- d. All tires on a school bus shall be bias or all tires on a school bus shall be radial and shall not differ more than one size between front and rear axles.
- e. On a Type C or D school bus, a spare tire, if present, shall be in a carrier mounted outside the passenger compartment.
- 25. Transmission: The school bus transmission shall have no fewer than three forward speeds and one reverse speed.
- 26. Turning radius:
 - a. A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, as measured to the edge of the front tire at the outside of a circle as the school bus moves within the circle.
 - b. A chassis with a wheelbase of more than 264 inches shall have a right and left turning radius of not more than 44 1/2 feet, as measured to the edge of the front tire at the outside of a circle as the school bus moves within the circle.
- 27. Weight:
 - a. The gross vehicle weight of a school bus shall not exceed the chassis manufacturer's gross vehicle weight rating for the chassis as recorded on a notice located in the school bus driver's compartment.
 - b. To calculate the gross vehicle weight of a school bus, add the chassis weight, the school bus body weight, the school bus driver's weight, and the total seated passenger weight.
 - i. For the purpose of calculation, the school bus driver's weight is 150 pounds.
 - ii. For the purpose of calculation, the passenger weight is 120 pounds per seated passenger.
 - c. The weight distribution of a school bus on a level surface that is fully loaded according to the gross vehicle weight rating shall not exceed the front axle gross weight rating or rear axle gross weight rating as recorded on a notice located in the school bus driver's compartment.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-106 recodified from R17-9-106 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4). Amended by final expedited rulemaking at 24 A.A.R. 2267, effective July 24, 2018 (Supp. 18-3).

R13-13-107. Minimum Standards for School Bus Body

The body of a school bus introduced to Arizona on or after May 31, 2008 shall meet the requirements of this Section. The body of a school bus introduced to Arizona before May 31, 2008 shall meet the requirements of this Section or shall be maintained in accordance with the manufacturer's original specifications.

- 1. Air conditioning system: The school bus may be installed with an air conditioning system. If installed, the air conditioning system shall:
 - a. Be of a mechanical vapor compression refrigeration type;
 - b. Be manufactured to conform to the requirements of Standard J639, June 2005 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warren-

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- dale, PA 15096-0001, incorporated by reference and on file with the Department;
 - c. Have sufficient power for simultaneous cooling, circulating, and dehumidifying the air;
 - d. Be provided with refrigerant that is nontoxic, non-flammable, and non-explosive;
 - e. Have all power and grounding installed according to the manufacturer’s specifications; and
 - f. Have exhaust system exit from the rear of the vehicle, and extend to, but not more than 2 inches beyond the outer edge of the rear bumper.
2. Aisle:
- a. The center aisle of a school bus shall have a clearance of not less than 12 inches at the bottom of the seat cushion, increasing to 15 inches at the top of the seat backs.
 - b. Aisles to side emergency doors shall have a minimum clearance of 12 inches which may be achieved by using flip-up type seats.
3. Auxiliary fan:
- a. An auxiliary fan, if installed, shall be placed in a location that does not obstruct the school bus driver’s view of any mirror located on the school bus.
 - b. An auxiliary fan, if installed, shall have a 6-inch nominal diameter, with the fan blades covered by a protective cage.
 - c. Each installed auxiliary fan shall be controlled by a switch that is independent of any other electrical system.
4. Battery:
- a. A battery shall be secured to a slide-out or swing-out tray in a vented compartment in the school bus body, so the battery is accessible to the outside for servicing. If the battery compartment has a door that is not removable, the door shall be secured by a fastening device when the door is in a closed position. If the battery compartment has a removable cover, the cover shall be secured by a fastening device when the cover is in place.
 - b. The word “Battery” shall be printed in unshaded black letters that are no more than 2 inches in height on the battery-compartment door or cover or immediately above the battery-compartment door or cover.
 - c. Buses with a battery located under the engine hood are exempt from these provisions.
5. Belt cutter: A school bus with passenger seat belts shall be equipped with a belt cutter having a full width hand-grip and a protected, replaceable or non-corrodible blade. The belt cutter shall be mounted in a location accessible to the seated driver, and in an easily detachable manner. The belt cutter shall be accessible only to the school bus driver.
6. Color:
- a. A school bus body shall be painted National School Bus Yellow according to the following specifications and tolerances:

Description	Reflectance		Chromaticity	
	Y	X	Y	X
Centroid	41.5%	.5139	.4434	
V+ Light Limit	42.9%	.5139	.4427	
V- Dark Limit	39.8%	.5133	.4422	
H+ Green Limit	41.6%	.5123	.4368	

- | Description | Reflectance | | Chromaticity | |
|----------------|-------------|-------|--------------|---|
| | Y | X | Y | X |
| H- Red Limit | 41.7% | .5168 | .4489 | |
| C+ Vivid Limit | 41.5% | .5188 | .4457 | |
| C- Weak Limit | 41.5% | .5095 | .4405 | |
- b. The bumpers, lamp hoods, lettering, and rub rails on a school bus body shall be black.
7. Crossing control arm:
- a. A school bus may be equipped with a crossing control arm. If installed, all components and all connections of the crossing control arm shall:
 - i. Meet the requirements set forth in Standard J1133, November 2004 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department;
 - ii. Be mounted on the right side of the front bumper;
 - iii. When opened, extend in a line parallel to the body side and aligned with the right side wheel;
 - iv. Be weatherproofed;
 - v. Incorporate system connectors (electrical, vacuum, or air) at the gate and be easily removable to allow for towing of the school bus;
 - vi. Be constructed of non-corrodible or nonferrous material, or treated in accordance with the school bus body sheet metal specification;
 - vii. Have no sharp edges or projections that could cause injury or be a hazard to students;
 - viii. Be rounded at the end of the crossing control arm;
 - ix. Extend approximately 70 inches (measured from the bumper at the arm assembly attachment point) when in the extended position;
 - x. Not extend past the end of the bumper when in the stowed position;
 - xi. Extend simultaneously with the stop signal arm, activated by the stop signal arm control; and
 - xii. Include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. The device shall not interfere with the normal operations of the crossing control arm.
 - b. An automatic recycling interrupt switch may be installed for temporarily disabling the crossing control arm.
8. Defrosters:
- a. Defrosting and defogging equipment shall direct a flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog, and snow.
 - b. The defrosting system shall conform to Standards J381 September 2000 (no later amendments or editions) and J382, September 2000 (no later amendments or editions), both published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001 incorporated by reference and on file with the Department.
 - c. An auxiliary fan shall not to be used in place of a defrosting and defogging system.

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- d. A portable heater shall not be used in place of a defrosting or defogging system.
9. Electrical wiring:
- a. All electrical wiring on a school bus shall conform to the standards contained in Standard J1292, October 1981 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001 and incorporated by reference and on file with the Department.
 - b. Electrical wiring that is coded by color shall be coded as follows:
 - i. Left Rear Directional Light: Yellow
 - ii. Right Rear Directional Light: Dark Green
 - iii. Stoplights: Red
 - iv. Back-up Lights: Blue
 - v. Taillights: Brown
 - vi. Ground: White
 - vii. Ignition Feed, Primary Feed: Black
 - c. Circuits: Electrical wiring circuits shall be protected by a fuse, circuit breaker, or Field Effect Transistor and shall be coded by number or color on an electrical wiring diagram located in the driver's compartment or the electrical access panel door. There shall be at least seven circuits as follows:
 - i. Head, tail, stop, and instrument panel lamps;
 - ii. Clearance and step-well lamps;
 - iii. Dome lamps;
 - iv. Ignition and emergency door signal;
 - v. Turn signal lamps;
 - vi. Alternately flashing signal lamps; and
 - vii. Heaters and defrosters.
 - d. All electrical wires passing through metal openings shall be protected by a non-metal grommet.
 - e. Electrical wires not enclosed within the school bus body shall be fastened at intervals of not more than 18 inches.
10. Emergency exits: A door, push-out window, or roof hatch used as an emergency exit shall conform to the following:
- a. On the inside and outside of a school bus, the words "EMERGENCY EXIT" or "EMERGENCY DOOR" shall be printed in black, unshaded letters at least 2 inches high above an emergency door or push-out window and at least 1 inch high on a roof hatch.
 - b. Each emergency exit shall open toward the exterior of the school bus and shall be labeled within 6 inches of the interior release mechanism with black lettering at least 3/8 of an inch high instructing how the exit is to be opened.
 - c. On a Type A school bus with double rear doors used as emergency exits, the rear doors shall be secured with upper, center, and lower latches to the door frame.
 - d. The upper portion of each door used as an emergency exit shall be equipped with a window made of safety glass with an area not less than 400 square inches. A door located in the rear end of the school bus used as an emergency exit shall also contain a lower window panel of safety glass of not less than 350 square inches. A Type A school bus that contains double rear doors used as emergency exits is exempt from this provision.
 - e. There shall be no steps on the outside of the school bus leading to an emergency exit.
 - f. A header pad filled with a material to protect against injury shall be attached to the top edge of the frame of a door used as an emergency exit. The header pad shall be a minimum of 3 inches wide and 1 inch thick and extend the full width of the door opening.
 - g. Each emergency exit shall be equipped with a latch that opens from the inside of the school bus and is connected to an electrical buzzer audible in the driver's compartment that actuates when the latch is being released.
 - h. Except for interlock/barrel bolt devices, if a lock is installed on an emergency exit, the lock shall be secured only by using a key and shall deactivate the ignition system of the school bus when locked.
11. Emergency equipment:
- a. All emergency equipment shall be mounted in the driver's compartment or adjacent to either side of the service entrance and shall be readily accessible. If the emergency equipment is mounted within a closed compartment, the compartment shall be clearly labeled as containing the emergency equipment.
 - b. Fire extinguisher:
 - i. A school bus shall be equipped with a minimum of one 5-pound pressurized, dry, chemical fire extinguisher of a type rated not less than 2A-10-BC by the Underwriter's Laboratories, Inc., as described by the National Fire Protection Association, Inc., One Batterymarch Park, Quincy, MA 02269, in NFPA 10: Standard for Portable Fire Extinguishers, published in 2006 (no later amendments or editions), incorporated by reference and on file with the Department.
 - ii. A pressure gauge shall be mounted on the fire extinguisher to be readable in its mounted position.
 - iii. The operating mechanism of the fire extinguisher shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.
 - c. Warning devices: A school bus shall have a minimum of three reflective triangle road-warning devices that comply with the standards at 49 CFR 571.125, October 2006 (no later amendments or editions), published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
12. Floor:
- a. The floor beneath the seats, including the tops of the wheel housings and the floor in the driver's compartment, shall be covered with fire-resistant floor-covering material having a minimum overall thickness of .10 inch.
 - b. The aisle floor shall be covered with a fire-resistant ribbed or non-skid floor-covering material with a minimum thickness of .10 inch.
 - c. The floor-covering material shall be bonded to the floor with a waterproof adhesive and shall not crack when subjected to changes in air temperature.
13. Handrail: A handrail at a school bus service entrance shall be secured to the school bus wall in a manner that causes the crevice formed by the distance between the handrail and the wall to pass the inspection procedure described by the National Highway Traffic Safety Administration, Washington, D.C. 20590, in School Bus

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Safety Assurance Program Recall Listing: January 1991 Through June 1996 (no later amendments or editions), incorporated by reference and on file with the Department.

14. Heating system:
 - a. Heaters shall be of the hot-water type.
 - b. The heating system shall be capable of maintaining bus interior temperatures as specified in the procedure set forth in Standard J2233, June 2002 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
 - c. A minimum of one heater shall be a fresh-air or combination fresh-air and recirculating-air type.
 - d. If more than one heater is used, additional heaters may be of recirculating-air type.
 - e. All heater hoses shall be secured in all areas of the school bus body and chassis to prevent wear due to vibration. Heater lines in the interior of the bus shall be covered by a protective shield to prevent scalding of the driver or passengers.
 - f. Except on Type A school buses, the heater system shall include shutoff valves installed at the engine in the water pressure lines and return lines.
15. Identification:
 - a. Only signs, lettering, and objects approved by state law or these rules shall appear on the interior or exterior of a school bus, including all glass areas.
 - b. Each school bus owned by a school or a private company shall display either the name of the school and school number, if any, or the name of the private company on each exterior side of the school bus between the rub rails at the center line and seat cushion levels in black unshaded letters that are at least 5 inches in height. Additionally, a school bus owned by a private company that displays the name of the school and school number as described above, may display the company's name on each exterior side of the school bus below the floor line in black unshaded letters that are a maximum of 2 inches in height.
 - c. An identification number assigned to a school bus by an owner shall be placed on the front and rear bumpers of the school bus and on each exterior side of the school bus below the floor line rub rail and forward of the centerline of the school bus. The identification number on each bumper shall be National School Bus Yellow. The identification number on each exterior side shall be black. Each identification number shall be a minimum of 5 inches in height.
 - d. In addition to an identification number, a school bus may be identified by an emblem placed on the loading side of the front bumper or the exterior wall of the loading side below the floor line rub rail and forward of the center line of the school bus, or both. The emblem shall be painted or decaled on or attached to a magnetic backing.
 - e. In addition to an identification number, a school bus may display a route identification sign. If displayed, the route identification sign shall:
 - i. Be installed with a heavy duty Velcro, magnetic, screw-type or similar fixture;
 - ii. Be a minimum of 5 inches in height; and
 - iii. Be located on a flat surface of the bus body, excluding glass.
16. Interior: If the ceiling is constructed with overlapping panels, the first panel placed in the ceiling shall be overlapped by the following panel and each panel shall consecutively overlap to the rear end of the school bus. Exposed edges in the interior of the school bus shall be beaded, hemmed, flanged, or rounded to eliminate sharp edges.
17. Lamps and signals:
 - a. All lamps on the exterior of a school bus shall conform to the provisions contained in 49 CFR 393.9 et seq. of the Federal Motor Carrier Safety Regulations, October, 2006 (no later amendments or editions) published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
 - b. Interior lamps shall be provided that illuminate the center aisle and step well.
 - c. Alternately flashing signal lamps:
 - i. When a school bus is equipped with a four-lamp system, the system shall consist of two red alternately flashing signal lamps located one on the left and one on the right above the rear windows of the school bus and two red alternately flashing signal lamps located one on the left and one on the right above the windshield.
 - ii. When a school bus is equipped with an eight-lamp system, the four red alternately flashing signal lamps shall be installed as described in subsection (14)(c)(i) and the four amber alternately flashing signal lamps shall be installed as follows: one amber alternately flashing signal lamp shall be located adjacent to each red alternately flashing signal lamp, at the same level, but closer to the vertical centerline of the school bus. The system of red and amber alternately flashing signal lamps shall be wired so the amber alternately flashing signal lamps are activated manually and the red alternately flashing signal lamps are activated automatically or manually.
 - iii. Except for LED lamps, each alternately flashing signal lamp shall be covered by a lamp hood.
 - d. Turn signal and stop lamps:
 - i. Except as provided in subsections (17)(d)(iii) and (17)(d)(iv), all school buses shall be equipped with amber side-mounted turn signals. The turn signal lamp on the left side of the bus may be mounted rearward of the stop signal arm and the turn signal lamp on the right side may be mounted rearward of the entrance door.
 - ii. Except on Type A school buses, a school bus body shall be equipped with rear turn signal lamps that are at least 7 inches in diameter, or if the lamp shape is other than round, a minimum of 38 square inches of illuminated area. The lens area of the rear turn signal lamps on Type A school buses shall be at least 21 square inches. The rear turn signal lamps shall be connected to the hazard warning switch located in the driver's compartment to allow the school bus driver to activate simultaneous flashing of

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- turn signal lamps when needed as a traffic hazard warning. The rear turn signal lamps shall be located to the far left and right sides of the flat surface of the rear of the school bus body and below the rear window.
- iii. A Type C school bus may have a double-faced turn signal lamp that is visible from the front and rear of the school bus and mounted on the tops or sides of both front fenders or may have a turn signal lamp mounted on the left and right sides of the grill and may have a turn signal lamp mounted on each side of the school bus body between the window line and the second rub rail and forward of the vertical centerline.
 - iv. A Type D school bus may have a turn signal lamp mounted at the front of the school bus body above each head lamp and may have a turn signal lamp mounted on each side of the school bus body between the window line and second rub rails and forward of the vertical centerline of the school bus.
 - v. A 7 inch diameter stop lamp, or if the lamp shape is other than round, a stop lamp with a minimum of 38 square inches of illuminated area shall be located toward the centerline and adjacent to each of the rear turn signal lamps.
 - e. Backup lamps: A school bus shall be equipped with two backup lamps with clear lenses, located one on the right and one on the left rear panels below the rear windows.
 - f. White flashing strobe lamp: If used on a school bus, a strobe lamp shall have a single clear lens that emits light 360 degrees around its vertical axis and shall be located on the longitudinal centerline of the school bus roof 1/3 to 1/2 of the distance forward from the rear of the school bus body unless this placement restricts the view of the strobe lamp.
 - i. If the view of the strobe lamp is restricted when the strobe lamp is located 1/3 to 1/2 of the distance forward from the rear of the school bus body, the strobe lamp may be mounted immediately to the rear of the roof hatch.
 - ii. The strobe lamp shall be controlled by a manual switch located in the driver's compartment.
 - iii. A pilot lamp shall be located in the driver's compartment to show the school bus driver that the strobe lamp is activated.
18. Mirrors:
- a. Interior mirror: The interior mirror shall be made of either laminated glass or glass bonded to a backing that will retain the glass in the event of breakage. The interior mirror in Types B, C, and D school buses shall be a minimum of 6 inches in height and 30 inches in length surrounded by a frame with rounded corners. The interior mirror in Type A buses shall be a minimum of 6 inches in height and 16 inches in length.
 - b. Exterior mirrors: A school bus shall comply with the requirements contained in 49 CFR 571.111, October 2006 (no later amendments or editions), published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
19. Noise suppression switch: A school bus shall be equipped with a manual noise suppression switch. Identification shall be provided on or adjacent to the switch, in order to clearly state its purpose and distinguish it from other controls. This switch shall be an on-off type that deactivates body equipment that produces noise, including, at least, the AM-FM radio, heaters, air conditioners, fans, and defrosters. This switch shall not deactivate safety systems, such as windshield wipers or lighting systems.
20. Overall length: The overall length of a school bus shall not exceed 45 feet including accessories.
 21. Overall width: The overall width of a school bus shall not exceed 102 inches excluding mirrors.
 22. Rear bumper:
 - a. The rear bumper shall be made of a minimum of 3/16 inch thick pressed steel that is a minimum of 8 inches in total height.
 - b. The rear bumper shall be wrapped around the back corners of the bus and shall extend toward the front of the school bus for at least 12 inches as measured from the rear-most point of the school bus body at the floor line.
 - c. The rear bumper shall be attached to the chassis frame and braced to support the rear corners of the bumper.
 - d. The rear bumper shall extend at least 1 inch beyond the rear-most part of the school bus body as measured at the floor line.
 - e. The rear bumper shall not be equipped with foot-holds or handles.
 - f. A Type A school bus equipped with the chassis manufacturer's rear bumper is exempt from subsections (22)(a) through (22)(c).
 23. Restraining barrier:
 - a. The restraining barrier shall be a minimum of 38 inches high as measured from the interior floor of the school bus to the top of the restraining barrier.
 - b. The restraining barrier shall be the same width as the seat directly behind the restraining barrier.
 24. Rub rails:
 - a. There shall be no fewer than two rub rails located on a school bus as follows:
 - i. One rub rail shall be located on each side of the school bus approximately at seat cushion level and shall extend from the rear post of the service door frame completely around the school bus body, excluding the emergency door, to the front post of the school bus driver's window.
 - ii. One rub rail shall be located on each side of the school bus approximately at the floor line and shall extend from the rear post of the service door frame to the rear corner post of the school bus body and from the front post of the school bus driver's window to the rear corner post on the driver's side
 - b. Rub rails are not required on emergency doors, special-service entrance door, access panels and compartment doors, and wheel well openings.
 - c. Each rub rail shall be attached on the outside of the school bus body at each structural post in the school bus body.
 - d. Each rub rail shall be a minimum of 4 inches in width and constructed of corrugated or ribbed 16-gauge steel.
 25. Seat belt for school bus driver: A seat belt for the school bus driver shall be installed in the driver's compartment. The seat belt shall be equipped with a retractor on each

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- side of the school bus driver's seat to keep the seat belt retracted and off the floor when not in use.
26. Seats:
- a. Each seat shall have a minimum depth of 15 inches measured from the front of the seat cushion to the seat back.
 - b. Each seat shall be a minimum of 38 inches in height measured from the interior floor of the school bus to the top of the back cushion.
 - c. Seat spacing shall meet the requirements of 49 CFR 571.222, October 2006 (no later amendments or editions), published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328, incorporated by reference and on file with the Department. Seat spacing shall not be less than 24 inches between the front of a seat back cushion to the back surface of the cushion on the preceding seat. Seat spacing shall be measured at cushion height, at the center of the seat, on a plane parallel to the center line of the bus. The seat upholstery may be placed against the seat cushion padding, but without compressing the padding, before measurement is taken.
 - d. The school bus driver's seat shall be adjustable, without the use of tools, both vertically and horizontally for a minimum of 4 inches. Seats with vertical adjustments are not required on Types A and B school buses.
27. Service door:
- a. The service door shall be located on the right side of the school bus opposite the school bus driver and within direct view of the school bus driver when seated in the school bus driver's seat. Types A and B school buses are exempt from this provision.
 - b. The service door shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches. Type A school buses shall have a service door with a minimum opening of 1200 square inches.
 - c. Windows in the upper and lower panels of the service door shall be made of safety glass. The bottom of each lower window panel shall be no more than 10 inches from the top surface of the lower step of the service entrance. The top of each upper window panel shall be no more than 6 inches below the top of the service door. Type A buses are exempt from this provision.
 - d. To protect passengers' fingers, a flexible rubber material shall be attached by number 10 3/4 inch metal screws to the opening and closing edges of the service door. Type A school buses are exempt from this provision.
 - e. The service door shall open towards the exterior of the school bus. A Type A school bus is exempt from this provision if the service door is provided by the school bus chassis manufacturer.
 - f. A header pad, filled with a material to protect against injury, shall be attached to the top edge of the frame of the service door. The header pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the service entrance.
 - g. A Type A school bus with the chassis manufacturer's standard service entrance is exempt from subsections (27)(a) through (27)(d).
28. Steps:
- a. The risers of the steps in the service entrance shall be equal. When plywood is laid over the steel floor of the school bus, the height of the top step may be increased by the thickness of the plywood.
 - b. The first step at the service entrance shall be no less than 10 inches and no more than 16 inches from the ground.
 - c. Steps shall be enclosed in the school bus body.
 - d. Steps shall not extend beyond the side of the school bus body.
 - e. A handrail not less than 10 inches in length shall be provided inside the doorway.
29. Step treads:
- a. All steps, including the floor-line platform area, shall be covered with ribbed or non-skid floor-covering material that is mounted on a metal plate.
 - b. The metal back of the step tread shall be a minimum 24-gauge cold rolled steel and shall be permanently bonded to the ribbed or non-skid material.
 - c. If ribbed material is used, the ribbed design shall run from the risers toward the service entrance. Each step tread shall have a 1 1/2 inch white nosing.
30. Stirrup steps: There shall be a handle and at least one folding stirrup step or recessed foothold located on each side of the front of a school bus for accessibility for cleaning the windshield and lamps. Type A school buses are exempt from this provision.
31. Stop signal arm:
- a. School buses shall be equipped with a stop signal arm on the left side of the school bus body that extends 90° from the school bus body when opened.
 - b. The stop signal arm shall be either air or electrically driven, and meet the requirements of Standard J1133, November 2004 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
 - c. The stop signal arm shall be an 18-inch octagon, constructed of a red material that reflects light, with the word "STOP" printed on both sides in white letters not less than 5 inches high. Additionally, the word "STOP" may be illuminated by a light-emitting diode system on both sides of the stop signal arm.
32. Sun shield: An interior adjustable transparent sun shield or visor not less than 6 inches x 30 inches with a finished edge shall be installed over the windshield in the driver's compartment. School buses with a gross vehicle weight rating of 10,000 pounds or less are exempt from this provision.
33. Tailpipe:
- a. The tailpipe shall extend to, but not more than 2 inches beyond, the outer edge of the rear bumper;
 - b. The tailpipe shall exit in the rear of the vehicle behind the rear drive axle, and shall be placed according to the manufacturer's specifications; and
 - c. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.
34. Undercoating:
- a. The entire underside of the school bus body, including floor sections, cross member and below-floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued to the bus body manufacturer notarized certification that materials meet or exceed all perfor-

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- mance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, Coating Compound, Bituminous, Solvent Type, Underbody (For Motor Vehicles), February 2, 1973 (no later amendments or editions), published by the General Services Administration acting as an agent for the Superintendent of Documents, Washington D.C. 20402, and incorporated by reference and on file with the Department. Modified test procedures shall be used for the following requirements:
- i. Salt spray resistance – test modified to 5% salt and 1,000 hours,
 - ii. Abrasion resistance, and
 - iii. Fire resistance.
- b. Test panels shall be prepared in accordance with paragraph 4.6.12 of Federal Specification TT-C-520B, with a modified procedure requiring that the test shall be made on a 48-hour air-cured film at a thickness recommended by the material manufacturer.
 - c. Undercoating is not required if the underside of the school bus is constructed of noncorrosive material.
 - d. The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in the cured film.
35. Ventilation: An immovable, non-closing exhaust ventilator shall be installed in the school bus roof.
 36. Wheel housing:
 - a. The wheel-housing opening shall be large enough to allow for the removal of the tire and wheel.
 - b. The wheel housing shall be constructed of 16-gauge steel or fiberglass of equal strength and sealed to the school bus floor.
 - c. The wheel housing shall not extend more than 12 inches above the floor inside the school bus body and shall not extend into the emergency door opening.
 - d. The wheel housing shall provide clearance for tire chains installed on the tires of the driving wheels.
 37. Windows: Each side window in the passenger compartment of a school bus body shall provide an unobstructed opening of at least 190 square inches when the window is open.
 38. Windshield washer system: A windshield washer system that provides an application of cleaning solution to the windshield shall be installed.
 39. Windshield wipers:
 - a. A windshield wiping system with a minimum of two speeds shall be provided.
 - b. The windshield wipers shall be operated by one or more air or electric motors.
- Historical Note**
- Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-107 recodified from R17-9-107 at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4).
- R13-13-108. Inspection, Maintenance, and Alterations**
- A. A school bus shall be inspected by the Department before the school bus is introduced into Arizona to transport passengers.
 1. After inspecting a school bus, the Department shall place a decal that contains a number used by the Department to identify the school bus above the school bus driver's side window in the driver's compartment. This decal shall not be removed from the school bus while it is operated in Arizona except by the Department. Before the school bus is transferred or retired from service, the school bus owner shall contact the Department to have this decal removed.
 2. If the Department finds that no major defect exists on a school bus, the Department shall place a safety inspection decal that contains the month and year of inspection on the right side of the centerline of the windshield of the school bus in a position that does not interfere with the school bus driver's line of vision.
 3. If the Department finds a major defect on the school bus, the Department shall place the school bus out of service. Before the school bus may be placed back into service, the Department shall reinspect the school bus to determine that the major defect has been corrected. If the major defect has been corrected, the Department shall place a safety inspection decal on the school bus in accordance with subsection (A)(2).
 4. If the Department finds a minor defect on a school bus, the Department shall issue an inspection order, but the school bus may be operated to transport passengers while the minor defect is being corrected. A copy of the inspection order shall be returned to the Department within 15 working days from the date of inspection and shall show that the minor defect has been corrected unless, in accordance with the provisions of subsection (A)(5), the school bus owner obtains an extension of time to correct the minor defect.
 5. Upon receipt of a written request from the school bus owner, the Department shall grant one or more extensions of time to correct a minor defect if:
 - a. The school bus owner submits to the Department written documentation that the:
 - i. School bus owner's action or inaction did not cause or contribute to the delay in completing the repair;
 - ii. School bus owner has secured a written estimated expedited delivery or completion date from the provider of the materials or services required to complete the repair; and
 - iii. School bus owner made reasonable attempts to secure the materials or services, or materials or services of equivalent quality, at a substantially similar price from alternate sources; and
 - b. The Department determines that an extension of time to correct the minor defect will not increase the probability of an accident involving the school bus or passengers or the risk of injury to the school bus driver or passengers.
 6. Each extension of time shall be for 60 days or less. The Department shall determine the length of each extension of time after giving consideration to the information provided under subsection (A)(5)(a). When the minor defect is corrected, the school bus owner shall return to the Department a copy of the inspection order issued by the Department.
 7. If a minor defect on a school bus is not corrected within 15 working days or at the end of an extension period, if applicable, the Department shall remove the safety inspection decal and the school bus shall be placed out of

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service until further inspection by the Department shows that the minor defect is corrected.

- B. The Department shall use the following criteria to determine whether a major or minor defect is present on a school bus introduced into Arizona on or after May 31, 2008. For a school bus introduced into Arizona before May 31, 2008, the Department shall determine whether the school bus is in an unsafe

condition by using the following criteria or if the item does not comply with the criteria due to its original design, the Department shall determine if the school bus is in an unsafe condition by determining if the school bus is maintained in accordance with the manufacturer’s original design specifications for the specific make and model of school bus.

INSPECTION ITEM	MAJOR DEFECT	MINOR DEFECT
Air conditioning system, if installed	Missing hose covers or trim panels Missing air conditioning louvres Loose or missing air conditioning mounting fasteners Refrigerant leaks from evaporators or hoses in the interior of the bus Broken compressor brackets Broken mounting bolts Electrical wiring hanging out of evaporator covers Missing evaporator covers Missing air diffusers Evaporators not secured to ceiling or bulkhead	Broken or loose evaporator covers Unsecured refrigerant hoses Loose, missing or severely cracked belts
Alarm, back-up, if installed		Low volume Not working
Auxiliary fan, if installed	Obstructs school bus driver’s view of any mirror Used in place of defrosting or defogging system Not covered by protective cage	Incorrect size Not controlled by independent switch
Battery (Types C and D buses only)	Not mounted according to the manufacturer’s instructions	Incorrect or no identification
Belt cutter	Missing	
Body fluid cleanup kit	Absence of body fluid cleanup kit Any item missing from body fluid cleanup kit	
Brakes, compressed air	Inoperative or missing visual or audible low air signal Compressed-air gauge missing Grease or oil leakage into brake system Exposed or damaged ply on any air hose Air capacity less than 90 pounds per square inch at idle speed Wet-reservoir valve missing or inoperative Leaking, cracked, or broken hose or connection Audible air leak Pushrod exceeds limitation Low-air warning system does not activate at 60 psi and remains activated at less than 60 psi	
Brakes, hydraulic-assisted	Inoperative or missing visual or audible signal	
Brakes, emergency-brake system	Inoperative Does not activate when service brake system reaches 20 to 40 pounds psi	
Bumpers	Break or rip Loose bumper Foothold or handle present on rear bumper	Not painted black

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Cooling system		Leak in system Fluid level in radiator not full
Crossing control arm, if installed	Has sharp edges or projections that could injure a student Will not retract	Not working Fails to open completely
Defroster	Inoperative Ventilation opening blocked	
Drive shaft	Absence of protective metal guard installed by the manufacturer around the drive shaft to any driving axle	
Dust boots	Missing, torn, split, or loose around floor-mounted gear shift, parking brake handle, or steering column.	
Emergency warning devices	Having fewer than two operable	Missing one
Emergency door	Inoperative latch Broken or missing portion of seal around door Window not of safety glass Inoperative warning device Lock is not the ignition shut-off type	No header pad
Emergency exit	Inoperative warning device or latch on all emergency exits except roof exit Not properly identified Header pad missing or damaged Broken seal around window	Inoperative roof exit
Engine compartment	Inoperative hood latch	Deterioration of hose, belt, or wiring Deterioration of battery hold-down clamp, corrosive acid buildup on terminal
Exhaust system	Exhaust leak Exhaust tailpipe extends more than 2 inches beyond the outer edge of the rear bumper or fails to terminate flush with the outside edge of the school bus body in the rear of the school bus	Exhaust pipe bracket not attached to the chassis and the tailpipe End of tailpipe pinched or bent
Exterior paint		Exposed metal or base primer Incorrect color
Fire extinguisher	Absence of fire extinguisher Not at full charge	Not mounted in required position
First-aid kit	Absence of first-aid kit Three or more items missing from first-aid kit	One or two items missing from first-aid kit
Frame	Crack in frame Cracked, loose, or missing body mount or body-mount bolt Welded repair not performed by body or chassis manufacturer or manufacturer's certified agent	
Fuel system	Fuel tank not mounted to the chassis frame or not vented to outside of engine compartment Fuel system extends above chassis frame (does not apply to filler tube or Type A bus) Fuel tank bracket cracked or broken Leaking tank or fuel line Fuel line attached to bottom of fuel tank Missing or improper fuel cap	

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Handrail	Handrail does not pass the inspection procedure described in R13-13-107(13)	
Heating system	Heater missing or inoperative Heater line in interior of school bus not covered by protective shield No shutoff valve	Unsecured heater hose Inadequate heat-producing capacity
Horn (Air or electrical)	Missing or inoperative	
Instrument panel	Missing or inoperative ignition power-deactivation switch if the ignition does not use a key. Any inoperative gauge or switch, except auxiliary fan switch Improper illumination	Inoperative auxiliary fan switch
Interior, aisles	Incorrect clearance	
Interior, seats	Broken, cracked, exposed, or loose seat frame Screw or mounting bolt missing	
Interior, floor covering	Hole Improper material Improperly bonded Loose metal trim	
Lamps, clearance	Inoperative Cracked, broken, or missing lens	Incorrect color Dust behind lens
Lamps, head	Low beam inoperative Not mounted as required by 49 CFR 393.24 Both high beams inoperative	One high beam inoperative Inoperative dimmer switch on a bus not operated when head lamps are required Cracked, broken, or missing lens
Lamps, back-up	Inoperative	Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, interior Over aisle		Inoperative Cracked, broken, or missing lens
Lamps, interior Over step-well	Inoperative	Cracked, broken, or missing lens
Lamps, turn signal	Inoperative	Cracked, broken, or missing lens Dust behind lens Incorrect size Incorrect location
Lamps, strobe, if installed	Pilot or strobe lamp missing or inoperative Cracked, broken, or missing lens Incorrect color Incorrect location	
Lamps, identification		Inoperative Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, hazard	Inoperative	
Lamps, stop	Both inoperative	One inoperative Cracked, broken, or missing lens Dust behind lens

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Lamps, tail	Both inoperative	One inoperative Cracked, broken, or missing lens Dust behind lens
Lamps, side marker		Inoperative Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, alternately flashing signal	One or more inoperative lamps	Incorrect color Lamp hood missing Cracked, broken, or missing lens Dust behind lens
Lettering and numbering		Missing any lettering or numbering Incorrect size, color, or location Unauthorized sign, letter, or object
Mirrors, cross-view	Missing Broken or loose mounting Broken or clouded glass	
Mirrors	Interior or exterior mirror missing Loose or broken mounting bracket Crack, break, or flaking of reflective material affixed to back of mirror glass Crack or break of mirror glass Loose or missing mounting bracket bolt or screw Incorrect size Do not meet safety standards contained in 49 CFR 571.111	
Miscellaneous	Object not secured inside the school bus Any item noted by the Department that could cause injury or present a danger to a passenger or school bus driver	Any item noted by the Department that needs to be repaired because it could interfere with the safe operation of the school bus but that is not a major defect
Noise suppression switch	Out of service Malfunctioning	
Parking brake	Inoperative, missing part, or not in proper adjustment	
Restraining barrier	Missing Incorrect size Loose	
Rub rails	Missing more than one Loose or dangling	Missing one Incorrect location Incorrect color Incorrect width
School bus body	Damage resulting in cut or rip to the exterior of school bus body Hole that would allow exhaust gases or dust to enter the passenger compartment Bolt attaching body to chassis loose, broken, or missing Exceeds length or width limitations	Absence of undercoating Loose or missing rivet, screw, or bolt
Seat belt	Absence of driver seat belt or inoperative driver seat belt buckle or retraction system Frayed seat belt material	

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<p>Seats</p>	<p>One or more missing Incorrect size or location Driver seat does not meet requirements for adjustment Loose seat cushions Exposed frame</p>	<p>Torn seat cushions</p>
<p>Service door</p>	<p>Incomplete closing of door assembly Does not contain safeguards to prevent accidental opening Window not made of safety glass Broken or cracked window panel Inoperative door control Does not open towards exterior of the school bus Scissors or butterfly door prohibited Absence of flexible material on outer edge of service door Absence of header pad</p>	
<p>Special needs school bus</p>	<p>Incorrect location or size of special-service entrance Incorrect size of special-service entrance door Window not made of safety glass Inoperative pressure switch No safety device in wheelchair lift No restraining barrier on wheelchair-lift platform Fails to provide wheelchair-securement device or anchorage Special-service entrance door does not open towards exterior of school bus (except Type A school bus) Wheelchair lift inoperable</p>	<p>Drip molding not installed above the special-service entrance Special-service entrance door not weather-sealed Incorrect color of door material or panel Lacks wheelchair emblem Missing fastening device for special-service entrance door Dome light missing or inoperative</p>
<p>Splash guards</p>		<p>Bottom edge of guard is more than 8 inches above the ground Does not cover entire width of single or dual tire Missing splash guard</p>
<p>Steering</p>	<p>Distance of movement not within parameters of R13-13-106(22)(c) Steering wheel does not move freely when turning the wheel Missing or cracked steering-wheel ring or bracing from center of steering wheel to steering-wheel ring Steering column not in a fixed position or locking mechanism missing or inoperative on adjustable steering column Steering column mounting bracket cracked or missing Loose or missing mounting bolt in steering gear housing Loose connecting arm on steering gear power source</p>	<p>Leakage of lubricant Power-steering belt cracked, frayed, or slipping Fluid does not fill power steering reservoir to the full level on the dipstick</p>
<p>Steps</p>	<p>Loose or missing grab handle in step-well Missing stirrup step or handle</p>	<p>Incorrect distance between steps Incorrect floor covering</p>

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Stop signal arm	Any stop arm inoperative Air leak If equipped with a light-emitting diode system, one or more lights missing Missing any stop arm	Incorrect lettering or color on stop signal arm Incorrect size of stop signal arm
Sun shield or visor (if required)	Broken, cracked, or missing	Not transparent
Suspension	Broken, damaged, or missing suspension part U-bolt loose, broken, cracked, or missing	Leaking shock absorber
Tires	Tires on same axle not of the same size Combination of bias and radial tires Tires vary more than one size between axles Tires not correct size for gross vehicle weight rating of school bus Single rear tire on school bus with gross vehicle weight rating of more than 10,000 pounds Regrooved, recapped, or retreaded tire mounted on a front wheel Tread groove depth less than 4/32 of an inch, measured in a tread groove on a tire on a front wheel Tire is mounted or inflated so it comes in contact with any part of the school bus or other tire Tread groove depth less than 2/32 of an inch, measured in a tread groove on a tire on a rear wheel Bump, knot, or bulge present on any tire Sidewall is cut, worn, or damaged to the extent that ply cord is exposed Separation of tread from tire casing Exposed ply or belting on any tire Flat tire or audible leak from a tire on any wheel If present, spare tire on Type C or D school bus not mounted outside passenger compartment	
Ventilation	Non-closing exhaust ventilator missing	
Wheel housing	Incorrect size or construction of wheel housing or opening	
Wheels	Not correct size for gross vehicle weight rating of school bus Loose or missing lug nut Broken stud bolt Crack or welded repair in wheel assembly	Not painted black
Windows	Not of safety glass Opening too small Cracked or broken Placement of non-transparent material Inoperative latch	
Windshield	Placement of non-transparent material Crack, chip, or pitting that interferes with the school bus driver's vision	Crack, chip or pitting that does not interfere with the school bus driver's vision
Windshield washer system	Missing	Low or no cleaning solution

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Windshield wipers	Inoperative or missing wiper on school bus driver's side Inoperative or missing wiper on side opposite the school bus driver	Inoperative speed control Split or hardened wiper blade
Wiring	Incorrect color or number coding Wiring circuit not protected by fuse or circuit breaker One or more non-metal grommets missing Electrical wires outside the school bus body improperly secured	

- C. A school bus shall be inspected annually, according to a schedule established by the Department and the standards contained in subsections (A) and (B) and this section.
1. If the Department finds a major defect, the Department shall remove the current safety inspection decal and replace with a new safety inspection decal only after the major defect is repaired.
 2. If the Department finds a minor defect, the Department shall remove the current safety inspection decal and replace with a new safety inspection decal and allow the school bus owner to make repairs in accordance with the provisions at R13-13-108(A)(4) through (A)(7).
- D. A school bus driver shall perform the following operations checks and tasks on the school bus:
1. Before a school bus is operated for the first time each day, conduct a pre-trip operations check of the school bus to determine that the following are operational and are not damaged:
 - a. All lamps, including alternately flashing, back-up, clearance, hazard, head, identification, interior, side marker, stop, tail, turn signal, and strobe lamps, if any, and emergency warning devices;
 - b. Tires, wheels, and wheel fasteners;
 - c. Service door;
 - d. Steps and step wells;
 - e. Emergency exits and signals;
 - f. Emergency doors and signals;
 - g. Wheelchair lift and wheelchair lift dome lamp;
 - h. Wheelchair-securement devices;
 - i. Wheelchair-securement anchorages;
 - j. Special-service entrance door;
 - k. Special-service entrance door signal;
 - l. Windows;
 - m. Windshield;
 - n. Windshield wipers;
 - o. Instrument panel and gauges;
 - p. Service brakes;
 - q. Service brake warning devices;
 - r. Parking brake;
 - s. Bumpers;
 - t. Seats and seat frames;
 - u. Floor coverings;
 - v. School bus body;
 - w. Engine fluid levels;
 - x. Engine compartment steering components;
 - y. Stop arm;
 - z. Horn;
 - aa. Mirrors;
 - bb. Engine fluid gauges;
 - cc. Noise suppression switch;
 - dd. Child alert notification system, if installed;
 - ee. Crossing control arm, if installed; and
 - ff. Air conditioning system, if installed.
 2. Each time a pre-trip operations check of a school bus is conducted, check all emergency equipment to determine that the emergency equipment complies with the standards at R13-13-107(11) and R13-13-110.
 3. Each time a school bus is operated subsequent to the first time the school bus is operated each day, conduct a walk-around operations check to determine whether there is an obvious engine fluid leak and the following are operational and are not damaged:
 - a. All lamps listed in subsection (D)(1)(a);
 - b. Tires, wheels, and wheel fasteners;
 - c. Bumpers;
 - d. School bus body;
 - e. Windows;
 - f. Stop arm; and
 - g. Windshield.
 4. Once daily, sweep and clean the interior of the school bus.
 5. After completing each operations check, the school bus driver shall complete the portions of a written monthly operations check report that provide the following information:
 - a. Date and time of the operations check;
 - b. Name of the school bus driver conducting the operations check;
 - c. Name of the employer;
 - d. Number assigned to the school bus by the school bus owner and painted on the outside of the school bus body; and
 - e. Indication of whether an item is operational, inoperative, or damaged.
 6. A school bus driver who performs an operations check and finds any item listed in subsections (D)(1) through (D)(3) inoperative or damaged shall immediately complete and submit a written repair order to the school bus owner through the employer.
 - a. The school bus owner shall use the standards contained in subsection (B) to determine whether an item reported on a repair order as inoperative or damaged is a major or minor defect.
 - b. If the school bus owner finds that a major defect exists, the school bus owner shall place the school bus out of service until the major defect is repaired.
 - c. If the school bus owner finds that a minor defect exists, the school bus may be used to transport passengers, but the school bus owner shall repair the defect in accordance with the provisions at R13-13-108(A)(4) through (A)(7). Time in which to make the minor repair shall be calculated from the date of the written repair order.
 7. After a school bus makes its final trip on the last day the school bus is driven in a particular month the school bus driver operating the school bus shall submit the written

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monthly operations check report to the school bus owner through the employer.

- E.** In addition to the operations checks described in subsection (D), a school bus owner shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all parts of a school bus chassis and body described in Sections R13-13-106 and R13-13-107 and any other parts and accessories that may affect safe operation of the school bus. The school bus owner shall ensure that the maintenance of a school bus and repair of major defects is done by:
1. An ASE-certified technician,
 2. An individual working under the supervision of an ASE-certified master school bus technician,
 3. An individual with at least one year of participation in a school bus manufacturer-sponsored or commercial vehicle maintenance training program, or
 4. An individual with at least one year of experience as a school bus mechanic.
- F.** Records
1. A school bus owner shall maintain the following records in a separate file for each school bus for as long as the school bus is in operation in Arizona:
 - a. Number assigned to the school bus by the school bus owner,
 - b. Name of the school bus body manufacturer,
 - c. Name of the school bus chassis manufacturer,
 - d. Identification number of the school bus located in the driver's compartment,
 - e. Year the school bus body was assembled upon the school bus chassis, and
 - f. Size of the tires placed on the school bus.
 2. A school bus owner shall maintain all records of initial inspection, subsequent inspections, and repairs and maintenance procedures performed on the school bus for three years from the date of inspection, repair, or maintenance. The school bus owner shall ensure that all records of repairs and maintenance procedures include verification from the owner of the business responsible for the repairs and maintenance procedures that the individual who actually performs the repairs and maintenance procedures is qualified under subsection (E).
 3. If a school bus is sold, the school bus owner shall transfer the records required by subsections (F)(1) and (F)(2) to the purchaser.
 4. A school bus owner shall maintain monthly operations check reports for three months from the date of the report.
- G.** Alterations
1. Before a school bus owner alters a school bus, the school bus owner shall submit a request in writing to the Department describing the proposed alteration and the reason for the proposal.
 2. Within 60 days of receiving a request for alteration, the Department shall inform the school bus owner in writing whether the request has been approved or denied. The Department shall base its decision to approve or deny on an assessment of whether the proposed alteration affects the operations of a school bus, complies with the statutes and rules applicable to school buses, or affects the health, safety, or welfare of any individual.

Historical Note

Adopted effective February 16, 1996 (Supp. 96-1).
Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-108 recodified from R17-9-108

with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 3211, effective January 24, 2016 (Supp. 15-4).

R13-13-109. Time-frames for Making Certification Determinations

- A.** For certification as a school bus driver, the time-frames required by A.R.S. § 41-1072 et seq. are:
1. Overall time-frame: 60 days
 2. Administrative completeness review time-frame: 45 days
 3. Substantive review time-frame: 15 days
- B.** An administratively complete application for certification as a school bus driver consists of all the information and documents listed in R13-13-102(A).
- C.** An administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Department receives an application.
1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
 2. Within 120 days from the postmark date of the deficiency notice, the applicant shall submit to the Department the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the postmark date of the deficiency notice until the date the Department receives the missing documents and information.
 3. If the applicant fails to provide the missing documents and information within the time provided, the Department shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-13-102.
 4. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.
- D.** A substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information.
 2. The applicant shall submit to the Department the additional information identified in the request for additional information within 20 days from the postmark date of the request for additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the postmark date of the request for additional information until the Department receives the additional information.
 3. Unless an applicant requests that the Department deny certification within the 20-day period in subsection (D)(2), the Department shall close the file of an applicant who fails to submit the additional information within the 20 days provided. An applicant whose file is closed and who wants to be certified shall apply again under R13-13-102.
 4. When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to certify the applicant.
 - a. The Department shall deny certification if it determines that the applicant does not meet all substantive criteria for certification required by statute and rule. An applicant who is denied certification may

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appeal the Department's decision under A.R.S. § 41-1092 et seq. and any rules made under A.R.S. § 41-1092.01(C)(4).

- b. The Department shall grant certification if it determines that the applicant meets all substantive criteria for certification required by statute and rule.

Historical Note

New Section R17-9-109 adopted by final rulemaking at 5 A.A.R. 384, effective January 5, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). New Section R13-13-109 recodified from R17-9-109 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-110. First-aid Equipment

No later than 180 days after the effective date of these rules, a school bus in Arizona shall meet the requirements of this Section.

1. First-aid and body-fluid cleanup kits shall be mounted in a school bus in accordance with R13-13-107(11)(a).
2. First-aid kit: A school bus shall be equipped with a removable first-aid kit that has a weatherproofing seal around the lid to prevent moisture or dust from entering the first-aid kit, is clearly labeled as a first-aid kit, and contains the following:
 - a. Two - 1 inch x 2 1/2 inch yards adhesive tape rolls,
 - b. 24 - Sterile gauze pads 3 inches x 3 inches,
 - c. Eight - 2 inch adhesive bandages,
 - d. 10 - 3 inch adhesive bandages,
 - e. Two - 2 inch x 6 inch sterile gauze roller bandages,
 - f. Four - Triangular bandages approximately 40 inches x 36 inches x 54 inches with two safety pins,
 - g. Three - Sterile gauze pads at least 24 inches x 24 inches,
 - h. Three - Sterile eye pads,
 - i. One - Rounded-end scissors,
 - j. One - Pair of non-latex gloves, and
 - k. One - Mouth-to-mouth airway.
3. Body fluid or bloodborne-pathogen cleanup kit: A school bus shall be equipped with a removable body-fluid or bloodborne-pathogen cleanup kit that is sealed, clearly labeled as a body-fluid or bloodborne-pathogen cleanup kit, and contains the following:
 - a. One - Pouch of solidifier with chlorine,
 - b. One - Pick-up scoop with scraper,
 - c. One - Pair of non-latex gloves,
 - d. Two - Disinfectant hand wipes (antimicrobial),
 - e. Two - Plastic disposal bags with ties (biohazard),
 - f. Two - Germicidal towelettes effective against human immunodeficiency virus and tuberculosis,
 - g. Two - Paper crepe towels, and
 - h. One - Easy to follow instructions.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-110 recodified from R17-9-110 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-111. Rehearing or Review of Decision

- A. The Department shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. A party may amend a motion for rehearing or review at any time before the Department rules on the motion.

- C. The Department may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 1. Irregularity in the proceedings of the Department or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Department, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 7. The Department's decision is a result of passion or prejudice; or
 8. The finding of fact or decision is not justified by the evidence or is contrary to law.
- D. The Department may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- E. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Department may extend this period for a maximum of 20 additional days, for good cause as described in subsection (H).
- F. Not later than 15 days after the date of a decision, after giving the parties notice and an opportunity to be heard, the Department may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Department may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- G. If a rehearing is granted, the Department shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- H. The Department may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action 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.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). New Section R13-13-111 recodified from R17-9-111, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-112. Enforcement Audits

- A. To enforce the provisions of this Chapter, the Department may conduct an audit of any of the records required to be maintained under this Chapter. The audit may be conducted for cause or without cause.
- B. The Department may enter an employer's or owner's place of business to conduct an audit.
- C. An employer or owner shall make records available to the Department during regular business hours at the employer's or owner's place of business or at another mutually agreeable location.

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- D. Within 10 business days after completing an audit, the Department shall inform the employer or owner in writing of any concerns identified.
- E. The Department and the employer or owner shall make a written agreement specifying the actions that must be taken to address the concerns identified by the audit and the time within which the actions will be taken.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). New Section R13-13-112 recodified from R17-9-112, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

ARTICLE 2. MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON ALTERNATIVE FUEL**R13-13-201. Minimum Standards for Compressed Natural Gas Fuel Systems**

- A. In addition to the definitions in R13-13-101, in this Article, unless otherwise specified:

“AGA” means the American Gas Association.

“ANSI” means the American National Standards Institute.

“Angle of departure” means the area above an imaginary line that extends from the bottom outside edge of the rear bumper on a vehicle to the point at which a tire on the vehicle’s rear drive axle touches the ground.

“Appurtenance” means an item connected to an opening of a natural-gas pressure vessel to make the natural-gas pressure vessel gas-tight. This includes pressure relief devices, shutoff, backflow, excess-flow, and internal valves, liquid-level and pressure gauges, and plugs.

“Approved” means acceptable to the Department.

“ASE” means National Institute of Automotive Service Excellence.

“Bracket” means rubber-lined, hoop and cradle mounting hardware supplied or approved by a pressure-vessel manufacturer to hold a natural-gas pressure vessel in a rack.

“CNG” means compressed natural gas, a combustible mixture of hydro-carbon gases and vapors, principally methane, that is reduced in volume by pressure for use as a vehicular fuel.

“Fuel-distribution assembly” means a device that regulates the flow of fuel from a natural-gas pressure vessel to a vehicle engine.

“Fuel line” means a pipe, tubing, or hose, and all related fittings through which natural gas passes on a vehicle.

“Installer” means a person who converts a school bus from the use of gasoline to the use of CNG by attaching a natural-gas fuel system to the school bus after the school bus is manufactured.

“Listed” means included in a publication of an approved organization that is concerned with product evaluation, conducts periodic inspection of equipment or material, and includes equipment or material in the approved organization’s publication only if the equipment or material complies with appropriate standards or performs in a specified manner.

“NFPA” means the National Fire Protection Association, which is located at 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, and which is accessible at (617) 770-3000 and www.nfpa.org.

“NGV-1” means specific standards set by the American National Standards Institute and American Gas Association for the refueling connection device of a natural-gas vehicle.

“NGV-2” means specific standards set by the American National Standards Institute and American Gas Association for a vehicle-on-board natural-gas pressure vessel.

“Natural gas” means a combustible mixture of hydrocarbon gases and vapors, principally methane.

“Natural-gas fuel system” means a group of items including a pressure vessel and all attached valves, piping, and appurtenances that form a network for distributing natural gas to a vehicle engine.

“Operating pressure” means the internal force that a manufacturer intends for a natural-gas pressure vessel to achieve during normal operation of the vehicle to which the natural-gas pressure vessel is attached.

“Out-of-service” means not compliant with these rules, NFPA 52, or manufacturer’s instructions for installation, maintenance, or repair.

“Owner” means a private business, school, or school district that owns a school bus.

“PSI” means pound per square inch.

“Pressure-relief device” means a mechanism that is installed in a natural-gas pressure vessel or integrated with a valve, that is operated by temperature, pressure, or both, and that releases the CNG in the natural-gas pressure vessel in specific emergency conditions. A pressure-relief device for a U.S. Department of Transportation or Canada Transport natural-gas pressure vessel also includes a mechanism capable of protecting a partially charged natural-gas pressure vessel.

“Pressure vessel” means a cylinder that is part of a natural-gas fuel system and that is constructed, inspected, and maintained in accordance with U.S. Department of Transportation or Canada Transport regulations or ANSI/AGA NGV2, Basic Requirements for Compressed Natural Gas Vehicle (CNGV) Fuel Containers, or CSA B51, Boiler, Pressure Vessel and Pressure Piping Code.

“Pressure-vessel valve” means a mechanical device connected directly to a natural-gas pressure vessel opening that regulates the flow of CNG from the natural-gas pressure vessel to the vehicle engine.

“Rack” means a metal structure that surrounds a natural-gas pressure vessel mounted on a vehicle and is secured to the vehicle frame by a method capable of withstanding a static up, down, left, right, forward, or backward force of eight times the weight of the fully pressurized natural-gas pressure vessel.

“UL” means the Underwriters’ Laboratory, Inc.

B. Applicability and enforcement date of this Section

1. This Section applies to school buses that are manufactured to use only gasoline or diesel fuel and are converted to use CNG, in whole or in part.
2. The Department shall enforce this Section beginning 180 days after it is filed with the Office of the Secretary of State. After the beginning enforcement date, a school bus that is manufactured to use only gasoline or diesel fuel and is converted to use CNG, in whole or in part, shall meet the requirements of this Section when the school bus is introduced into Arizona or when the school bus is converted to natural-gas power. A school bus introduced into Arizona and powered in whole or in part by CNG

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY - SCHOOL BUSES

before the beginning enforcement date of this Section shall meet the requirements of this Section or those at A.A.C. R17-4-611.

3. After the beginning enforcement date of this Section, the Department shall not approve a school bus manufactured to use only gasoline or diesel fuel and converted to use CNG, in whole or in part, unless the natural-gas fuel system meets the requirements of this Section.

C. Insurance

1. An owner shall not contract with an installer unless the installer has insurance coverage provided by a comprehensive general liability broad form insurance policy that is approved by the Department. The insurance policy shall include coverage for liability resulting from:
 - a. Completed installation operations,
 - b. Harm that arises on the installer's premises, and
 - c. Breach of contract by the installer.
2. In addition to the liability coverage described in subsection (C)(1), an owner shall ensure that either:
 - a. The installer has insurance coverage for liability resulting from harm that arises from subcontracted work performed by an independent contractor, or
 - b. An independent contractor who performs work for the installer under an agreement has an insurance policy that provides coverage for liability resulting from harm caused by the independent contractor's work.
3. An owner shall not contract with an installer unless the installer has an insurance policy that provides at least \$1 million liability coverage per occurrence both for bodily injury and for property damage.
4. An owner shall not contract with an installer unless the issuer of the installer's insurance policies described in subsections (C)(1) through (C)(3) names the Department as an additional insured on each policy and keeps the Department informed of any change in the status of each policy.
5. An owner shall obtain the Department's approval of the installer's insurance policy by submitting proof of the insurance described in subsections (C)(1) through (C)(3) to the Department before entering a contractual agreement with the installer for the installation of a natural-gas fuel system on a school bus.
6. If an owner acts as an installer, the owner shall maintain the insurance required by this Section.
7. The Department shall approve an installer's insurance policy, proof of which is submitted by an owner in accordance with subsection (C)(5), if the policy conforms to the requirements in subsections (C)(1) through (C)(3). The Department shall send written notice of its decision to approve or disapprove the installer's insurance policy to the owner within 15 days from receipt of the proof of insurance.

D. General requirements for installing a natural-gas fuel system

1. Converting a school bus to use of CNG, whether in whole or in part, is not an alteration as defined in R13-13-101.
2. Unless specifically provided otherwise in this Section, when installing a natural-gas fuel system, an installer shall use parts and equipment and perform work in a manner that meets or exceeds the standards of NFPA 52, Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1995 (and no later editions or amendments), Quincy, MA, which is incorporated by this reference and on file with the Department and the Office of the Secretary of State.

3. An installer shall use only UL-listed or AGA-approved carburetor equipment when installing a natural-gas fuel system on a school bus.
4. An installer shall meet or exceed the recommended guidelines provided by the manufacturers of all parts of a natural-gas fuel system when installing the natural-gas fuel system on a school bus.
5. An installer shall ensure that installation of a natural-gas fuel system on a school bus is performed by an individual who has proof of training provided by the manufacturer of the natural-gas fuel system or ASE alternative fuels certification.
6. If a school bus is converted from the use of gasoline or diesel fuel to the dedicated use of CNG, the installer shall remove the gasoline or diesel-fuel tank and accompanying gasoline or diesel-fuel system parts from the school bus.

- E. Natural-gas pressure vessel:** An installer shall use only a natural-gas pressure vessel that is certified by its manufacturer as meeting or exceeding the NGV2 standards and as being U.S. Department of Transportation or ANSI listed. An installer shall use the natural-gas pressure vessel manufacturer's recommended bracket.

F. Installing a natural-gas pressure vessel

1. An installer shall securely attach a rack to the frame of a school bus in the following manner:
 - a. By drilling no holes in the school bus frame that exceed the manufacturer's requirements; and
 - b. By using no welding on and applying no heat to the school bus frame.
2. When installing a natural-gas fuel system on a school bus, an installer shall locate the natural-gas pressure vessel and its appurtenances on the vehicle frame as follows:
 - a. Below the driver's or passengers' compartment;
 - b. So no part protrudes:
 - i. In front of the front axle,
 - ii. Beyond the outside face of the rear bumper, or
 - iii. Beyond the sides of the school bus;
 - c. Inside a rack; and
 - d. So the minimum clearance between the road and the lowest part of the natural-gas pressure vessel and its rack on a school bus loaded to its gross vehicle weight rating, is:
 - i. No fewer than 7 inches (17.5 mm) for a school bus with a wheel base fewer than or equal to 127 inches (323 mm); or
 - ii. No fewer than 9 inches (22.5 mm) for a school bus with a wheel base greater than 127 inches (323 mm).
3. If the natural-gas pressure vessel and its appurtenances are located behind the rear axle of the school bus, in addition to the requirements in subsection (F)(3), an installer shall locate the natural-gas pressure vessel as follows:
 - a. Below the floor line, and
 - b. Above the school bus' angle of departure.

- G. Protecting a natural-gas pressure vessel.** To protect a natural-gas pressure vessel and its appurtenances from damage, an installer shall:

1. Surround the natural-gas pressure vessel with a stone guard on all sides that are not protected by the natural barriers of the vehicle. The stone guard shall not be attached to the natural-gas pressure vessel. If the stone guard protects a valve, it shall be made of at least 16-gauge steel. If the stone guard does not protect a valve, it shall be made of at least 3/16-in. mesh with openings no greater than 1 in.;

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY - SCHOOL BUSES

2. Place a resilient, non-absorbent gasket between the natural-gas pressure vessel and its brackets in a manner that prevents the brackets from directly contacting the natural-gas pressure vessel;
 3. Ensure that the weight of the natural-gas pressure vessel is not supported, in whole or in part, by an appurtenance; and
 4. Place a shield between, but not attached to, the natural-gas pressure vessel and the vehicle exhaust system if the natural-gas pressure vessel or the fuel lines are located fewer than 8 inches from the exhaust system. The shield shall be constructed of at least 18-gauge metal.
- H. Safety and check valves:** An installer shall equip a natural-gas fuel system with:
1. Either an automatic fuel supply shut-off valve that is placed between the pressure vessel fuel-pressure regulator and the fuel distribution assembly and activated by engine vacuum or oil pressure, or an electronic fuel injector; and
 2. Either a manual or automatically controlled shut-off valve that enables the natural-gas pressure vessel to be isolated from the remainder of the natural-gas fuel system. If a manual shut-off valve is used, it shall:
 - a. Have no more than 90° rotation from the opened to the closed position;
 - b. Have a red valve handle;
 - c. Be placed in an accessible location; and
 - d. Have "ESV" printed on the school bus at the access location to the manual shut-off valve, in 2-in. to 4-in., unshaded, red letters.
- I. Installation of fuel lines.** An installer shall:
1. Use fuel lines constructed of seamless stainless steel that has been tested and certified by the manufacturer to an operating pressure of 3600 PSI with a 4:1 safety factor;
 2. Mount and brace fuel lines to the vehicle frame in a manner that minimizes vibration;
 3. Secure fuel lines to the vehicle frame at least every 24 inches with rubber-lined fasteners;
 4. Protect fuel lines that pass through any structural member with rubber grommets, bulkhead fittings, or both;
 5. Cause fuel lines that run to the engine to follow the main frame channel; and
 6. Install an access door that is at least 70 square inches if access to the fill receptacle and fuel pressure gauge is through the school bus body. The words "CNG Fill" shall be printed on the school bus body, immediately above the access door, in 2-in. to 4-in., unshaded letters.
- J. Installation of Venting System.** An installer shall ensure that in addition to meeting the requirements in NFPA 52, all vent exits are aimed toward the ground.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 4115, effective October 3, 2000 (Supp. 00-4). New Section R13-13-201 recodified from R17-9-201 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

R13-13-202. Inspection and Maintenance of Compressed Natural Gas Fuel Systems

- A.** This Section applies to all school buses that are powered, in whole or in part, by CNG and are introduced into Arizona after the beginning enforcement date of these rules.
- B.** An owner shall not use a school bus equipped with a natural-gas fuel system to transport passengers until the natural-gas fuel system is inspected and approved by the Department. An

owner shall notify the Department when the owner obtains a school bus that needs to be inspected for compliance with these rules.

- C.** After the initial inspection conducted by the Department, an owner shall ensure that a school bus equipped with a natural-gas fuel system is inspected annually and under the following special circumstances:
 1. When the school bus is involved in an accident;
 2. When the natural-gas pressure vessel may have been damaged;
 3. When natural gas is smelled;
 4. When there is an unexpected loss of gas pressure, rattling, or other indication of looseness; or
 5. When the natural-gas pressure vessel is changed.
- D.** An owner shall ensure that an annual or special-circumstances inspection is conducted by the Department or an individual who has proof of training provided by the manufacturer of the natural-gas fuel system or ASE alternative-fuel certification.
- E.** An owner shall ensure that every inspection of a school bus equipped with a natural-gas fuel system assesses whether the natural-gas fuel system meets the safety standards in 13 A.A.C. 13, and NFPA 52. This assessment shall include:
 1. Leak-testing the natural-gas fuel system in compliance with NFPA 52 guidelines;
 2. Verifying that the pressure vessel is designed for storage of CNG;
 3. Verifying that the service life of the natural-gas pressure vessel has not expired;
 4. Verifying that the natural-gas pressure vessel is certified by its manufacturer as meeting or exceeding the NGV2 standards and as being U.S. Department of Transportation or ANSI listed;
 5. Verifying that all parts of the natural-gas fuel system are properly listed or approved; and
 6. Verifying that all parts of the natural-gas fuel system are installed in accordance with the manufacturer's instructions.
- F.** An owner shall ensure that an individual who conducts an inspection of a school bus equipped with a natural-gas fuel system completes a Compressed Natural Gas Safety Inspection Form, which is available from the Department, and certifies that the school bus meets all safety standards in 13 A.A.C. 13, and NFPA 52.
- G.** If it is necessary to condemn a natural-gas pressure vessel, the owner shall:
 1. Return the condemned natural-gas pressure vessel to its manufacturer; and
 2. Obtain a certificate from the manufacturer that states ownership of the natural-gas pressure vessel is transferred from the owner to the manufacturer.
- H.** An owner shall maintain each completed Compressed Natural Gas Safety Inspection Form in a separate file for each school bus for the service life of the school bus. If a school bus is transferred from one owner to another, the first owner shall transfer the completed inspection forms to the second owner.
- I.** An owner shall make the inspection forms maintained under subsection (H) available for review by the Department.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 4115, effective October 3, 2000 (Supp. 00-4). New Section R13-13-202 recodified from R17-9-202 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

DEPARTMENT OF HEALTH SERVICES (F19-0801)

Title 9, Chapter 7, Article 4, Standards for Protection Against Ionizing Radiation



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-0801)
Title 9, Health Services, Chapter 7, Radiation Control, Article 4, Standards for Protection Against Ionizing Radiation

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Health Services, Chapter 7, Radiation Control, the rules cover the following;

- **Article 4: Standards for Protection Against Ionizing Radiation.**

In the previous 5YRR for these rules, the Department stated it planned to revise several rules by June 2015, if the rule moratorium ended on December 31, 2014. The moratorium did not end, but the Department indicates it still completed two rulemakings to address the issues identified in the 5YRR.

Proposed Action

The Department indicates the rules in Article 4 must comply with the requirements of an agreement with the United States Nuclear Regulatory Commission (NRC). As discussed in the 5YRR, in March 1967, the Governor of Arizona and the former United States Atomic Energy Commission (now NRC) entered into an agreement pursuant to A.R.S. § 30-656. In order to remain in compliance with this agreement, Arizona has to adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations pursuant to A.R.S. § 30-654(B)(6). Under Laws 2017, Ch. 313 and Laws 2018, Ch. 234, the Department assumed

the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and the persons using them.

Therefore, because Arizona is an “Agreement State,” the Department must discuss any proposed changes to these rules with the NRC before it can begin a rulemaking. In some cases, the NRC must approve any proposed rule changes before the Department can begin a rulemaking. The Department states that it plans to review the rules in the entire chapter at a later date, possibly after completing 5YRRs on all the Articles in Chapter 7. It may consider a rulemaking at that time if the issues with the rules justify a rulemaking and the expenditure of resources.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites both general and specific authority for these rules.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department has determined that the economic impact of the Article 4 does not differ significantly from what was originally determined by the Economic Impact Statement.

The stakeholders include all persons authorized to possess, use, or transport radioactive material in Arizona

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

The Department has determined that the rules provide the least intrusive and least costly method of achieving the regulatory objective. The Department states that the benefits of having effective and understandable rules outweigh the costs.

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

No. The Department indicates it did not receive any written criticisms on these rules.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. For the reasons specified in the report, the Department indicates that the following rules could be amended to improve their clarity, conciseness, and understandability:

- R9-7-403 (Definitions)
- R9-7-404 (Units and Quantities)
- R9-7-405 (Form of Records)
- R9-7-407 (Radiation Protection Programs)

- R9-7-412 (Determination of Prior Occupational Dose)
- R9-7-413 (Planned Special Exposures)
- R9-7-417 (Testing for Leakage or Contamination of Sealed Sources)
- R9-7-419 (Conditions Requiring Individual Monitoring of External and Internal Occupational Dose)
- R9-7-420 (Control of Access to High Radiation Areas)
- R9-7-421 (Control of Access to Very-high Radiation Areas)
- R9-7-422 (Control Access to Irradiators (Very-high Radiation Areas))
- R9-7-424 (Use of Other Controls)
- R9-7-425 (Use of Individual Respiratory Protection Equipment)
- R9-7-428 (Caution Signs)
- R9-7-438 (Disposal of Specific Wastes)
- R9-7-443 (Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation)
- R9-7-444 (Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits)
- R9-7-450 (Sealed Sources)
- Appendix C (Quantities of Licensed or Registered Material Requiring Labeling)

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

Yes. For the reason specified in the report, the Department indicates that the following rules are not enforced as written:

- R9-7-412 (Determination of Prior Occupational Dose)
- R9-7-422 (Control Access to Irradiators (Very-high Radiation Areas))
- R9-7-452 (Radiological Criteria for License Termination)
- Appendix B (Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewage)

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

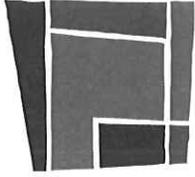
No. The Department indicates the rules are not more stringent than the corresponding federal law.

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?

A general permit is not applicable. The Department indicates it is exempt from A.R.S. § 41-1037 due to paragraph (A)(3), since the issuance of a general permit would not meet the statutory requirement of A.R.S. § 30-656.

9. Conclusion

As stated above, the Department is proposing to review the rules in the entire Chapter, once 5YRRs are completed on all the Articles in the Chapter. The Department anticipates to have completed five-year-review reports on all articles by December 2021. At that time, December 2021, or shortly thereafter, the Department will initiate a rulemaking if the issues with the rules justify it. The Department indicates the rules in Article 4 must comply with an Agreement with NRC, and must discuss any possible changes with NRC before initiating a rulemaking. Council staff recommend approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

May 16, 2019

Connie Wilhelm, Vice-Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 7, Article 4 Standards for Protection Against Ionizing Radiation

Dear Ms. Wilhelm:

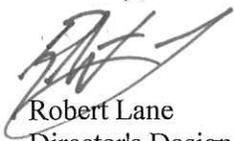
According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 7, Article 4, is due to the Council no later than May 31, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 7, Article 4, and is enclosing a report to the Council for these rules for consideration at the July Council meeting.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The five-year-review report, the rules reviewed, and the general and specific authority for the rules are included in the package. As described in the report, the Department plans to review the rules in the entire Chapter at a later date, possibly after completing the five-year-review reports on all Articles in the Chapter, and may consider a rulemaking at that time if issues with the rules appear to warrant such action and expenditure of resources.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,



Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 4. Standards for Protection Against Ionizing Radiation

May 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, and 30-673

2. The objective of each rule:

The purpose of the rules is to establish standards for protection against ionizing radiation resulting from activities conducted according to licenses or registrations issued by the Department, consistent with requirements of the U.S. Nuclear Regulatory Commission (NRC), to comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967.

Rule	Objective
R9-7-401	To provide the purpose of the rules in Article 4.
R9-7-402	To specify the persons affected by the rules in Article 4.
R9-7-403	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-7-404	To specify the use of Standard International (SI) units in records required by the Article and to require the distinction by type of the quantities recorded.
R9-7-405	To specify the types and forms of records required and requirements related to how quantities of radioactive materials are recorded.
R9-7-406	To require license or registration conditions that are more restrictive to remain in effect until amendment or renewal of the license or registration.
R9-7-407	To require the establishment, implementation, and review of a radiation protection program. To specify requirements for records, including types of records, retention periods, and those exempt from the requirements for records.
R9-7-408	To specify the limits on occupational exposure of adults to radiation, except for planned special exposures under R9-7-413.
R9-7-409	To specify how a licensee or registrant calculates occupational dose limits through summation of external and internal doses.
R9-7-410	To specify how an external dose from airborne radioactive material is determined.
R9-7-411	To specify how an internal dose of radioactivity is determined for occupational workers.
R9-7-412	To specify requirements related to determining a worker's current and previously accumulated

	occupational dose of radioactivity, including obtaining and maintaining exposure records.
R9-7-413	To specify requirements for a planned special exposure of an occupational worker to a level of radioactivity above that specified in R9-7-408, including restrictions and recordkeeping.
R9-7-414	To establish the annual dose limits for minor occupational workers.
R9-7-415	To establish the annual occupational exposure limit for a declared pregnant woman.
R9-7-416	To specify the limits for exposure to radioactivity from a licensed or registered operation to a member of the public, an exception from requirements, requirements for monitoring, and recordkeeping requirements. To establish a method for a licensee, registrant, or applicant to apply to operate with a higher annual dose limit.
R9-7-417	To specify methods of testing sealed sources of radioactive material for leakage or contamination.
R9-7-418	To specify requirements for surveys, processing of personal dosimeters, individual monitoring devices, calibration, and recordkeeping.
R9-7-419	To specify what personnel are required to have individual monitoring devices and the placement of the devices, and to require monitoring of exposure and recordkeeping.
R9-7-420	To specify requirements for controlling access to high radiation areas and exceptions for areas containing radioactive materials packaged for transport or patients in hospitals who had been administered radioactive materials as part of treatment.
R9-7-421	To specify requirements for controlling access to very-high radiation areas and for recordkeeping.
R9-7-422	To specify requirements for controlling access to areas containing sources of radiation in non-self-shielded irradiators.
R9-7-423	To require the use of process or engineering controls to reduce the concentration of radioactive material in air.
R9-7-424	To describe other mechanisms a licensee may use to limit the intake of radioactive material in air.
R9-7-425	To specify requirements related to the use of respiratory protection equipment to limit the intake of radioactive material from air.
R9-7-426	To require a licensee or registrant to securely store registered sources of radiation that are in unrestricted areas.
R9-7-427	To specify licensee or registrant requirements for sources of radiation that are in unrestricted areas and not in storage.
R9-7-428	To specify signage requirements for radiation areas.
R9-7-429	To specify posting requirements for radiation areas.
R9-7-430	To specify exceptions to posting requirements for radiation areas.
R9-7-431	To describe the labelling requirements for containers of radioactive materials.
R9-7-432	To specify exceptions to the labelling requirements for containers of radioactive materials.
R9-7-433	To specify procedures for receiving and opening packages containing radioactive materials.
R9-7-434	To specify general requirements for disposal of radioactive waste.
R9-7-435	To specify requirements for Department approval of proposed procedures for disposal of radioactive waste.
R9-7-436	To specify conditions under which licensed radioactive materials may be discharged into a sanitary sewer.
R9-7-437	To specify requirements for disposal of radioactive waste by incineration.

R9-7-438	To specify requirements for disposal of specific types of radioactive waste.
R9-7-438.01	To specify requirements for disposal of certain types of radioactive material not otherwise covered in the rules.
R9-7-439	To describe requirements for the transfer of radioactive waste for disposal at a licensed land disposal facility.
R9-7-440	To establish that nothing in listed rules relieves a licensee from complying with other local, state, or federal rules or regulations.
R9-7-441	To establish requirements for maintaining and retaining records of disposal of licensed materials.
R9-7-442	To specify that radioactive wastes shipped from Arizona are subject to inspection by the Department.
R9-7-443	To specify the process for reporting a missing, lost, or stolen radioactive source.
R9-7-444	To specify requirements related to the notification of the Department of exposures, radiation levels, or concentrations of radioactive material exceeding the limits.
R9-7-445	To describe the timeframes for notification of the Department and the reporting of specified incidents.
R9-7-446	To require notification of individuals exposed to radiation or radioactive material.
R9-7-447	To specify requirements for a licensee and the Department when a licensee vacates a facility.
R9-7-448	To specify additional reporting requirements related to events that could pose an exposure hazard.
R9-7-449	To specify requirements for calibration of survey instruments and for retaining records of the calibration. To specify requirements for evaluation of dosimeters.
R9-7-450	To specify requirements related to possessing and using sealed sources of radiation, including inventory requirements.
R9-7-451	To describe procedures whereby a licensee may terminate a radioactive material license.
R9-7-452	To specify the radiological criteria for termination of a radioactive material license.
Table 1	To specify acceptable levels of radioactive contamination on a surface.
R9-7-453	To require notification of individuals of occupational exposure due to a planned special exposure, of an exposure exceeding limits, or of exposures due to license termination, including providing the affected individual with a copy of specified reports.
R9-7-454	To require a licensee to register certain radioactive material on a national source tracking system, in compliance with federal requirements.
R9-7-455	To specify security requirements for portable gauges.
Appendix A	To describe assigned protection factors for different types of respirators.
Appendix B	To describe the annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure, effluent concentrations, and concentrations for release to sanitary sewerage.
Appendix C	To describe the quantities of licensed or registered material requiring labeling.
Appendix D	To describe the classification and characteristics of low-level radioactive waste.
Appendix E	To describe the quantities for use with decommissioning forms.

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
Multiple	The wording of many Sections could be more effective. However, Arizona is required by the Agreement to include many requirements word-for-word with federal requirements, regardless of whether the language is effective or not.
R9-7-401, R9-7-402	The two Sections would be more effective if they were combined. However, this is how the NRC and many Agreement States structure their rules. These two rules are identical to 10 CFR 20.1001.
R9-7-404, R9-7-405	R9-7-404(B) and R9-7-405(D) appear to be duplicative. The rules would be more effective if the Sections were combined. However, the rules are compatibility category A, meaning they must be word-for-word with federal requirements.
R9-7-407	The rule would be more effective if subsection (D) were moved into R9-7-416.
R9-7-412	Subsection (C)(3) would be more effective if revised to indicate that verbal reports are not allowed, but that e-mail is an acceptable method for reporting.
R9-7-423	The rule would be more effective if the requirement were stated in other applicable Sections, such as R9-7-410, or if other Sections cited to this rule.
R9-7-437	The rule would be more effective if it were combined into R9-7-438.
R9-7-446	Subsection (A) is duplicative of the cross-reference in subsection (B). However, it is identical to the NRC and other Agreement States' order.
R9-7-453	The rule would be more effective if the requirement to notify an exposed individual were included under the respective cited Section. However, it is identical to the NRC and other Agreement States' order.

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
R9-7-416	Subsections (A)(1) and (2) cite to R9-7-719, containing requirements for training of medical personnel. The cross-reference should be to R9-7-717 (Release of Individuals Containing Radioactive Material or Implants Containing Radioactive Material). In addition, the incorporation by reference in subsection (D) should be updated to the 2012 version of 40 CFR 190.
R9-7-418	The incorporation by reference in subsection (B)(1) should be updated to the 2010 versions of the NIST Handbooks.
R9-7-419	Subsections (E)(2) and (3) cite to subsection (D)(1). The cross-reference should be to subsection (E)(1).
R9-7-425	The incorporation by reference in subsection (A)(7) should be updated to the 2006 version of 29 CFR 1910.134.
R9-7-430	Subsection (B) cites to R9-7-719, containing requirements for training of medical personnel. The cross-reference should be to R9-7-717 (Release of Individuals Containing Radioactive Material or Implants Containing Radioactive Material).
R9-7-440	Subsection (A) lists other Sections relating to disposal, but R9-7-438.01 is incorrectly

	omitted.
R9-7-448	The requirements in subsection (D) (“report within 30 days”) and subsection (E) (report “within 60 days”) appear inconsistent. However, the rule must be word-for-word with federal requirements.
R9-7-551	Subsection (B)(1) lists other Sections relating to disposal, but R9-7-438.01 is incorrectly omitted.
Appendix B	Table III cites to R9-7-435, but the requirements for release to a sanitary sewer are contained in R9-7-436.

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
R9-7-412	The Department does not enforce subsection (C)(3) as written. Verbal reports by telephone are not allowed, but e-mail notification would be acceptable.
R9-7-422	Although there is no license category for these irradiators, there is an unclassified (D18) license category that allows charging the full cost for something for which there is not a specific category.
452	In subsection (E)(2), the Department does not provide notification in newspapers but does provide notification by e-mail.
Appendix B	Table III cites to R9-7-435, but requirements for release to a sanitary sewer are in R9-7-436. The Department enforces the requirement as if the citation were to R9-7-436.

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.

Rule	Explanation
Multiple	The rules would be clearer if grammatical or punctuation errors were corrected. In addition, the wording of many Sections could be clearer. However, Arizona is required by the Agreement to include many requirements word-for-word with federal requirements, regardless of whether the language is clear or not.
R9-7-403	Several definitions could be clearer, but definitions are NRC requirements and compatibility category A, meaning they must be word-for-word with federal requirements. The last sentence in the definition of “nonstochastic effect,” which is not part of an NRC definition, would be more understandable if grammar and a missing word were corrected.
R9-7-404, R9-7-405	Subsection (B) of R9-7-404 and subsection (D) of R9-7-405 appear to be duplicative. However, the rules are compatibility category A, meaning they must be word-for-word with federal requirements.
R9-7-407	Subsection (A) should read “this Article” rather than “Article 4.” It is unclear who determines “sound radiation protection principles” in subsection (B). However, the subsection is written to be identical to 10 CFR 20.1101 and other Agreement States.
R9-7-412	Subsection (B) appears to duplicate the content of R9-7-413(A)(4). In subsection (D), the phrase “this subsection” should be “this Section.”

R9-7-413	Subsection (A)(4) duplicates R9-7-412 (B), which is more specific and should be moved to this rule. However, per the NRC, they need to both be present. The portion of subsection (A)(6) requiring submission of a written report appears to duplicate the requirement in subsection (C). It is unclear what is meant by the requirement in subsection (B)(1)(c) and whether the requirement to retain records in subsection (B)(2) refers to the records in subsection (B)(1).
R9-7-417	The requirements in subsections (B) would be clearer if connected with “or” rather than “and” because, as the rule now reads, a reader could conclude that the listed sealed sources would have to be tested unless all conditions were met. The rule would also be clearer if the second sentence in subsection (B)(6) were a separate subsection.
R9-7-419	The first sentence in subsection (D)(3) duplicates requirements in R9-7-408(C)(2)(a). In subsection (E)(1), it is unclear what units were in effect before January 1, 1994. Subsection (E)(1)(d) should not cite to “R9-7-419,” since this is that Section.
R9-7-420	Subsection (F) should not cite to “Article 4”, since this is that Article. Subsection (G) would be clearer if the specific Sections in Articles 5, 6, and 9 were cited, rather than just the Articles.
R9-7-421	The rule would be clearer if the last sentence in subsection (A) were incorporated into subsection (B). The terms “non-self-shielded irradiators” and “self-shielded irradiators” are not defined, but are described under R9-7-422. Subsection (B) would be clearer if the specific Sections in Articles 5, 6, and 9 were cited, rather than just the Articles. Subsection (C) cites to R9-7-422(B)(9), which cites back to R9-7-421, creating a circular reference.
R9-7-422	The rule would be clearer if subsection (B) specified that requirements in the subsection may not apply if the conditions in subsection (C) are met. Subsection (B) would also be clearer if the subsections were re-ordered and re-worded. While the content of the second and third sentences in subsection (B)(2)(b) is important, it does not fit in the subsection and should be moved or reworded. The formatting/wording of several subsections under subsection (B), such as subsections (B)(3), (4), and (6), are not consistent with the lead-in. The second sentence of subsection (B)(3)(b) does not fit in the subsection and should be moved. Subsection (E) duplicates R9-7-421(C).
R9-7-424	The rule would be clearer if some additional specificity were added or the rule were combined with R9-7-423.
R9-7-425	In subsection (A)(2), it is unclear to what subsections the phrase “except as otherwise provided in this Section” refers. It is also unclear what constitutes “reliable test information.” Subsection (B) would also be clearer if it specified which “Appendix A” is meant, since there is an Appendix A in Articles 2, 5, 6, 9, 11, 14, and 19, as well as in this Article.
R9-7-428	In subsection (A), the rule states a “cross-hatched area,” while the picture is in color. The picture should match the description in rule.
R9-7-438	Subsection (C) cites to R9-7-434, which cites back to R9-7-438, creating a circular reference.
R9-7-443	It is unclear from subsection (D) when the names of the individuals should be made known to the Department. The rule would be clearer if the content of subsection (D) were included in the list of information to be included in the report under subsection (B).
R9-7-444	In subsection (A), it is unclear to whom the “written report” is sent. Subsection (B)(2) would be clearer if it read: “Each report filed according to subsection (A) shall include, in a separate and detachable part of the report, for each occupationally overexposed individual: name, Social Security number, and date of birth.” However, the wording and content is identical to the NRC and other Agreement States’ order/content.
R9-7-450	Subsection (A), stating that “The license to manufacture and distribute a sealed source

	shall be issued by the Department, the U.S. Nuclear Regulatory Commission, a Licensing State, or another Agreement State,” should be reworded to make clear that the Department is not requiring the issuance of the license, but requiring that any license issued be through one of the listed entities. Subsection (D) would be clearer if the relevant Sections of Article 7 were referenced.
Appendix C	The Note cites to “Appendix B to Article 4,” but Appendix C is also part of Article 4 and should cite to “Appendix B of this Article.”

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Arizona is an Agreement State by the agreement negotiated between the United States Atomic Energy Commission (now U.S. Nuclear Regulatory Commission (NRC)) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656 (Agreement). In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations, as required in A.R.S. § 30-654(B)(6). Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 4 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though the rulemakings were in 12 A.A.C. 1.

The rules in Article 4 were variously last revised in 1994, 2001, 2003, July 2004, December 2004, 2006, 2007, 2009, 2014, 2016, and 2018. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking. No economic impact statements are available to the Department for some of these rulemakings, but the Department is estimating the economic effect of the rulemaking from available records and information. The rules in Article 4 are currently used by approximately 6,000 licensees and registrants.

R9-7-414 and Appendices C, D, and E were last amended in 1994, and no economic impact statement is available. Since the Appendices are provided by the NRC and must be used without change according to the Agreement, the Agreement rather than the rules impose any burden caused by the content of the Appendices. Requirements in R9-7-414 relate to the federal restriction for radiation workers under the age of 18 years of age to have a dose limit of 10% of the adult dose limit. Currently, Arizona does not have any licensed or registered radiation workers under the age of 18, so the rule has no effect on radiation workers or their employers and no burden on the Department to monitor compliance with the requirement.

In a 2001 rulemaking, 16 of the rules in Article 4 were last revised, but no economic impact statement is available. In various rules referencing organ dose, “eye” dose was changed to “lens” dose to ensure compatibility

with NRC regulations. In R9-7-431 specific labeling requirements were listed for syringe and vial shields used to protect handlers from radiopharmaceutical radiation. In R9-7-438, authorized licensees were allowed to hold radioactive waste with a half-life of 120 days or less for decay, provided the radioactive waste was held for 10 half-lives and surveyed prior to disposal. In R9-7-449 users of pocket dosimeters, used to show compliance with Article 4, were required to maintain them in proper operating condition. R9-7-450 was amended to require users of licensed and sealed radioactive sources to use sources manufactured in accordance with a specific license for their manufacture and to use the sources as intended by the manufacturer. Radioactive sealed sources were not allowed to be opened, unless authorized by the Agency. The changes to R9-7-438, R9-7-449, and R9-7-450 were made to incorporate license conditions that affect all similarly licensed radioactive material users in rule. Numerous other changes were made throughout the rules in Article 4 that improved clarity, understandability, and incorporated references. These changes were thought to provide a benefit. The change in the disposal action level listed in R9-7-438 was believed to possibly save radioactive material users money because they were allowed to store radioactive waste for decay, rather than sending it to a disposal site or waste broker. The changes to R9-7-449 and R9-7-450 were estimated to cause no additional costs to the affected radiation users because the requirements were already being applied to them through license conditions. However, the maintenance of pocket dosimeters was believed to impose no additional use conditions on registrants, but would result in an additional cost for annual calibration of \$50 per dosimeter. The Department believes the economic impact was as estimated.

Two rules, R9-7-423 and Appendix A, were last amended in a 2003 rulemaking. R12-1-423 is being amended to meet current federal standards for process and other engineering controls. A new Appendix A was provided by the NRC. No costs were anticipated to be caused by these changes. The Department believes the economic impact was as estimated.

Six rules (R9-7-407, R9-7-416, R9-7-444, R9-7-445, and R9-7-450) were last amended in a rulemaking effective July 3, 2004. An economic impact statement is available for the rulemaking. R9-7-407 was amended to clarify ALARA programs for users of radioactive gases. R9-7-416 was amended to take into account the radiation emitted from patients treated under R9-7-719. Amendments were made to R9-7-444 and R9-7-445 so that Arizona's rules would be compatible with NRC standards. R9-7-450 was amended to include a device or equipment in the rule's required inventory if the device or equipment contained a sealed source. The newly required ALARA level for airborne radioactive material in R9-7-407 was estimated to impose an unknown increase in cost to the regulated community. The affect was believed to be small because the affected licensees were already required to calculate the concentration levels in the restricted and unrestricted areas impacted by the discharge of radioactive material. The amendment to R9-7-416 was thought to result in a small administrative cost due to the need for an additional calculation for those medical licensees that release patients under R9-7-719. The cost of this calculation was believed to be minimal to nonexistent. The minor changes being made to the standards in R9-7-444 and R9-7-445 were thought to have little economic impact, because the standards are established by the NRC and must be adopted by Arizona under the Agreement. The change to R9-7-450 was only a clarification

of existing requirements, with no to minimal additional economic burden resulting from the change. The Department believes the economic impact was as estimated.

Two other rules, R9-7-424 and R9-7-425, were part of a rulemaking, effective December 4, 2004, to include new NRC standards for persons using respiratory protection when handling or working with forms of radioactive material that are inhalable. No economic impact statement is available, but no significant economic impact was believed to result from the implementation of the changes, and the benefits from the amendments would increase public safety from the safe use, transport, storage, and disposal of radiation sources. The Department believes the economic impact was as estimated.

Seven rules (R9-7-405, R9-7-412, R9-7-413, R9-7-430, R9-7-433, R9-7-441, and R9-7-453) were last amended in a 2006 rulemaking, and no economic impact statement is available. In this rulemaking, numerous clarifications were made in Article 4 to maintain standards compatible to those in NRC regulations. For example, requirements in R9-7-430 were changed to permit a teletherapy licensee to be exempted from the posting requirements in R9-7-429, if the newly listed conditional controls were met. A new rule, R9-7-453, was added that required a licensee or registrant to notify an individual who had been exposed to radiation and to provide the same report that is required to be sent to the Agency to the individual who was exposed to radiation. The changes made to Article 4 were estimated to result in no new economic impact to the affected radiation users and members of the public, since most rules were just updated. The new rule affected a group of radiation users that were very familiar with the newly required practice and believed the change to be part of the cost of doing business. The Department believes the economic impact was as estimated.

R9-7-455 was added as a new rule in a rulemaking in 2007, for which no economic impact statement is available. The rule established a higher level of security for portable gauging devices that contain sealed sources of radioactive material. The new standard included two levels of security during the time when a gauge is in storage at the licensee's facility, in transit to a job-site, and stored at temporary locations, including motels and job-site work trailers. The new regulation was believed to result in some cost to the portable gauge user, who might have to expend some resources to strengthen the security measures used to prevent loss or theft of the gauges while they were stored or transported. These new or strengthened measures could include putting in a security system, adding locks to doors, putting in a fence, hiring a security service, or installing a 16 gauge box bolted to the interior of a transport vehicle. The cost of security methods had not been determined, but the security methods were believed to be readily available and not expensive. The Department believes the economic impact was as estimated.

Ten rules (R9-7-403, R9-7-422, R9-7-431, R9-7-432, R9-7-435, R9-7-440, R9-7-443, R9-7-447, R9-7-449, and R9-7-454) were last amended in a rulemaking effective August 1, 2009. An economic impact statement is available for this rulemaking and specifies "minimal" as \$1,000 or less, "moderate" as between \$1,000 and \$10,000, and "substantial" as greater than \$10,000. As part of the rulemaking, a definition of "nationally tracked source" was added to R9-7-403, and the incorporation by reference was updated in R9-7-432. Clarifying changes to existing requirements were made to R9-7-422, R9-7-431, R9-7-435, R9-7-440, R9-7-443, R9-7-447, and R9-7-

449. A new Section, R9-7-454 was added to specify requirements related to nationally tracked sources to comply with NRC requirements. The costs for these changes was estimated to be at most minimal and associated with the administrative changes presented in the affected rules. The regulated community was thought to already be familiar with the need for a source tracking system, instituted as a result of the NRC Agreement. The Department believes the economic impact was as estimated.

Six rules (R9-7-434, R9-7-438, R9-7-438.01, R9-7-439, R9-7-446, and Appendix B) were last amended in a 2014 rulemaking to ensure that Arizona's radiation compliance remains compatible with NRC requirements. An economic impact statement is available for the rulemaking and specifies "minimal" as \$1,000 or less, "moderate" as between \$1,000 and \$10,000, and "substantial" as greater than \$10,000. These changes were thought to have little or minimal economic impact on regulated entities, since the changes would not markedly change the way businesses operate with radiation safety concerns in mind. The Department believes the economic impact was as estimated.

Two rules, R9-7-418 and R9-7-452, were last amended in a rulemaking effective February 2 2016, for which an economic impact statement is available that specifies "minimal" as \$1,000 or less, "moderate" as between \$1,000 and \$10,000, and "substantial" as greater than \$10,000. A clarifying change was made to R907-418, and R9-7-452 was revised to provide more structure to requirements for the provision of financial assurance related to license termination. Minimal or no economic impact was anticipated due to these changes. The Department believes the economic impact was as estimated.

Seven rules (R9-7-408, R9-7-415, R9-7-417, R9-7-418, R9-7-419, R9-7-448, and R9-7-451) were last amended in an expedited rulemaking in 2018 to ensure that Arizona's radiation compliance remains compatible with NRC requirements. No economic impact statement was required as part of this rulemaking. In keeping with the requirements for expedited rulemaking, these changes did not increase the cost of regulatory compliance, did not increase a fee or reduce a procedural right of regulated persons, and either adopted or incorporated by reference, without material change, federal statutes and regulations, or clarified language of a rule without changing its effect. The Department believes these considerations are still true.

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 2014 five-year-review report stated a plan to revise several rules by June 2015 if the rulemaking moratorium ended on December 31, 2014. The moratorium has not ended, but two rulemakings were completed to address NRC-specific issues. Since the moratorium is still in place, no other rulemaking was initiated, and the agency complied with the stated plan.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that the substantive content of the rules are the minimum necessary to protect health and safety and comply with requirements of the Agreement. Other issues identified in this report may impose a regulatory burden.

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)?

10 CFR 20.1001, 10 CFR 20.1002, 10 CFR 20.1003, 10 CFR 20.1004, 10 CFR 20.1005, 10 CFR 20.1007, 10 CFR 20.1009, 10 CFR 20.1101, 10 CFR 20.1201, 10 CFR 20.1202, 10 CFR 20.1203, 10 CFR 20.1204, 10 CFR 20.1206, 10 CFR 20.1207, 10 CFR 20.1208, 10 CFR 20.1301, 10 CFR 20.1302, 10 CFR 20.1401, 10 CFR 20.1402, 10 CFR 20.1403, 10 CFR 20.1404, 10 CFR 20.1405, 10 CFR 20.1406, 10 CFR 20.1501, 10 CFR 20.1502, 10 CFR 20.1601, 10 CFR 20.1602, 10 CFR 20.1701, 10 CFR 20.1702, 10 CFR 20.1703, 10 CFR 20.1704, 10 CFR 20.1705, 10 CFR 20.1801, 10 CFR 20.1802, 10 CFR 20.1901, 10 CFR 20.1902, 10 CFR 20.1903, 10 CFR 20.1904, 10 CFR 20.1905, 10 CFR 20.1906, 10 CFR 20.2001, 10 CFR 20.2002, 10 CFR 20.2003, 10 CFR 20.2004, 10 CFR 20.2005, 10 CFR 20.2006, 10 CFR 20.2007, 10 CFR 20.2008, 10 CFR 20.2101, 10 CFR 20.2102, 10 CFR 20.2103, 10 CFR 20.2104, 10 CFR 20.2105, 10 CFR 20.2106, 10 CFR 20.2107, 10 CFR 20.2108, 10 CFR 20.2110, 10 CFR 20.2201, 10 CFR 20.2202, 10 CFR 20.2203, 10 CFR 20.2204, 10 CFR 20.2205, 10 CFR 20.2206, 10 CFR 20.2207, 10 CFR 20.2301, 10 CFR 20.2401, 10 CFR Appendix A to Part 20, 10 CFR Appendix B to Part 20, 10 CFR Appendix C to Part 20, 10 CFR Appendix G to Part 20, 10 CFR 30.19, 10 CFR 30.20, 10 CFR 30.22, and 10 CFR 30.35

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department believes the rules are exempt from A.R.S. §§ 41-1037 due to paragraph (A)(3) as the issuance of a general permit would not meet the statutory requirement of A.R.S. § 30-656, which allows Arizona to be an Agreement State, since compatibility of licensing is one of the requirements of the Agreement.

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 minor items and possible changes described in paragraphs 3, 4, 5, and 6 are not substantive. Since the rules in Article 4 must comply with requirements of the Agreement, possible changes must be discussed with and, in some cases, approved by the NRC before they can be proposed. The Department plans to review the rules in the entire Chapter after completing the five-year-review reports on all Articles in the Chapter. According to the

Department's current schedule, the last five-year report for the Chapter is due in December 2021. Therefore, in December 2021, or shortly thereafter, the Department plans to evaluate the entire Chapter and determine whether a rulemaking is necessary and, if so, establish a time-frame to complete the rulemaking.

ARTICLE 4. STANDARDS FOR PROTECTION AGAINST IONIZING RADIATION

R9-7-401. Purpose

- A. Article 4 establishes standards for protection against ionizing radiation resulting from activities conducted according to licenses or registrations issued by the Department. These rules are issued according to A.R.S. Title 30, Chapter 4, as amended.
- B. The requirements of Article 4 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose equivalent to an individual, including radiation exposure resulting from all sources of radiation other than radiation prescribed by a physician in the practice of medicine, radiation received while voluntarily participating in a medical research program, and background radiation, does not exceed the standards for protection against radiation prescribed in this Article. However, this Article does not limit actions that may be necessary to protect health and safety.

Historical Note

New Section R9-7-401 recodified from R12-1-401, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-402. Scope

Except as specifically provided in other Articles, Article 4 applies to persons licensed or registered by the Department to receive, possess, use, transfer, or dispose of sources of ionizing radiation.

Historical Note

New Section R9-7-402 recodified from R12-1-402, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-403. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

“Air-purifying respirator” means respiratory protective equipment with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

“ALI” means annual limit on intake, the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the Reference Man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Appendix B, Table I, Columns 1 and 2.

“Assigned protection factor” or “APF” means the expected workplace level of respirator protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

“Atmosphere-supplying respirator” means respiratory protective equipment that supplies the equipment user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

“Class” means a classification scheme for inhaled material according to the material’s rate of clearance from the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, days, of less than 10 days, for Class W, weeks, from 10 to 100 days, and for Class Y, years, of greater than 100 days (see Introduction, Appendix B). For purposes of these rules, “lung class” and “inhalation class” are equivalent terms.

“Constraint” or “dose constraint” means a value above which specified licensee or registrant actions are required.

“Critical group” means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

“DAC” means derived air concentration, the concentration of a given radionuclide in air which, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Appendix B, Table I, Column 3.

“DAC-hour” means derived air concentration-hour, the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

“Declared pregnant woman” means a woman who has voluntarily informed the licensee or registrant in writing of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

“Decommission” means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license or release of the property under restricted conditions and the termination of the license.

“Demand respirator” means an atmosphere-supplying respiratory protective equipment that admits breathing air to the face piece only when a negative pressure is created inside the face piece by inhalation.

“Deterministic effect” (See “Nonstochastic effect”)

“Disposable respirator” means respiratory protective equipment for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent depletion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of device include a disposable half-mask respirator or a disposable, escape-only, self-contained breathing apparatus (SCBA).

“Distinguishable from background” means that the detectable concentration of a radionuclide is statistically greater than the background concentration of that radionuclide in the vicinity of a site or, in the case of structures, in similar materials using accepted measurement, survey, and statistical techniques.

“Dosimetry processor” means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

“Filtering face piece (dust mask)” means a particulate respirator that operates under a negative pressure with a filter as an integral part of the face piece or with the entire face piece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

“Fit factor” means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

“Fit test” means the use of protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

“Helmet” means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

“Hood” means a respiratory inlet covering that completely covers the head, neck, and may also cover portions of the shoulders and torso.

“Inhalation class” (See “Class”)

“Loose-fitting face piece” means a respiratory inlet covering that is designed to form a partial seal with the face.

“Lung class” (See “Class”)

“Nationally tracked source” means a sealed source that contains a quantity equal to or greater than Category 1 or Category 2 levels of radioactive material listed in 10 CFR 20, Appendix E, revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. In this context sealed source does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

“Negative pressure respirator (tight fitting)” means respiratory protective equipment in which the air pressure inside the face piece is negative during inhalation with respect to the ambient air pressure outside the respirator.

“Nonstochastic effect” means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, “deterministic effect” is an equivalent term and “threshold” means that which if not exceeded, poses no risk or likelihood of an effect to occur.

“Planned special exposure” means an infrequent exposure to radiation received while employed, but separate from and in addition to the annual occupational dose limits.

“Positive pressure respirator” means respiratory protective equipment in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

“Powered air-purifying respirator” or “PAPR” means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

“Pressure demand respirator” means a positive pressure, atmosphere-supplying respirator that admits breathing air to the face piece when the positive pressure is reduced inside the face piece by inhalation.

“Probabilistic effect” (See “Stochastic effect”)

“Qualitative fit test” or “QLFT” means a pass or fail fit test to assess the adequacy of respirator fit that relies on the individual’s response to the test agent.

“Quantitative fit test” or “QNFT” means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

“Reference Man” means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of Reference Man is contained in the

International Commission on Radiological Protection report, ICRP Publication 23, “Report of the Task Group on Reference Man,” published in 1975 by Pergamon Press, incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Residual radioactivity” means radioactivity in structures, materials, soils, groundwater, or other media at a site, resulting from activities under a licensee’s control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials that remain at the site because of routine or accidental release of radioactive material at the site or a previous burial at the site, even if the licensee complied with reagent provisions of 9 A.A.C. 7.

“Respiratory protective equipment” means an apparatus, such as a respirator, used to reduce an individual’s intake of airborne radioactive materials.

“Sanitary sewerage” means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

“Self-contained breathing apparatus” or “SCBA” means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

“Stochastic effect” means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without a threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, “probabilistic effect” is an equivalent term.

“Supplied-air respirator” or “SAR” or “airline respirator” means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

“Tight-fitting face piece” means a respiratory inlet covering that forms a complete seal with the face.

“User seal check” or “fit check” means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

“Very-high radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to an individual’s body could result in the individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates. (At very high doses received at high dose rates, units of absorbed dose, the gray and rad should be used, rather than units of dose equivalent, the sievert and rem).

“Weighting factor” w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS	
Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole Body	1.00 ^b
^a 0.30 results from 0.06 for each of five “remainder” organs, excluding the skin and the lens of the eye, that receive the highest doses.	
^b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved by the Department on a case-by-case basis.	

Historical Note

New Section R9-7-403 recodified from R12-1-403, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-404. Units and Quantities

- A. Each licensee or registrant shall use the Standard International (SI) units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this Article.
- B. The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this Article, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

Historical Note

New Section R9-7-404 recodified from R12-1-404, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-405. Form of Records

- A. A licensee or registrant shall ensure that each record required by this Article is legible throughout the specified retention period. The record shall be the original, a reproduced copy, or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. As an alternative the record may be stored in electronic media capable of producing legible records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. A licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.
- B. In the records required by this Article, a licensee or registrant may record quantities in SI units in parentheses following each of the required units, curie, rad, and rem, and include multiples and subdivisions.
- C. Notwithstanding subsection (B), the licensee or registrant shall ensure that information is recorded in the International System of Units (SI) or in SI and the units specified in subsection (B) on each shipment manifest as required in R9-7-439(A).
- D. A licensee or registrant shall make a clear distinction among the quantities entered on the records required by this Section (e.g., total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, committed effective dose equivalent).

Historical Note

New Section R9-7-405 recodified from R12-1-405, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-406. Implementation

Any existing license or registration condition that is more restrictive than this Article remains in force until amendment or renewal of the license or registration.

Historical Note

New Section R9-7-406 recodified from R12-1-406, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-407. Radiation Protection Programs

- A. Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Article 4.
- B. The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).
- C. The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.
- D. To implement the ALARA requirements in subsection (B), and notwithstanding the requirements in R9-7-416, each licensee or registrant governed by 9 A.A.C. 7, Article 3 shall limit air emissions of radioactive material to the environment so that individual members of the public likely to receive the highest dose will not receive a total effective dose equivalent in excess of 0.1mSv (10 mrem) per year from the emissions. If a licensee or registrant subject to this requirement exceeds this limit, the licensee or registrant shall report the incident to the Department, in accordance with R9-7-444, and take prompt corrective action to prevent additional violations.
- E. Records.
 - 1. Each licensee or registrant shall maintain records of the radiation protection program, including:
 - a. The provisions of the program; and
 - b. Audits and other reviews of program content and implementation.
 - 2. A licensee or registrant shall retain the records required by subsection (E)(1)(a) for three years after the termination of the license or registration. The licensee or registrant shall retain the records required by subsection (E)(1)(b) for three years after the record is made.
 - 3. The following licensees and registrants are exempt from the record requirements contained in this subsection:

- a. B6-General Medical,
- b. C9-Gas Chromatograph,
- c. C10-General Industrial,
- d. D15-Possession Only,
- e. E2-X-ray Machine class B, and
- f. E3-X-ray Machine class C.

Historical Note

New Section R9-7-407 recodified from R12-1-407, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-408. Occupational Dose Limits for Adults

- A.** Each licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures required in R9-7-413, to the following dose limits:
 - 1. An annual limit, which is the more limiting of:
 - a. The total effective dose equivalent being equal to 0.05 Sv (5 rem); or
 - b. The sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.5 Sv (50 rem).
 - 2. The annual limits to the lens of the eye, to the skin, and to the extremities which are:
 - a. A lens dose equivalent of 0.15 Sv (15 rem), and
 - b. A shallow dose equivalent of 0.5 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.
- B.** Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See R9-7-413.
- C.** The assigned deep-dose equivalent and shallow-dose equivalent are, for the portion of the body receiving the highest exposure, determined as follows:
 - 1. The deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.
 - 2. If a protective apron is worn and monitoring is conducted as specified in R9-7-419(B), the effective dose equivalent for external radiation shall be determined as follows:
 - a. If only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25% of the limit specified in subsection (A), the reported deep-dose equivalent value multiplied by 0.3 is the effective dose equivalent for external radiation; or
 - b. When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation is assigned the value of the sum of the deep-dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep-dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.
 - 3. When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the Department. The assigned deep-dose equivalent shall be determined for the part of the body that receives the highest exposure. The assigned shallow-dose equivalent is the dose averaged over the contiguous 10 square centimeters of skin that receives the highest exposure. The deep-dose equivalent, lens-dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.
- D.** Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in Table I of Appendix B and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.
- E.** Notwithstanding the annual dose limits, the licensee shall limit the soluble Uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. See footnote 3 of Appendix B.
- F.** The licensee or registrant shall reduce the dose that an individual may receive in the current year by the amount of occupational dose received while employed occupationally as a radiation worker by all previous employers. See R9-7-412.

Historical Note

New Section R9-7-408 recodified from R12-1-408, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-409. Summation of External and Internal Doses

- A.** If a licensee or registrant is required to monitor according to both R9-7-419(B) and (C), the licensee or registrant shall add external and internal doses, and use the sum to demonstrate compliance with dose limits. If the licensee or registrant is required to monitor only according to R9-7-419(B) or only according to R9-7-419(C), summation is not required to demonstrate compliance with dose limits. The licensee or registrant may demonstrate compliance with the requirements for

summation of external and internal doses according to subsections (B), (C), and (D). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation but are subject to separate limits (See R9-7-408(A)(2)).

- B.** If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity (1):
1. The sum of the fractions of the inhalation ALI for each radionuclide, or
 2. The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or
 3. The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using applicable biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, W_T , and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.
- C.** If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than 10% of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.
- D.** The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for Hydrogen-3 and does not need to be evaluated or accounted for according to this subsection.

Historical Note

New Section R9-7-409 recodified from R12-1-409, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-410. Determination of External Dose from Airborne Radioactive Material

- A.** Each licensee shall, when determining the dose from airborne radioactive material, include the contribution to the deep-dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See Appendix B, footnotes 1 and 2.
- B.** Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep-dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep-dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

Historical Note

New Section R9-7-410 recodified from R12-1-410, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-411. Determination of Internal Exposure

- A.** For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, each licensee or registrant shall, when required according to R9-7-419, take suitable and timely measurements of:
1. Concentrations of radioactive materials in air in work areas,
 2. Quantities of radionuclides in the body,
 3. Quantities of radionuclides excreted from the body, or
 4. Combinations of these measurements,
- B.** Unless respiratory protective equipment is used, as provided in R9-7-425, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.
- C.** When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:
1. Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record;
 2. Upon prior approval of the Department, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and
 3. Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B.
- D.** If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in subsection (A)(2) or (3), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by R9-7-444 or R9-7-445. This delay permits the licensee or registrant to make additional measurements basic to the assessments.
- E.** If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours is either:
1. The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y from Appendix B for each radionuclide in the mixture; or
 2. The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.
- F.** If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture is the most restrictive DAC of any radionuclide in the mixture.

- G. If a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:
 1. The licensee uses the total activity of the mixture to demonstrate compliance with the dose limits in R9-7-408 and complies with the monitoring requirements in R9-7-419;
 2. The concentration of any radionuclide disregarded is less than 10% of its DAC; and
 3. The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30%.
- H. When determining the committed effective dose equivalent, the following information may be considered:
 1. In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.
 2. For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.5 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee shall also demonstrate that the limit in R9-7-408(A)(1)(b) is met.

Historical Note

New Section R9-7-411 recodified from R12-1-411, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-412. Determination of Prior Occupational Dose

- A. For each individual who is likely to receive in a year an occupational dose that requires monitoring according to R9-7-419 the licensee shall:
 1. Determine the occupational radiation dose received during the current year, and
 2. Attempt to obtain the records of lifetime cumulative occupational radiation dose.
- B. Before permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:
 1. The internal and external doses from all previous planned special exposures; and
 2. All doses in excess of the limits received during the lifetime of the individual, including doses received during accidents and emergencies; and
 3. All lifetime, cumulative, occupational radiation doses.
- C. In complying with the requirements of subsection (A), a licensee or registrant shall:
 1. Accept, as a record of the occupational dose that the individual received during the current year, a written and signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and
 2. Accept, as the record of lifetime cumulative radiation dose, an up-to-date Department Form Y (available from the Department) or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and
 3. Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.
- D. Records.
 1. The licensee or registrant shall record the exposure history, as required by subsection (A), on Department Form Y (available from the Department) or a similar clear and legible record of all the information required by this subsection. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report for preparing Department Form Y or its equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on Department Form Y or its equivalent indicating each period of time for which there is no data.
 2. The licensee or registrant is not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed according to the rules in Article 4 in effect before January 1, 1994. Occupational exposure histories obtained and recorded on Department Form Y or its equivalent before January 1, 1994, would not have included effective dose equivalent but may be used in the absence of specific information on the intake of radionuclides by the individual.
 3. If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall:
 - a. In establishing administrative controls under R9-7-408(F) for the current year, reduce the allowable dose limit for the individual by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and
 - b. Not subject the individual to planned special exposures.

4. The licensee or registrant shall retain current and prior records on Department Form Y or its equivalent for three years after the Department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing Department Form Y or its equivalent for three years after the record is made.

Historical Note

New Section R9-7-412 recodified from R12-1-412, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-413. Planned Special Exposures

- A. A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in R9-7-408, provided that each of the following conditions is satisfied:
 1. The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated from the planned special exposure are unavailable or impractical.
 2. The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.
 3. Before a planned special exposure, the licensee or registrant ensures that each individual involved is:
 - a. Informed in writing of the purpose of the planned special exposure;
 - b. Informed in writing of the estimated doses, associated potential risks, and specific radiation levels or other conditions that might be involved in performing the task; and
 - c. Instructed in the measures to be taken to keep the dose ALARA, considering other risks that may be present.
 4. Before permitting an individual to participate in a planned special exposure, the licensee or registrant shall ascertain prior doses as required by R9-7-412(B) for each individual involved.
 5. Subject to R9-7-408(B), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses that exceed:
 - a. The numerical value of any of the dose limits in R9-7-408(A) in any year, and
 - b. Five times the annual dose limits in R9-7-408(A) during the individual's lifetime.
 6. The licensee or registrant shall maintain records of a planned special exposure in accordance with subsections (B) and (C) and submit a written report to the Department within 30 days after the date of any planned special exposure conducted in accordance with this Section, informing the Department that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by subsection (B).
 7. The licensee or registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and inform the individual, in writing, of the dose within 30 days after the date of the planned special exposure. The dose from a planned special exposure shall not be considered in controlling future occupational dose of the individual according to R9-7-408(A) but shall be included in evaluations required by subsections (A)(4) and (A)(5).
- B. Records.
 1. For each planned special exposure, the licensee or registrant shall maintain records that describe:
 - a. The exceptional circumstances requiring the use of a planned special exposure,
 - b. The name of the management official who authorized the planned special exposure and a copy of the signed authorization,
 - c. What actions were necessary,
 - d. Why the actions were necessary,
 - e. What precautions were taken to assure that doses were minimized in accordance with R9-7-407(B),
 - f. What individual and collective doses were expected,
 - g. The doses actually received in the planned special exposure, and
 - h. The process through which the employee involved in the planned special exposure has been informed in writing of the information contained in subsection (A)(3).
 2. The licensee or registrant shall retain the records for three years after the Department terminates each pertinent license or registration.
- C. A licensee shall submit a report to the Department no later than 30 days after a planned special exposure conducted in accordance with subsection (A). The report shall contain the date of the planned exposure and the information required by subsection (B).

Historical Note

New Section R9-7-413 recodified from R12-1-413, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-414. Occupational Dose Limits for Minors

The annual occupational dose limits for minors are 10% of the annual occupational dose limits specified for adult workers in R9-7-408.

Historical Note

New Section R9-7-414 recodified from R12-1-414, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-415. Dose Equivalent to an Embryo or Fetus

- A. A licensee or registrant shall ensure that the dose equivalent to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem). Records shall be maintained according to R9-7-419(E)(4) and (5).
- B. The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman to satisfy the limit in subsection (A).
- C. For purposes of this Section, the dose equivalent to the embryo or fetus is the sum of:
 - 1. The deep-dose equivalent to the declared pregnant woman; and
 - 2. The dose equivalent to the embryo or fetus resulting from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman.
- D. If the dose equivalent to the embryo or fetus is found to have exceeded 5 mSv (0.5 rem) or is within 0.5 mSv (0.05 rem) of this dose by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with subsection (A) if the additional dose equivalent to the embryo or fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.

Historical Note

New Section R9-7-415 recodified from R12-1-415, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-416. Dose Limits for Individual Members of the Public

- A. Each licensee or registrant shall conduct operations so that:
 - 1. The total effective dose equivalent to any individual member of the public from the licensed or registered operation does not exceed 1 mSv (0.1 rem) in a year, excluding the dose contribution from background radiation, medical administration of radiation, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-719, voluntary participation in a medical research program, and the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with R9-7-436; and
 - 2. The dose in any unrestricted area from an external source excluding the dose contribution from an individual who has been administered radioactive material and released in accordance with R9-7-719, does not exceed 0.02 mSv (0.002 rem) in any one hour.
- B. Registrants possessing radiation machines in operation before August 10, 1994, are exempt from the requirement in subsection (A)(1). Operation of these machines shall be conducted so that the total effective dose equivalent to any individual member of the public does not exceed 5 mSv (0.5 rem) in a year.
- C. A licensee, registrant, or an applicant for a license or registration may apply for Department authorization to operate with an annual dose limit of 5 mSv (0.5 rem) for an individual member of the public. The application shall include the following information:
 - 1. An explanation of the need for and the expected duration of operations in excess of the limit in subsection (A), and
 - 2. The licensee's or registrant's program to assess and control dose within the 5 mSv (0.5 rem) annual limit; and
 - 3. The procedures to be followed to maintain the dose in accordance with R9-7-407(B).
- D. A licensee or registrant shall comply with the U.S. Environmental Protection Agency's applicable environmental radiation standards in 40 CFR 190, 2003 edition, published July 1, 2003, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, which are incorporated by reference, on file with the Department and contain no future editions or amendments.
- E. The Department may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.
- F. Each licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted areas and radioactive materials contained in effluents released to unrestricted areas.
- G. Each licensee or registrant shall:
 - 1. Demonstrate by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or
 - 2. Demonstrate that:
 - a. The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Appendix B, Table II; and
 - b. If an individual were continually present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.5 mSv (0.05 rem) in a year.
- H. Upon approval from the Department, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.
- I. Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public and shall retain the records for three years after the Department terminates each pertinent license or registration.

Historical Note

New Section R9-7-416 recodified from R12-1-416, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-417. Testing for Leakage or Contamination of Sealed Sources

- A. A licensee in possession of any sealed source shall ensure that:
1. Each sealed source, except as specified in subsection (B), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.
 2. Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Department, after evaluation of information specified by R9-7-311(D)(2) or equivalent information specified by an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.
 3. Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Department, after evaluation of information specified by R9-7-311(D)(2) or equivalent information specified by an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.
 4. Each sealed source suspected of damage or leakage is tested for leakage or contamination before further use.
 5. Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, are capable of detecting the presence of 185 Bq (0.005 μ Ci) of radioactive material on a test sample. The person conducting the test shall take test samples from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which contamination could accumulate. For a sealed source contained in a device, the person conducting the test shall obtain test samples when the source is in the "off" position.
 6. The test for leakage from brachytherapy sources containing radium is capable of detecting an absolute leakage rate of 37 Bq (0.001 μ Ci) of Radon-222 in a 24-hour period when the collection efficiency for Radon-222 and its daughters has been determined with respect to collection method, volume, and time.
 7. Tests for contamination from radium daughters are taken on the interior surface of brachytherapy source storage containers and are capable of detecting the presence of 185 Bq (0.005 μ Ci) of a radium daughter which has a half-life greater than four days.
- B. A licensee need not perform tests for leakage or contamination on the following sealed sources:
1. Sealed sources containing only radioactive material with a half-life of less than 30 days;
 2. Sealed sources containing only radioactive material as a gas;
 3. Sealed sources containing 3.7 MBq (100 μ Ci) or less of beta or photon-emitting material or 370 kBq (10 μ Ci) or less of alpha-emitting material;
 4. Sealed sources containing only Hydrogen-3;
 5. Seeds of Iridium-192 encased in nylon ribbon; and
 6. Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used, and identified as in storage. The licensee shall test each sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.
- C. Persons specifically authorized by the Department, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission shall perform tests for leakage or contamination from sealed sources.
- D. A licensee shall maintain for Department inspection test results in units of becquerel or microcurie.
- E. The following is considered evidence that a sealed source is leaking:
1. The presence of 185 Bq (0.005 μ Ci) or more of removable contamination on any test sample.
 2. Leakage of 37 Bq (0.001 μ Ci) of Radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.
 3. The presence of removable contamination resulting from the decay of 185 Bq (0.005 μ Ci) or more of radium.
- F. A licensee shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with this Article.
- G. A licensee shall file a report with the Department within five days if the test for leakage or contamination indicates a sealed source is leaking or contaminated. The report shall include the equipment involved, the test results, and the corrective action taken.
- H. A licensee shall maintain records of the tests for leakage required in subsection (A) for three years after the records are made.

Historical Note

New Section R9-7-417 recodified from R12-1-417, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-418. Surveys and Monitoring

- A. Each licensee or registrant shall make, or cause to be made, surveys if surveys are:
1. Necessary for the licensee or registrant to comply with Article 4, and
 2. Reasonable under the circumstances to evaluate:

- a. The magnitude and extent of radiation levels, and
 - b. Concentrations or quantities of residual radioactivity, and
 - c. The potential radiological hazards of the radiation levels and residual radioactivity detected.
- B.** All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with R9-7-408, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:
- 1. Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology, according to NVLAP procedures published March 1994 as NIST Handbook 150, and NIST Handbook 150-4, published August 1994, which is incorporated by reference, published by the U.S. Government Printing Office, Washington D.C. 20402-9325, and on file with the Department. The material incorporated by reference contains no future editions or amendments;
 - 2. Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored; and
 - 3. Film badges must be replaced at periods not to exceed one month; other personnel dosimeters processed and evaluated by an accredited NVLAP processor must be replaced at periods not to exceed three months.
- C.** The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device and that personnel monitoring devices are issued to, and used by only the individual to whom the monitoring device has been first issued during any reporting period.
- D.** A licensee shall ensure that survey instruments and personnel dosimeters that are used to make quantitative measurements are calibrated in accordance with R9-7-449.
- E.** Records.
- 1. Each licensee or registrant shall maintain records showing the results of surveys required by this Section and R9-7-433(B). The licensee or registrant shall retain these records for three years after the record is made.
 - 2. The licensee or registrant shall retain each of the following records for three years after the Department terminates the license or registration:
 - a. Records of the survey results used to determine the dose from external sources of radiation, in the absence of or in combination with individual monitoring data, and provide an assessment of individual dose equivalents;
 - b. Records of the results of measurements and calculations used to determine individual intakes of radioactive material and to assess an internal dose;
 - c. Records showing the results of air sampling, surveys, and bioassays required according to R9-7-425(A)(3)(a) and (b);
 - d. Records of the measurement and calculation results used to evaluate the release of radioactive effluents to the environment; and
 - e. Notwithstanding subsection (A) of this part, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with R9-7-323, as applicable.

Historical Note

New Section R9-7-418 recodified from R12-1-418, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-419. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose

- A.** Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this Article.
- B.** At minimum each licensee or registrant shall supply and require the use of individual monitoring devices by the following personnel:
- 1. Adults likely to receive, in one year, an intake in excess of 10% of the applicable ALI in Table I, Columns 1 and 2, of Appendix B;
 - 2. Minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.5 mSv (0.05 rem);
 - 3. Adults likely to receive, in one year from radiation sources external to the body, a dose in excess of 10 percent of the limits in R9-7-408(A);
 - 4. Minors likely to receive, in one year, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of 5 mSv (0.5 rem);
 - 5. Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem) (Note: All of the occupational doses in R9-7-408 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.);
 - 6. Individuals entering a high or very high radiation area;
 - 7. Individuals operating mobile x-ray equipment as described in R9-7-608;

8. Individuals holding animals for diagnostic x-ray procedures, as described in R9-7-613;
 9. Individuals servicing enclosed beam x-ray systems with bypassed interlocks, as described in R9-7-803;
 10. Individuals operating open beam fluoroscopic systems and ancillary personnel working in the room when the fluoroscopic system is in use, except when relieved of this requirement by registration condition;
 11. Individuals performing well logging, as described in Article 17;
 12. Individuals, wearing a finger or wrist individual monitoring device, during the operation of an open-beam or hand held analytical x-ray system or equipment with no safety devices as described in R9-7-806(C) and (F); and
 13. Individuals, wearing a finger or wrist individual monitoring device, performing repairs that require the presence of a primary beam of the analytical x-ray system or equipment, as described in R9-7-806(C) and (F).
- C.** Each licensee shall monitor the occupational intake of radioactive material by and assess the committed effective dose equivalent to:
1. Adults likely to receive, in one year, an intake in excess of 10 percent of the applicable ALI in Table 1, Columns 1 and 2, of Appendix B;
 2. Minors likely to receive, in one year, a committed effective dose equivalent in excess of 1 mSv (0.1 rem); and
 3. Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 1 mSv (0.1 rem).
- D.** Each licensee or registrant shall require that all individual monitoring devices be located on individuals according to the following requirements:
1. An individual monitoring device, used to obtain the dose equivalent to an embryo or fetus of a declared pregnant woman according to R9-7-415, shall be located under the protective apron at the waist. A qualified expert shall be consulted to determine the dose equivalent to the embryo or fetus if this individual monitoring device has a monthly reported dose equivalent value that exceeds 0.5 millisieverts (50 millirem). For purposes of this subsection, the value for determining the dose equivalent to an embryo or fetus under R9-7-415(C), for occupational exposure to radiation from medical fluoroscopic equipment, is the value reported by the individual monitoring device worn at the waist underneath the protective apron, which has been corrected for the particular individual and the work environment by a qualified expert.
 2. An individual monitoring device used for lens dose equivalent shall be located at the neck or an unshielded location closer to the eye, outside the protective apron.
 3. If only one individual monitoring device is used to determine the effective dose equivalent for external radiation, according to R9-7-408(C)(2)(a), the device shall be located at the neck outside the protective apron. If a second individual monitoring device is used for the same purpose, it shall be located under the protective apron at the waist. A second individual monitoring device is required for a declared pregnant woman.
 4. An individual, wearing an extremity personnel monitoring device, during the operation of an open-beam or hand-held analytical x-ray system with no safety devices or an individual performing repairs in the presence of a primary beam of the analytical x-ray system or equipment, as described in R9-7-806(C) and (F), shall wear the device on the individual's finger or wrist.
- E.** Records.
1. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring is required according to this Section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:
 - a. The deep-dose equivalent to the whole body, lens dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities;
 - b. The estimated intake of radionuclides;
 - c. The committed effective dose equivalent assigned to the intake of radionuclides;
 - d. The specific information used to assess the committed effective dose equivalent according to R9-7-411(A) and (C), and when required R9-7-419;
 - e. The total effective dose equivalent when required by R9-7-409; and
 - f. The total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose;
 2. The licensee or registrant shall make entries of the records specified in subsection (D)(1), at intervals not to exceed one year;
 3. The licensee or registrant shall maintain at the inspection site the records specified in subsection (D)(1) in a clear and legible method that contains all the information required by this subsection;
 4. The licensee or registrant shall maintain the records of dose to an embryo or fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file but may be maintained separately from the dose records; and
 5. The licensee or registrant shall retain each required form or record for three years after the Department terminates each pertinent license or registration requiring the record.

Historical Note

New Section R9-7-419 recodified from R12-1-419, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-420. Control of Access to High Radiation Areas

- A. A licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:
 - 1. A control device that, upon entry into the area, causes the level of radiation to be reduced below the level at which an individual might receive a deep-dose equivalent of 1 mSv (0.1 rem) in one hour at 30 centimeters from the source from any surface that the radiation penetrates;
 - 2. A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or
 - 3. Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entity.
- B. In place of the controls required by subsection (A) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.
- C. The licensee or registrant may apply to the Department for approval of alternative methods for controlling access to high radiation areas.
- D. The licensee or registrant shall establish the controls required by subsections (A) and (C) in a way that does not prevent individuals from leaving a high radiation area.
- E. The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the U.S. Department of Transportation, provided that:
 - 1. The packages do not remain in the area longer than three days, and
 - 2. The dose rate at 1 meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.
- F. The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Article 4 and operate in accordance with R9-7-407(B) and the provisions of the licensee's or registrant's radiation protection program.
- G. The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area if the registrant has met all the specific requirements for access and control specified in other applicable Articles, such as Article 5 for industrial radiography, Article 6 for x-rays in the healing arts, and Article 9 for particle accelerators.

Historical Note

New Section R9-7-420 recodified from R12-1-420, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-421. Control of Access to Very-high Radiation Areas

- A. In addition to the requirements in R9-7-420, a licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 5 Gy (500 rad) or more in one hour at 1 meter from a source or from any surface that the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation or non-self-shielded irradiators.
- B. The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area, described in subsection (A), if the registrant has met all requirements for access and control specified in other applicable Articles, such as Article 5 for industrial radiography, Article 6 for x-rays in the healing arts, and Article 9 for particle accelerators.
- C. Each licensee or registrant shall maintain records of tests made according to R9-7-422(B)(9) on entry control devices for very-high radiation areas. These records shall include the date, time, and results of each test of function.
- D. The licensee or registrant shall retain the records required by this Section for three years after the record is made.

Historical Note

New Section R9-7-421 recodified from R12-1-421, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-422. Control of Access to Irradiators (Very-high Radiation Areas)

- A. This Section applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. This Section does not apply to sources of radiation that are used in teletherapy, industrial radiography, or completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.
- B. A licensee or registrant shall ensure that each area in which radiation levels may exceed 5 Gy (500 rad) in one hour at 1 meter from a source that is used to irradiate materials meets the following requirements:
 - 1. Each entrance or access point shall be equipped with entry control devices that:
 - a. Function automatically to prevent any individual from inadvertently entering a very high radiation area;
 - b. Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in one hour; and

- c. Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep-dose equivalent to an individual in excess of 1 mSv (0.1 rem) in one hour.
 2. If the control devices required in subsection (B)(1) fail to function, additional control devices shall be provided so that:
 - a. The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in one hour; and
 - b. Conspicuous visible and audible alarm signals are generated so that an individual entering the area is aware of the hazard. The individual who enters the very-high radiation area after an alarm signals shall be familiar with the process and equipment. Before entering, the individual shall ensure that a second individual is present and aware of the first person's actions.
 3. The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:
 - a. The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in one hour, and
 - b. Conspicuous visible and audible alarm signals are generated so that potentially affected individuals are aware of the hazard. Potentially affected individuals shall notify the licensee or registrant of the failure or removal of the physical barriers.
 4. When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.
 5. Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of subsections (B)(3) and (4).
 6. The licensee or registrant shall equip each area with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, installed in the area, and which can prevent the source of radiation from being put into operation.
 7. The licensee or registrant shall control each area by use of administrative procedures and devices necessary to ensure that the area is cleared of personnel before each use of the source of radiation.
 8. The licensee or registrant shall check each area by radiation measurement to ensure that, before the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area will not expose an individual to a deep-dose equivalent in excess of 1 millisievert (0.1 rem) in one hour.
 9. The licensee or registrant shall test the entry control devices required in subsection (B)(1) for proper functioning and keep records according to R9-7-421.
 - a. Testing shall be conducted before initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day;
 - b. Testing shall be conducted before resumption of operation of the source of radiation after any unintentional interruption;
 - c. The licensee or registrant shall submit to the Department a schedule of testing; and
 - d. The licensee or registrant shall include in the schedule a listing of the periodic testing that will be followed.
 10. The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in a safe condition or effect repairs on controls, unless control devices are functioning properly.
 11. The licensee or registrant shall control entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by personnel, with devices and administrative procedures necessary to physically protect and warn against inadvertent entry by an individual through one of the portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any uncontained radioactive material that is carried toward an exit and automatically prevent contained radioactive material from being carried out of the area.
- C. A licensee, registrant, or applicant seeking a license or registration for a source of radiation within the purview of subsection (B) that will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of subsection (B) may apply to the Department for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to that specified in subsection (B). At least one of the alternative measures shall be an entry-preventing interlock control, based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where the sources of radiation are used.
- D. A licensee or registrant shall provide the entry control devices required by subsections (B) and (C) in such a way that no individual will be prevented from leaving the area.
- E. Records.
 1. Each licensee or registrant shall maintain records of tests made according to subsection (B)(9) on entry control devices for very-high radiation areas. These records shall include the date and results of each test of function.
 2. The licensee or registrant shall retain the records for three years from the date the record is made.

Historical Note

New Section R9-7-422 recodified from R12-1-422, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-423. Use of Process or Other Engineering Controls

A licensee shall use, to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentration of radioactive material in air.

Historical Note

New Section R9-7-423 recodified from R12-1-423, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-424. Use of Other Controls

- A. If it is not practical to apply process or other engineering controls to control concentrations of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent according to R9-7-407(B), increase monitoring and limit intakes by one or more of the following means:
1. Control access,
 2. Limit exposure times,
 3. Use respiratory protection equipment, or
 4. Use other controls.
- B. If the licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee shall also consider the impact of respirator use on workers' industrial health and safety.

Historical Note

New Section R9-7-424 recodified from R12-1-424, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-425. Use of Individual Respiratory Protection Equipment

- A. If a licensee assigns or permits the use of respiratory protection equipment to limit the intake of radioactive material,
1. Except as provided in subsection (A)(2), the licensee shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health (NIOSH).
 2. If the licensee wishes to use equipment that has not been tested or certified by NIOSH, or for which there is no schedule for testing or certification, the licensee shall submit an application to the Department and request authorization for use of this equipment, except as otherwise provided in this Section. The licensee shall provide evidence with the application that the material and performance characteristics of the equipment provide the asserted degree of protection under anticipated conditions of use. The licensee shall demonstrate the degree of protection by providing reliable test information.
 3. The licensee shall implement and maintain a respiratory protection program that includes:
 - a. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;
 - b. Surveys and bioassays, as necessary, to evaluate actual intakes;
 - c. Testing of respirators for operability (user seal check for face sealing devices and functional check for other devices) immediately before each use;
 - d. Written procedures regarding:
 - i. Monitoring, including air sampling and bioassays;
 - ii. Supervision and training of respirator users;
 - iii. Fit testing;
 - iv. Respirator selection;
 - v. Breathing air quality;
 - vi. Inventory and control;
 - vii. Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;
 - viii. Recordkeeping; and
 - ix. Limitations on periods of respirator use and relief from respirator use;
 - e. Determination by a physician that each individual user is able to use respiratory protection equipment:
 - i. Before the initial fitting of a face-sealing respirator;
 - ii. Before the first field use of a non-face-sealing respirator, and
 - iii. Every 12 months after initial fitting or first use, or periodically at a frequency determined by a physician; and
 - f. Fit testing, with a fit factor ≥ 10 times the APF for a negative pressure device and a fit factor ≥ 500 for any positive pressure, continuous flow, and pressure-demand device, before the first field use of tight-fitting, face-sealing respirators and periodically after first use at least yearly. The licensee shall perform fit testing with the face piece operating in the negative pressure mode.
 4. The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use, in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other condition that might require relief.
 5. The licensee shall consider manufacturer limitations regarding respirator type and mode of use. When selecting a respiratory device, the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in a manner that does not interfere with the proper operation of the respirator.

6. The licensee shall provide standby rescue persons whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The licensee shall equip standby rescue persons with respiratory protection devices or other apparatus designed for potential hazards and anticipated conditions of use. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. The licensee shall provide at least one standby rescue person for every five workers, who is immediately available to assist any worker using this type of equipment and provide effective emergency rescue if needed.
 7. The licensee shall supply atmosphere-supplying respirators with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of OSHA (29 CFR 1910.134(i)(1)(ii)(A) through (E), July 1, 2003, incorporated by reference and on file with the Department, containing no future editions or amendments). Grade D quality air criteria include:
 - a. Oxygen content (v/v) of 19.5-23.5%;
 - b. Hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
 - c. Carbon monoxide (CO) content of 10 ppm or less;
 - d. Carbon dioxide content of 1,000 ppm or less; and
 - e. Lack of noticeable odor.
 8. The licensee shall ensure that no objects, materials, or substances, such as facial hair, or any conditions that interfere with the face-to-face piece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator face piece.
 9. In estimating the dose to individuals from intake of airborne radioactive materials, the licensee shall use the concentration of radioactive material in the air that is inhaled when respirators are worn, which is determined by dividing the ambient concentration in air without respiratory protection by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the licensee shall modify the calculation using the corrected value. If the dose is later found to be less than the estimated dose, the licensee may modify the calculation using the corrected value.
- B.** The licensee shall use Appendix A to select equipment and associated assigned protection factors.
- C.** A licensee shall apply to the Department for authorization to use assigned protection factors in excess of those specified in Appendix A. To apply for authorization the licensee shall:
1. State the reason for the higher protection factors; and
 2. Demonstrate that the requested respiratory protective equipment provides the higher protection factors under the proposed conditions of use.
- D.** The licensee shall notify the Department in writing at least 30 days before the date that respiratory protective equipment is first used according to subsection (A) or (C).

Historical Note

New Section R9-7-425 recodified from R12-1-425, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-426. Security of Stored Sources of Radiation

A licensee or registrant shall secure from unauthorized removal or access licensed or registered sources of radiation that are stored in unrestricted areas.

Historical Note

New Section R9-7-426 recodified from R12-1-426, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-427. Control of Sources of Radiation Not in Storage

- A.** A licensee shall control and maintain constant surveillance of licensed radioactive material that is in an unrestricted area and is not in storage or in a patient.
- B.** A registrant shall maintain control of radiation machines that are in an unrestricted area and not in storage.

Historical Note

New Section R9-7-427 recodified from R12-1-427, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-428. Caution Signs

- A.** Unless otherwise authorized by the Department, a licensee or registrant shall use the symbol prescribed by this Section with the colors magenta, or purple, or black on yellow background as the standard radiation symbol. The symbol prescribed is the three-bladed design as follows:

RADIATION SYMBOL

1. Cross-hatched area is to be magenta, purple, or black; and
2. The background is to be yellow.



- B. Notwithstanding the requirements of subsection (A), licensees or registrants are authorized to label sources of radiation, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols that lack the color scheme required in subsection A.
- C. In addition to the contents of signs and labels prescribed in this Article, the licensee or registrant shall provide, on or near the required signs and labels, additional information to make individuals aware of potential radiation exposures and to minimize the exposures.

Historical Note

New Section R9-7-428 recodified from R12-1-428, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-429. Posting

- A. A licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words “CAUTION, RADIATION AREA.”
- B. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words “CAUTION, HIGH RADIATION AREA” or “DANGER, HIGH RADIATION AREA.”
- C. The licensee or registrant shall post each very-high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words “GRAVE DANGER, VERY HIGH RADIATION AREA.”
- D. The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words “CAUTION, AIRBORNE RADIOACTIVITY AREA” or “DANGER, AIRBORNE RADIOACTIVITY AREA.”
- E. The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of licensed material specified in Appendix C with a conspicuous sign or signs bearing the radiation symbol and the words “CAUTION, RADIOACTIVE MATERIAL(S)” or “DANGER, RADIOACTIVE MATERIAL(S).”

Historical Note

New Section R9-7-429 recodified from R12-1-429, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-430. Exceptions to Posting Requirements

- A. A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:
 - 1. The sources of radiation are constantly attended during these periods by an individual who takes precautions necessary to prevent exposure of individuals to sources of radiation in excess of limits established in this Article; and
 - 2. The area or room is subject to the licensee’s or registrant’s control.
- B. A licensee or registrant is not required to post a caution sign in a room or other area in a hospital that is occupied by an individual who has been administered radioactive material, if the individual meets the criteria for release in R9-7-719.
- C. A licensee or registrant is not required to post a caution sign in a room or area because of the presence of a sealed source, provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.
- D. A hospital or clinic licensee is exempt from the posting requirements in R9-7-429 for a teletherapy room if:
 - 1. Access to the room is controlled according to R9-7-731; and
 - 2. Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation that exceeds the limits established in this Chapter.
- E. A registrant is not required to post a caution sign in a room or area because of the presence of radiation machines used solely for diagnosis in the healing arts.

Historical Note

New Section R9-7-430 recodified from R12-1-430, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-431. Labeling Containers and Radiation Machines

- A. A licensee shall ensure that each container of licensed material is labeled with a durable, clearly visible radiation symbol and the words “CAUTION, RADIOACTIVE MATERIAL” or “DANGER, RADIOACTIVE MATERIAL.” The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the radioactivity is estimated, radiation level, kind of material, and mass enrichment, to permit an individual handling or using a container, or working in the vicinity of a container, to take precautions to avoid or minimize exposure.
- B. Before removal or disposal of an empty, uncontaminated container to an unrestricted area, each licensee shall remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.
- C. Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner to caution an individual that radiation is produced when it is energized.

- D. A licensee shall label each syringe and vial that contains a radiopharmaceutical used in the practice of medicine with the radiopharmaceutical content. Each syringe shield and vial shield shall be labeled, unless the label on the syringe or vial is visible when shielded. The label shall contain the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the name of the person being administered the radiopharmaceutical. Color-coding syringe shields and vial shields does not meet the labeling requirement.

Historical Note

New Section R9-7-431 recodified from R12-1-431, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-432. Labeling Exemptions

A licensee is not required to label:

1. Containers holding licensed material in quantities less than the quantities listed in Appendix C;
2. Containers holding licensed material in concentrations less than those specified in Table III of Appendix B;
3. Containers attended by an individual who takes precautions necessary to prevent exposure of individuals to radiation in excess of the limits established in this Article;
4. Containers holding radioactive material that do not exceed the limits for excepted quantity or article as defined and limited in 49 CFR 173.403, and 173.421 through 173.424, and are transported, packaged, and labeled in accordance with 49 CFR 172.436 through 172.440 (Revised October 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.);
5. Containers that are accessible only to individuals authorized to handle, use, or work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record, retained as long as the container is in use for the purpose indicated on the record. (Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells.); or
6. Installed manufacturing or process equipment, such as piping and tanks.

Historical Note

New Section R9-7-432 recodified from R12-1-432, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-433. Procedures for Receiving and Opening Packages

- A. Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in 10 CFR 71.4, January 1, 2005, which is incorporated by reference, published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. The material incorporated by reference contains no future editions or amendments. The licensee shall make arrangements to receive:
1. The package when the carrier offers it for delivery; or
 2. The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.
- B. Each licensee shall:
1. Monitor the external surfaces of a package, labeled with a Radioactive White I, Yellow II, or Yellow III as specified in 49 CFR 172.403 and 172.436 through 172.440, October 1, 2004, which are incorporated by reference, published by the Office of Federal Register, National Archives and Records Administration, Washington, D.C. 20408, and on file with the Department. The material incorporated by reference contains no future editions or amendments. The licensee shall test the package for radioactive contamination, unless the package contains only radioactive material in the form of gas or in special form, as defined in R9-7-102; and
 2. Monitor the external surfaces of a package, labeled with a Radioactive White I, Yellow II, or Yellow III as specified in subsection (B)(1), for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, defined in 10 CFR 71, and referenced in subsection (A); and
 3. Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.
- C. The licensee shall perform the monitoring required by subsection (B) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than three hours from the beginning of the next working day if it is received after working hours.
- D. The licensee shall immediately notify the final delivery carrier and the Department by telephone when:
1. Removable radioactive surface contamination exceeds 22 dpm/cm² for beta-gamma emitting radionuclides or 2.2 dpm/cm² for alpha-emitting radionuclides, wiping a minimum surface area of 300 square centimeters (46 square inches), or the entire surface if less than 300 square centimeters (46 square inches); or
 2. External radiation levels exceed the limits of 2 millisieverts (200 millirem) per hour.
- E. Each licensee shall:
1. Establish, maintain, and retain written procedures for safely opening packages that contain radioactive material, and
 2. Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

- F. Licensees transferring special form sources in vehicles owned or operated by the licensee to and from a work site are exempt from the contamination monitoring requirements of subsection (B) but are not exempt from the monitoring requirement in subsection (B) for measuring radiation levels that ensures that the source of radiation is still properly lodged in its shield.

Historical Note

New Section R9-7-433 recodified from R12-1-433, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-434. General Requirements for Waste Disposal

- A. A licensee shall dispose of licensed material only:
1. By transfer to an authorized recipient as provided in R9-7-439 or in Article 3, or to the U.S. Department of Energy;
 2. By decay in storage, according to R9-7-438(C);
 3. By release in effluents within the limits in R9-7-416; or
 4. As authorized according to R9-7-435, R9-7-436, R9-7-437, R9-7-438, or R9-7-438.01;
- B. To receive waste that contains licensed material from other persons, a person shall be specifically licensed for:
1. Treatment prior to disposal,
 2. Treatment or disposal by incineration,
 3. Decay in storage,
 4. Disposal at a land disposal facility licensed according to Article 3, or
 5. Storage until transferred to a storage or disposal facility authorized to receive the waste.

Historical Note

New Section R9-7-434 recodified from R12-1-434, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-435. Method for Obtaining Approval of Proposed Disposal Procedures

For disposal of licensed material generated in the licensee's operations, a licensee or applicant for a license may apply to the Department for approval of proposed disposal procedures, not otherwise authorized in this Chapter. Each application shall include:

1. A description of the waste containing licensed material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation;
2. The proposed manner and conditions of waste disposal;
3. An analysis and evaluation of pertinent information on the nature of the environment;
4. The nature and location of other potentially affected facilities; and
5. An analysis and procedure to ensure that doses comply with R9-7-407(B), and are within the dose limits in this Article.

Historical Note

New Section R9-7-435 recodified from R12-1-435, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-436. Disposal by Release into Sanitary Sewerage System

- A. A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:
1. The material is readily soluble or is readily dispersible biological material, in water;
 2. The quantity of licensed radioactive material that the licensee releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Appendix B, Table III; and
 3. If more than one radionuclide is released, the following conditions shall also be satisfied:
 - a. The licensee shall determine the fraction of the limit in Appendix B, Table III represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Appendix B, Table III;
 - b. The sum of the fractions for each radionuclide required by subsection (A)(3)(a) does not exceed unity; and
 - c. The total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 185 GBq (5 Ci) of Hydrogen-3, 37 GBq (1 Ci) of Carbon-14, and 37 GBq (1 Ci) of all other radioactive materials combined.
- B. Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in subsection (A).

Historical Note

New Section R9-7-436 recodified from R12-1-436, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-437. Treatment or Disposal by Incineration

A licensee shall treat or dispose of licensed material by incineration only in the amounts and forms specified in R9-7-438 or as specifically approved by the Department according to R9-7-435.

Historical Note

New Section R9-7-436 recodified from R12-1-436, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-438. Disposal of Specific Wastes

- A. A licensee may dispose of the following licensed material as if it were not radioactive:
 - 1. 1.85 kBq (0.05 µCi), or less, of Hydrogen-3 or Carbon-14 per gram of medium used for liquid scintillation counting; and
 - 2. 1.85 kBq (0.05 µCi), or less, of Hydrogen-3 or Carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.
 - 3. 1.85 kBq (0.05 µCi), or less, of Iodine-125 per gram of medium used in analyzing in vitro laboratory samples and associated sample holders contaminated during the laboratory procedure.
- B. A licensee shall not dispose of tissue, contaminated with radioactive material, according to subsection (A)(2) in a manner that would permit its use either as food for humans or as animal feed.
- C. A licensee may hold radioactive material with a physical half-life of less than or equal to 120 days for decay in storage before disposal without regard to its radioactivity, and is exempt from the requirements of R9-7-434, provided:
 - 1. The licensee monitors the radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and
 - 2. The licensee removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.
- D. The licensee shall maintain records in accordance with R9-7-441.

Historical Note

New Section R9-7-438 recodified from R12-1-438, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-438.01. Disposal of Certain Radioactive Material

- A. Licensed material as defined in the definition of radioactive material in R9-7-102 may be disposed of in accordance with this Article, even though it is not defined as low-level radioactive waste. Therefore, any licensed radioactive material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed by the Department, must meet the requirements of R9-7-439.
- B. A licensee may dispose of radioactive material, as defined in the definition of radioactive material in R9-7-102, at a disposal facility authorized to dispose of such material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

Historical Note

New Section R9-7-438.01 recodified from R12-1-438.01, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-439. Transfer for Disposal and Manifests

- A. Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility (for purposes of this rule “land disposal facility” means the land, buildings, structures, and equipment that are intended to be used for the disposal of radioactive waste. A geologic repository is not a land disposal facility) shall comply with 10 CFR 20.2006 and 10 CFR 20 Appendix G, published January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- B. An authorized representative of the waste generator shall provide the certification required in 10 CFR 20, Appendix G, Section II, which is incorporated by reference in subsection (A).

Historical Note

New Section R9-7-439 recodified from R12-1-439, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-440. Compliance with Environmental and Health Protection Regulations

Nothing in R9-7-434, R9-7-435, R9-7-436, R9-7-437, R9-7-438, or R9-7-439 relieves the licensee from complying with other applicable federal, state, and local rules or regulations governing any other toxic or hazardous properties of materials that may be disposed of according to the rules listed in Article 4 of this Chapter.

Historical Note

New Section R9-7-440 recodified from R12-1-440, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-441. Records of Waste Disposal

- A. Each licensee shall maintain records of the disposal of licensed materials made in accordance with R9-7-435, R9-7-436, R9-7-437, R9-7-438, and disposal by burial in soil, including burials authorized before February 25, 1985.
- B. The licensee shall retain the records required by subsection (A) until the Department terminates each pertinent license requiring the record. The licensee shall provide for the disposition of these records prior to license termination.

Historical Note

New Section R9-7-441 recodified from R12-1-441, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-442. Department Inspection of Shipments of Waste

Each shipment of waste to a disposal facility, licensed under R9-7-1302(D)(11), is subject to inspection by the Department before shipment or transportation. The waste shipper shall notify the Department not less than five working days before the scheduled shipment or transportation of waste to a licensed disposal facility.

Historical Note

New Section R9-7-442 recodified from R12-1-442, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-443. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation

- A.** Each licensee or registrant shall report to the Department by telephone as follows:
1. Immediately after it becomes known to the licensee that licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C is stolen, lost, or missing under circumstances that indicate to the licensee that an exposure could result to individuals in unrestricted areas;
 2. Within 30 days after it becomes known to the licensee that licensed radioactive material in an aggregate quantity greater than 10 times the quantity specified in Appendix C is stolen, lost, or missing, and is still missing; and
 3. Immediately after it becomes known to the registrant that a radiation machine is stolen, lost, or missing.
- B.** Each licensee or registrant required to make a report according to subsection (A) shall, within 30 days after making the telephone report, make a written report to the Department that contains the following information:
1. A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model, serial number, type, and maximum energy of radiation emitted;
 2. A description of the circumstances under which the loss or theft occurred;
 3. A statement of disposition, or probable disposition, of the licensed or registered source of radiation;
 4. Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;
 5. Actions that have been taken, or will be taken, to recover the source of radiation; and
 6. Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.
- C.** After filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of the information.
- D.** The licensee or registrant shall provide the Department with the names of individuals who may have received an exposure to radiation as a result of an incident reported to the Department under subsection (B).

Historical Note

New Section R9-7-443 recodified from R12-1-443, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-444. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits

- A.** In addition to the notification required by R9-7-445, each licensee or registrant shall submit a written report within 30 days after learning of any of the following:
1. Incidents for which notification is required by R9-7-445;
 2. Doses in excess of any of the following:
 - a. The occupational dose limits for adults in R9-7-408;
 - b. The occupational dose limits for a minor in R9-7-414;
 - c. The limits for an embryo or fetus of a declared pregnant woman in R9-7-415;
 - d. The limits for an individual member of the public in R9-7-416;
 - e. Any applicable limit in the license or registration; or
 - f. The ALARA limit on air emissions in R9-7-407;
 3. Levels of radiation or concentrations of radioactive material in:
 - a. A restricted area in excess of applicable limits in the license or registration, or
 - b. An unrestricted area in excess of 10 times the applicable limit in this Article or in the license or registration, whether or not this involves an exposure of any individual to a dose in excess of the limits in R9-7-416;
 4. Radiation levels or concentrations of radioactive material in excess of the standards in 40 CFR 190, 2003 edition, published July 1, 2003, by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 which is incorporated by reference and on file with the Department, if the licensee is subject to these federal standards, or there is a license condition referencing the 40 CFR 190 standards. This incorporation by reference contains no future editions or amendments.
- B.** Contents of reports.
1. Each report shall contain a description of each individual's exposure to radiation and radioactive material, including as applicable:
 - a. Estimates of each individual's dose;
 - b. The levels of radiation and concentrations of radioactive material involved;
 - c. The cause of the elevated exposures, dose rates, or concentrations; and
 - d. Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, and associated license or registration conditions.
 2. Each report filed according to subsection (A) shall include for each occupationally overexposed individual: name, Social Security number, and date of birth. With respect to the limit for an embryo or fetus in R9-7-415, the identifiers

in the report should be those of the declared pregnant woman. The report shall be prepared so that information regarding each overexposed individual is stated in a separate and detachable part of the report.

- C. All licensees or registrants who make reports according to subsection (A) shall submit the report in writing to the Department.

Historical Note

New Section R9-7-444 recodified from R12-1-444, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-445. Notification of Incidents

- A. Immediate notification: Each licensee or registrant shall immediately report to the Department any event involving a radiation source that may have caused or threatens to cause any of the following conditions:
 - 1. An individual to receive:
 - a. A total effective dose equivalent of 0.25 Sv (25 rem) or more;
 - b. A lens dose equivalent of 0.75 Sv (75 rem) or more; or
 - c. A shallow-dose equivalent to the skin or extremities of 2.5 Gy (250 rads) or more; or
 - 2. The release of radioactive material, inside or outside of a restricted area, so if an individual had been present for 24 hours, the individual could have received five times the annual limit on intake (this subsection do not apply to a location where personnel are not normally stationed during routine operations, such as a hot-cell or process enclosure).
- B. Twenty-four hour notification: Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Department any event involving loss of control of a radiation source possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:
 - 1. An individual to receive, in a period of 24 hours
 - a. A total effective dose equivalent exceeding 0.05 Sv (5 rem);
 - b. A lens dose equivalent exceeding 0.15 Sv (15 rem); or
 - c. A shallow-dose equivalent to the skin or extremities exceeding 0.5 Gy (50 rads); or
 - 2. The release of radioactive material, inside or outside of a restricted area, so, if an individual had been present for 24 hours, the individual could have received an intake in excess of one occupational annual limit of intake (this subsection does not apply to a location where personnel are not normally stationed during routine operations, such as a hot-cell or process enclosure).
- C. A licensee or registrant shall prepare any report filed with the Department according to this Section so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.
- D. A licensee or registrant shall report to the Department by telephone in response to the requirements of this Section.
- E. If the Department does not respond to the initial telephone call, the licensee or registrant shall report to the Department of Public Safety and continue with reasonable efforts to contact the Department Duty Officer until contact is made.
- F. The provisions of this Section do not apply to a dose that results from a planned special exposure, if the dose is within the limits for planned special exposures and reported according to R9-7-413(C).

Historical Note

New Section R9-7-445 recodified from R12-1-445, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-446. Notifications and Reports to Individuals

- A. Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in R9-7-1004.
- B. In addition to the reporting requirements in R9-7-444 and R9-7-445, each licensee or registrant shall notify the individual exposed to radiation or radioactive material. The notice to the exposed individual shall be provided no later than the date the report is submitted to the Department and shall comply with R9-7-1004(A).

Historical Note

New Section R9-7-446 recodified from R12-1-446, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-447. Vacating Premises

- A. If a facility has been used for activities involving radioactive material a licensee shall notify the Department in writing of the intent to vacate the facility no less than 45 days before relinquishing possession or control of the facility.
- B. If a facility is contaminated with radioactive material, a licensee vacating the facility shall decontaminate it using Department-approved procedures.
- C. The Department shall inspect a vacated facility to determine whether it is contaminated with radioactive material.

Historical Note

New Section R9-7-447 recodified from R12-1-447, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-448. Additional Reporting

- A. Each licensee shall notify the Department as soon as possible, but not later than four hours after the discovery of an event, and take immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed

the limits specified in this Chapter or releases of licensed material that could exceed the limits specified in this Chapter. For purposes of this Section, event means a radiation accident involving a fire, explosion, gas release, or similar occurrence.

- B.** Each licensee shall notify the Department within 24 hours after discovering any of the following events involving licensed material:
 - 1. A contamination event that:
 - a. Requires that anyone having access to the contaminated area be restricted for more than 24 hours by the imposition of additional radiological controls to prohibit entry into the area; and
 - b. Involves a quantity of radioactive material greater than five times the lowest annual limit on intake specified in Appendix B of this Article; and
 - c. Results in access to the contaminated area being restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination.
 - 2. An event in which equipment is disabled or fails to function as designed when:
 - a. The equipment is part of a system designed to prevent releases exceeding the limits specified in this Chapter, to prevent exposures to radiation and radioactive materials exceeding limits specified in this Chapter, or to mitigate the consequences of an accident; and
 - b. The equipment performs a safety function; and
 - c. No redundant equipment is available and operable to perform the required safety function.
 - 3. An event that requires urgent medical treatment of an individual with radioactive contamination on the individual's clothing or body.
 - 4. A fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:
 - a. The quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of this Article, and
 - b. The damage affects the integrity of the licensed material or its container.
- C.** Each licensee shall make reports required by subsections (A) and (B) above by telephone to the Department. To the extent that the information is available at the time of notification, the information provided in these reports shall include:
 - 1. The callers's name, official title, and call back telephone number;
 - 2. A description of the event, including date and time;
 - 3. The exact location of the event;
 - 4. The isotopes, quantities, and chemical and physical form of the licensed material involved; and
 - 5. Any personnel radiation exposure data available.
- D.** Each licensee who makes a report required by subsection (A) or (B) shall submit to the Department a written follow-up report within 30 days of the initial report. Written reports prepared as required by other rules may be submitted to fulfill this requirement if the reports contain all of the required information in this subsection. The report shall include the following:
 - 1. A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;
 - 2. The exact location of the event;
 - 3. The isotopes, quantities, and chemical and physical form of the licensed material involved;
 - 4. Date and time of the event;
 - 5. Corrective actions taken or planned and the results of any evaluations or assessments; and
 - 6. The extent of personnel exposure to radiation or to radioactive materials without identification of each exposed individual by name.
- E.** Each licensee that makes a report required by subsection (A) or (B) shall submit a written follow-up report to the Department within 60 days after the initial report.

Historical Note

New Section R9-7-448 recodified from R12-1-448, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-449. Survey Instruments and Pocket Dosimeters

- A.** Each licensee or registrant shall ensure that survey instruments used to show compliance with this Article have been calibrated before first use, annually, and following repair, unless otherwise specified in this Chapter.
- B.** To satisfy the requirements of subsection (A), the licensee or registrant shall:
 - 1. For each scale to be calibrated, calibrate two readings separated by at least 50 percent of scale rating; and
 - 2. Conspicuously note on the instrument the apparent radiation level, in appropriate units for the type of survey instrument being used and the date of calibration.
- C.** Each licensee or registrant shall check each survey instrument for proper operation with the dedicated check source after calibration and before each use.
- D.** The licensee or registrant shall retain a record of each calibration required in subsection (A) for three years. The record shall include:
 - 1. A description of the calibration procedure; and

2. A description of the source used, the certified dose rates from the source, the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.
- E. To meet the requirements of subsections (A), (B), and (C), the licensee or registrant may obtain the services of persons licensed or registered by the Department, the NRC, an Agreement State, or a Licensing State to perform calibrations of survey instruments. Licensing records of the service person authorization shall be maintained for three years by the licensee or registrant obtaining the service.
 - F. Each licensee or registrant shall ensure that pocket dosimeters used to show compliance with this Article:
 1. Have been evaluated for proper operation annually and following repair, using a procedure acceptable to the Department, unless a more frequent evaluation is required by license condition (Unless the dosimeter is electronic, the evaluation of the dosimeter shall include a drift test over a 24-hour period.); and
 2. Meet the performance criteria listed in R9-7-523(C) and R9-7-1130(C).
 - G. Records of personnel dosimeter operational checks shall be maintained for three years.

Historical Note

New Section R9-7-449 recodified from R12-1-449, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-450. Sealed Sources

- A. A licensee shall only receive, possess, and use radioactive materials contained in a sealed source that has been manufactured, labeled, packaged, and distributed in accordance with a specific license for its manufacture and distribution. The license to manufacture and distribute a sealed source shall be issued by the Department, the U.S. Nuclear Regulatory Commission, a Licensing State, or another Agreement State.
- B. A licensee who possesses and uses a sealed source, or any device or equipment that contains a sealed source, shall follow the radiation safety and handling instructions approved by the Department or follow the radiation safety and handling instructions furnished by the manufacturer on the label attached to the source, on the permanent container of the source, or in a leaflet or brochure that accompanies the source, and maintain the instructions in a legible and conveniently available form. If the handling instructions, leaflet, or brochure is no longer available and a copy cannot be obtained from the manufacturer, the licensee shall notify the Department that the source handling information is no longer available.
- C. Inventories:
 1. An inventory shall be conducted at intervals not to exceed six months, unless a shorter interval is specified by license condition.
 2. The records of the inventory shall be maintained for three years from the date of the inventory, and shall be available for inspection by the Department.
 3. The information recorded shall include:
 - a. The kind and quantity of radioactive material,
 - b. The model and serial number of the source or the device in which it is mounted,
 - c. The location of the sealed source,
 - d. The date of the inventory, and
 - e. The signature of the person performing the inventory.
- D. Any licensee who possesses and uses sealed sources in the practice of medicine shall conduct a physical inventory according to the requirements in 9 A.A.C. 7, Article 7.
- E. Sealed sources, containing radioactive material, shall not be opened unless authorized by license condition.
- F. Sealed sources and machines, devices, or equipment containing sealed sources shall be used in accordance with procedures described in the manufacturer's instructions and the safety precautions described in the Nuclear Regulatory Commission Sealed Sources and Device Registry, unless the instructions or precautions conflict with these rules or license condition.

Historical Note

New Section R9-7-450 recodified from R12-1-450, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-451. Termination of a Radioactive Material License or a Licensed Activity

- A. As the final step before terminating a radioactive material use program licensed under R9-7-312, the licensee shall:
 1. Certify to the Department the disposition of all licensed material, including accumulated wastes, by submitting a complete description of a disposal plan with signed receipts from all licensed persons receiving the licensed material; and
 2. Conduct a radiation survey of the premises where the licensed activities were carried out to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in R9-7-452 and submit to the Department a report of the results of this survey, unless the licensee demonstrates in some other manner acceptable to the Department that the premises are suitable for release in accordance with the criteria for decommissioning in R9-7-452.
- B. Before terminating a licensed program, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in any unsealed form, shall forward the following records to the Department:
 1. Records of disposal of the licensed material required by R9-7-435, R9-7-436, R9-7-437, and R9-7-438; and
 2. Records required by R9-7-418.

- C. If a licensed activity is transferred or assigned in accordance with subsection (E), each licensee authorized to possess radioactive material with a half-life greater than 120 days, in any unsealed form, shall transfer the following records to the new licensee and the new licensee shall maintain these records until the license is terminated:
 - 1. Records of disposal of licensed material required by R9-7-435, R9-7-436, R9-7-437, and R9-7-438; and
 - 2. Records required by R9-7-418.
- D. Before the Department terminates a license, each licensee shall forward the records required by subsection (E) to the Department.
- E. A person licensed under R9-7-312 shall maintain required records regarding decommissioning of a facility in a location identified on the license until the Department releases the site for unrestricted use. Before transfer or assignment of licensed activities, a licensee shall transfer all records required by this Section to the transferee. If records relating to facility decommissioning are kept for other purposes, the transferee shall refer to these records and provide their location on the transferee's application for a license. The transferee shall maintain the records until the Department terminates the transferee's new license. The new licensee shall maintain the following decommissioning records for Department review:
 - 1. Records of spills or other occurrences involving the spread of contamination in and around the facility, equipment, or site. The licensee shall maintain a record of any instance when contamination remains after cleanup procedures or there is a reasonable likelihood that a contaminant has spread to an inaccessible area, as in the case of possible seepage into porous material such as concrete. These records shall include any known information that identifies any radionuclide involved and its quantity, form, and concentration.
 - 2. As-built drawings showing modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and locations of possible inaccessible contamination, such as buried pipes. If as-built drawings are referenced, the licensee need not index each relevant document individually. If drawings are not available, the licensee shall provide records with known information concerning these areas and locations, as prescribed in subsection (E)(1).
 - 3. Except for areas that contain depleted uranium used only for shielding or as penetrators in unused munitions, a list, contained in a single document and updated every two years, of the following:
 - a. Any area designated or formerly designated as a restricted area as defined under R9-7-102;
 - b. Any area outside of a restricted area for which documentation is required under subsection (B)(1);
 - c. Any area outside of a restricted area where wastes have been buried;
 - d. Any area outside of a restricted area that contains regulated radioactive material that will require the licensee to either decontaminate the area for decommissioning under R9-7-452 or obtain disposal approval under R9-7-435; and
 - e. Any restricted area where wastes have been buried.
 - 4. Records of the cost estimate performed for the decommissioning funding plan or the amount certified by the Department for decommissioning and the method for assuring funding, if either a funding plan or certification is used.

Historical Note

New Section R9-7-451 recodified from R12-1-451, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-452. Radiological Criteria for License Termination

- A. General provisions and scope:
 - 1. The criteria in this Section apply to the decommissioning of facilities licensed under Article 3 of this Chapter. The criteria do not apply to uranium and thorium recovery facilities already subject to 10 CFR 40, Appendix A, or to uranium solution extraction facilities.
 - 2. The criteria in this Section do not apply to sites that:
 - a. Have been decommissioned before the effective date of this Section; or
 - b. Have previously submitted and received Department approval of a license termination plan (LTP) or decommissioning plan.
 - 3. If a site has been decommissioned and the license terminated in accordance with the criteria in this Section, the Department shall not require additional cleanup unless, based on new information, the Department determines that the criteria of this Section were not met and residual radioactivity at the site is a threat to public health and safety.
 - 4. When calculating the TEDE for the average member of the critical group, a licensee shall use the peak annual dose expected within the first 1000 years after decommissioning.
- B. Radiological criteria for unrestricted use. The Department considers a site acceptable for unrestricted use if the licensee reduces residual radioactivity, distinguishable from background radiation, to a TEDE for an average member of the critical group that does not exceed 0.15 mSv (15 mrem) per year, including radiation from groundwater sources of drinking water, and the residual radioactivity is as low as reasonably achievable (ALARA). To determine the level that is ALARA, the Department and the licensee shall take into account any detriment, such as deaths from transportation accidents, that is likely to result from decontamination and waste disposal.
- C. Criteria for license termination under restrictive conditions. The Department considers a site acceptable for license termination if the licensee meets all of the following restrictive conditions:
 - 1. The licensee demonstrates that a reduction in residual radioactivity, necessary to comply with subsection (B), will result in net public or environmental harm or is not being made because the residual level of radioactivity is ALARA.

- To determine the level that is ALARA, the Department and the licensee shall take into account any detriment, such as deaths from transportation accidents, that is likely to result from decontamination and waste disposal;
2. The licensee establishes one or more legally enforceable institutional controls that reduce residual radioactivity, distinguishable from background radiation, to a TEDE for the average member of the critical group that does not exceed (0.15 mSv) 15 mrem per year, including radiation from groundwater sources of drinking water;
 3. The licensee demonstrates financial assurance that complies with R9-7-323(C), which enables an independent third party, including a governmental custodian of the site, to assume and carry out responsibilities for control and maintenance of the site and funds placed into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual 1 percent real rate of return on investment;
 4. The licensee submits a decommissioning plan or License Termination Plan (LTP) to the Department, indicating the licensee's intent to decommission in accordance with R9-7-323 and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the LTP or decommissioning plan how comments from individuals and institutions in the community, who may be affected by the decommissioning, have been sought and addressed after analysis.
 - a. If a licensee is restricting use of the site, the licensee shall seek comments from the public concerning the proposed decommissioning, regarding all of the following matters:
 - i. Whether the institutional controls proposed by the licensee will reduce residual radioactivity, distinguishable from background radiation, to a TEDE for the average member of the critical group that does not exceed 0.15 mSv (15 mrem) per year; are enforceable; and do not impose an unreasonable burden on the local community or other affected parties; and
 - ii. Whether the licensee has provided financial assurance that complies with R9-7-323(C), which enables an independent third party, including a governmental custodian of the site, to assume and carry out responsibilities for control and maintenance of the site;
 - b. In seeking comments on the issues identified in subsection (C)(4)(a), the licensee shall provide for:
 - i. Participation by representatives of a broad cross section of community interests that may be affected by the decommissioning;
 - ii. An opportunity for a comprehensive discussion of the issues by all of the community representatives; and
 - iii. A publicly available document that contains or access to each oral and written comment that reflects the viewpoints of community representatives on each issue and the extent of agreement or disagreement among representatives on each issue; and
 5. The licensee reduces residual radioactivity, distinguishable from background radiation, at the site so that if the institutional controls are no longer in effect, the TEDE for the average member of the critical group is as low as reasonably achievable and does not exceed 1 mSv (100 mrem) per year; unless the licensee:
 - a. Demonstrates that a further reduction in residual radioactivity necessary to comply with subsection (C)(5) is not technically achievable or economically feasible, or will result in net public or environmental harm;
 - b. Provides for durable institutional controls; and
 - c. Provides financial assurance that complies with R9-7-323(C), which enables an independent third party, including a governmental custodian of the site, to carry out periodic rechecks of the site, no less frequently than every five years; assures that each institutional control remains in place according to subsection (C)(3); and assumes and carries out responsibilities for maintenance of the institutional control.
- D. Alternate criteria for license termination:**
1. Based on circumstances that relate to a specific license, the Department may terminate the license using the following alternate criteria for subsections (B) or (C)(2), if the licensee demonstrates that the TEDE from residual radioactivity, distinguishable from background radiation, for an average member of the critical group does not exceed 0.15 mSv (15 mrem) per year, and if the licensee:
 - a. Ensures that public health and safety is protected by submitting an analysis of possible sources of exposure, prepared by a independent qualified expert, which indicates whether it is likely that the dose from all human-made sources combined, other than medical sources, is more than the 1 mSv/y (100 mrem/y) limit in R9-7-416;
 - b. Employs to the extent practicable, restrictions on site use, according to the provisions of subsection (C) to minimize exposures at the site;
 - c. Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; d. Submits a decommissioning plan or License Termination Plan (LTP) to the Department that indicates the licensee's intent to decommission in accordance with R9-7-323, and specifies that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or LTP how comments from individuals and institutions in the community, who may be affected by the decommissioning, have been sought and addressed after analysis. In seeking comments, the licensee shall provide for:
 - i. Participation by representatives of a broad cross section of community interests that may be affected by the decommissioning;
 - ii. An opportunity for a comprehensive discussion of the issues by all of the community representatives; and

- iii. A publicly available document that contains or access to each oral and written comment that reflects viewpoints of community representatives on each issue and the extent of agreement and disagreement among the representatives on each issue; and
 - e. Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.
 - 2. The use of alternate criteria to terminate a license requires approval by the Department after consideration of any comments provided by the U.S. Environmental Protection Agency and any public comments submitted under subsection (E).
- E. Public notification and public participation:
 - 1. Upon the receipt of an LTP or decommissioning plan from a licensee, or a proposal by a licensee for release of a site under subsection (C) or (D), or whenever the Department determines that notice will serve the public interest, the Department shall notify and solicit comments from:
 - a. Local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and
 - b. The U.S. Environmental Protection Agency.
 - 2. To comply with subsection(E)(1) the Department shall publish a notice in a local newspaper, send letters to state or local organizations on its mailing list, hold a public hearing that is readily accessible to individuals in the vicinity of the site, and solicit comments from the public.
- F. Minimization of contamination. After the effective date of this Section, an applicant for a license, other than a renewal, shall describe in the application how facility design and procedures for operation will facilitate eventual decommissioning and minimize, to the extent practicable, the generation of radioactive waste and contamination of the facility and the environment.
 - 1. Applicants for standard design certifications, standard design approvals, and manufacturing licenses shall describe in the application how facility design will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.
 - 2. Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in this Article and radiological criteria for license termination in this Article.
- G. The Department considers a site acceptable for unrestricted use if the residual radioactivity, distinguishable from background radiation, is equal to or less than the values in Table 1.

Historical Note

New Section R9-7-452 recodified from R12-1-452, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Table 1. Acceptable Surface Contamination¹ Levels

Radionuclide¹	Average^{2,3}	Maximum^{2,4}	Removable^{2,5}
U-nat, U-235, U-238, and associated decay products	5,000 dpm/100 cm ²	15,000 dpm/100cm ²	1,000 dpm/100 cm ²
Transuranics, Ra-226, Ra-228, Th-230, Pa-231, Ac-227, I-125, I-129	100dpm/100cm ²	300 dpm/100cm ²	20dpm/100cm ²
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	1000 dpm/100cm ²	3000 dpm/100cm ²	200 dpm/100cm ²
Beta-gamma (Exceptions noted above)	5,000 dpm/100 cm ²	15,000 dpm/100cm ²	1,000 dpm/100 cm ²

¹ Where surface contamination by both alpha-and beta-gamma- emitting radionuclides exists, the limits established for alpha-and beta-gamma-emitting radionuclides apply independently.

² As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed on an instrument calibrated for background, efficiency, and geometric factors associated with the instrumentation, in accordance with R9-7-449.

³ Measurements of average contamination level shall not be averaged over more than one square meter. For objects of less surface area, the average shall be derived for each object.

⁴ The maximum contamination level applies to an area of not more than 100 cm².

⁵ The amount of removable radioactive material per 100 cm² of surface area shall be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an instrument calibrated in accordance with R9-7-449. When removable contamination on objects of surface area A (where A is less than 100 sq. cm) is determined, the entire surface shall be wiped and the contamination level multiplied by 100/A to convert to a "per 100 sq. cm" basis.

Historical Note

New Article 4, Table 1 recodified from 12 A.A.C. 1, Article 4, Table 1, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-453. Reports to Individuals of Exceeding Dose Limits

Any licensee or registrant that reports a personnel exposure to the Department in accordance with R9-7-413(A)(6), R9-7-444, or R9-7-452 shall:

1. Notify the exposed individual of the exposure addressed in the report; and
2. Transmit the report to the exposed individual at the same time the Department is notified of the exposure.

Historical Note

New Section R9-7-453 recodified from R12-1-453, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-454. Nationally Tracked Sources

- A. A licensee who manufactures, receives, transfers, disassembles, or disposes of a nationally tracked source shall complete and submit to the Nuclear Regulatory Commission's National Source Tracking System and the Department, a National Source Tracking Transaction Report that contains the information required in 10 CFR 20.2207(a) through (e), revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The report shall be submitted by the close of the next business day after the transaction using a reporting method specified in 10 CFR 20.2207(f), revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- B. The initial National Source Tracking Transaction Report shall contain the information required in subsection (A), be submitted using a method specified in 10 CFR 20.2207(f) and include the additional information required by 10 CFR 20.2207(h)(1) through (6), revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- C. A licensee shall correct any error in previously filed National Source Tracking Transaction Reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction in accordance with 10 CFR 20.2207(g), revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- D. A licensee who receives a nationally tracked sealed source shall not disassemble the source unless specifically authorized to do so by the Department.

Historical Note

New Section R9-7-454 recodified from R12-1-454, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-455. Security Requirements for Portable Gauges

- A. A licensee that uses a portable gauge shall use a minimum of two independent controls to maintain security while:
 1. Transporting a portable gauge; and
 2. Storing a portable gauge.
- B. Each control shall form a tangible barrier that will prevent unauthorized removal whenever a portable gauge is not under the control and constant surveillance of the licensee.
- C. A licensee shall employ controls approved by the Department.

Historical Note

New Section R9-7-455 recodified from R12-1-455, at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Appendix A. Assigned Protection Factors for Respirators^a

	Operating mode	Assigned Protection Factors
I. Air Purifying Respirators [Particulate ^b only] ^c :		
Filtering face piece disposable ^d	Negative	(^d)
Face piece, half ^e	Negative Pressure	10
Face piece, full	Negative Pressure	100
Face piece, half	Powered Air-purifying Respirators	50
Face piece, full	Powered Air-purifying Respirators	1000
Helmet/hood	Powered Air-purifying Respirators	1000
Face piece, loose-fitting	Powered Air-purifying Respirators	25
II. Atmosphere supplying respirators [particulate, gases and vapors ^f]:		
1. Air-line respirator:		
Face piece, half	Demand	10
Face piece, half	Continuous Flow	50
Face piece, half	Pressure Demand	50
Face piece, full	Demand	100
Face piece, full	Continuous Flow	1000
Face piece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Face piece, loose-fitting	Continuous Flow	25
Suit	Continuous Flow	(^g)
2. Self-contained breathing Apparatus (SCBA):		
Face piece, full	Demand	^h 100
Face piece, full	Pressure Demand	ⁱ 10,000
Face piece, full	Demand, Recirculating	^h 100
Face piece, full	Positive Pressure Recirculating	ⁱ 10,000
III. Combination Respirators:		
Any combination of air-purifying and atmosphere-supplying respirators	Assigned protection factor for type and mode of operation as listed above	

^a These assigned protection factors apply only in a respiratory protection program that meets the requirements of this Article. They are applicable only to airborne radiological hazards and may not be appropriate if chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. A licensee shall comply with Department of Labor regulations, regarding selection and use of respirators for those circumstances.

Radioactive contaminants for which the concentration values in Table 1, Column 3 of Appendix B are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

^b A licensee shall equip air purifying respirators of APF<100 with particulate filters that are at least 95 percent efficient. The licensee shall equip air purifying respirators of APF=100 with particulate filters that are at least 99 percent efficient. The licensee shall equip air purifying respirators of APF>100 with particulate filters that are at least 99.97 percent efficient.

^c A licensee may apply to the Commission for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors, similar to radioiodine.

^d A Licensee may permit an individual to use this type of respirator if the individual has not been medically screened or fit tested on the device, provided that no credit is taken for use of these respirators in estimation of intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in 10 CFR 20.1703, January 2000 Edition, and published January 1, 2000, apply and are incorporated by reference and available for review at the Department and Secretary of State. This incorporation by reference contains no future editions or amendments. There is no assigned protection factor for these devices. However, a licensee may use an APF equal to 10 if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

^e Under-chin type only. No distinction is made in this appendix between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the face piece (disposable or reusable disposable). Both types are acceptable as long as the seal area of the latter contains some substantial type of seal-enhancing material, such as rubber or plastic, two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient, and all other requirements of this Article are met.

^f The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard and protective actions for these contaminants should be based on external (submersion) dose considerations.

^g No NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met. The minimum program requirements are provided in 10 CFR 20.1703.

^h The licensee shall implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).

ⁱ This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

Historical Note

New Appendix A recodified from 12 A.A.C. 1, Article 4, Appendix A, effective March 22, 2018 (Supp. 18-1).

Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage

Introduction

For each radionuclide, Table I indicates the chemical form which is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 μm, micron, and for three classes (D,W,Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days. Table II provides concentration limits for airborne and liquid effluents released to the general environment. Table III provides concentration limits for discharges to sanitary sewerage.

Note:

The values in Tables I, II, and III are presented in the computer “E” notation. In this notation a value of 6E-02 represents a value of 6×10^{-2} or 0.06, 6E+2 represents 6×10^2 or 600, and 6E+0 represents 6×10^0 or 6.

Table I “Occupational Values”

Note that the columns in Table I of this Appendix captioned “Oral Ingestion ALI,” “Inhalation ALI,” and “DAC” are applicable to occupational exposure to radioactive material.

The ALIs in this Appendix are the annual intakes of given radionuclide by “Reference Man” which would result in either (1) a committed effective dose equivalent of 0.05 Sv (5 rem), stochastic ALI, or (2) a committed dose equivalent of 0.5 Sv (50 rem) to an organ or tissue, nonstochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep-dose equivalent to the whole body of 0.05 Sv (5 rem). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, W_T . This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of W_T are listed under the definition of weighting factor in R9-7-403. The nonstochastic ALIs were derived to avoid nonstochastic effects, such as prompt damage to tissue or reduction in organ function.

A value of $W_T = 0.06$ is applicable to each of the five organs or tissues in the “remainder” category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the GI tract -- stomach, small intestine, upper large intestine, and lower large intestine -- are to be treated as four separate organs.

Note that the dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent but are subject to limits that shall be met separately.

When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the nonstochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used:

LLI wall	=	lower large intestine wall,
St. wall	=	stomach wall,
Blad wall	=	bladder wall, and
Bone surf	=	Bone surface.

The use of the ALIs listed first, the more limiting of the stochastic and nonstochastic ALIs, will ensure that nonstochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the nonstochastic ALI is limiting, use of that nonstochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 0.5 Sv (50 rem) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep-dose equivalent plus the internal committed dose equivalent to that organ, not the effective dose. For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the nonstochastic ALIs (ALI_{ns}) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed unity, that is, Σ (intake (in μCi) of each radionuclide/ ALI_{ns}) ≤ 1.0 . If there is an external deep dose equivalent contribution of H_d , then this sum must be less than $1 - (H_d/50)$, instead of ≤ 1.0 .

Note that the dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent but are subject to limits that must be met separately.

The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:

$$\text{DAC} = \text{ALI (in } \mu\text{Ci)} / (2000 \text{ hours per working year} \times 60 \text{ minutes/hour} \times 2 \times 10^4 \text{ ml per minute}) = [\text{ALI} / 2.4 \times 10^9] \mu\text{Ci/ml,}$$

where 2×10^4 ml is the volume of air breathed per minute at work by Reference Man under working conditions of light work.

The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides shall be treated by the general method appropriate for mixtures.

The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation. See R9-7-407. When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as Class D, Class W, or Class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

Table II “Effluent Concentrations”

The columns in Table II of this Appendix captioned “Effluents,” “Air,” and “Water” are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of R9-7-415. The concentration values given in Columns 1 and 2 of Table II are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.5 mSv (0.05 rem).

Consideration of nonstochastic limits has not been included in deriving the air and water effluent concentration limits because nonstochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the nonstochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table II. For this reason, the DAC and airborne effluent limits are not always proportional as they were in earlier versions of Appendix A of Article 4.

The air concentration values listed in Table II, Column 1 were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9 , relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 0.05 Sv (5 rem) annual occupational dose limit to the 0.1 rem limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in Table I, Column 3 was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7 . The factor of 7.3×10^7 (ml) includes the following components: the factors of 50 and 2 described above and a factor of 7.3×10^5 (ml) which is the annual water intake of Reference Man.

Note 2 of this Appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations, and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

Table III “Releases to Sewers”

The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in R9-7-435. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) is composed of a factor of 7.3×10^5 (ml), the annual water intake by Reference Man, and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a Reference Man during a year, would result in a committed effective dose equivalent of 0.5 rem.

LIST OF ELEMENTS

<u>Name</u>	<u>Symbol</u>	<u>Atomic Number</u>
Actinium	Ac	89
Aluminum	Al	13
Americium	Am	95
Antimony	Sb	51
Argon	Ar	18
Arsenic	As	33
Astatine	At	85
Barium	Ba	56
Berkelium	Bk	97
Beryllium	Be	4
Bismuth	Bi	83
Bromine	Br	35
Cadmium	Cd	48
Calcium	Ca	20
Californium	Cf	98
Carbon	C	6
Cerium	Ce	58
Cesium	Cs	55
Chlorine	Cl	17
Chromium	Cr	24
Cobalt	Co	27
Copper	Cu	29
Curium	Cm	96
Dysprosium	Dy	66
Einsteinium	Es	99
Erbium	Er	68
Europium	Eu	63
Fermium	Fm	100
Fluorine	F	9
Francium	Fr	87
Gadolinium	Gd	64
Gallium	Ga	31
Germanium	Ge	32
Gold	Au	79
Hafnium	Hf	72
Holmium	Ho	67

Hydrogen	H	1
Indium	In	49
Iodine	I	53
Iridium	Ir	77
Iron	Fe	26
Krypton	Kr	36
Lanthanum	La	57
Lead	Pb	82
Lutetium	Lu	71
Magnesium	Mg	12
Manganese	Mn	25
Mendelevium	Md	101
Mercury	Hg	80

<u>Name</u>	<u>Symbol</u>	<u>Atomic Number</u>
Molybdenum	Mo	42
Neodymium	Nd	60
Neptunium	Np	93
Nickel	Ni	28
Niobium	Nb	41
Nitrogen	N	7
Osmium	Os	76
Oxygen	O	8
Palladium	Pd	46
Phosphorus	P	15
Platinum	Pt	78
Plutonium	Pu	94
Polonium	Po	84
Potassium	K	19
Praseodymium	Pr	59
Promethium	Pm	61
Protactinium	Pa	91
Radium	Ra	88
Radon	Rn	86
Rhenium	Re	75
Rhodium	Rh	45
Rubidium	Rb	37
Ruthenium	Ru	44

Samarium	Sm	62
Scandium	Sc	21
Selenium	Se	34
Silicon	Si	14
Silver	Ag	47
Sodium	Na	11
Strontium	Sr	38
Sulfur	S	16
Tantalum	Ta	73
Technetium	Tc	43
Tellurium	Te	52
Terbium	Tb	65
Thallium	Tl	81
Thorium	Th	90
Thulium	Tm	69
Tin	Sn	50
Titanium	Ti	22
Tungsten	W	74
Uranium	U	92
Vanadium	V	23
Xenon	Xe	54
Ytterbium	Yb	70
Yttrium	Y	39
Zinc	Zn	30
Zirconium	Zr	40

		Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration	
Atomic No.	Radionuclide	Class	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	DAC ($\mu\text{Ci/ml}$)	Air ($\mu\text{Ci/ml}$)	Water ($\mu\text{Ci/ml}$)	
1	Hydrogen-3 1E-2	Water,	skin absorption	8E+4	DAC 8E+4	2E-5	1E-7	includes 1E-3
4	Beryllium-7 6E-3	Gas (HT or T ₂) Submersion ¹ : Use above values as HT and T ₂ oxidize in air and in the body to HTO. W, all compounds except	4E+4	2E+4	9E-6	3E-8		6E-4
		those given for Y						
		Y,	oxides, nitrates	-	2E+4	halides, 8E-6	3E-8	and -
4	Beryllium-10 -	W, see ⁷ Be -	1E+3	2E+2	6E-8	2E-10		-
			LLI wall (1E+3)	-	-	-		2E-5
		Y, see ⁷ Be	-	1E+1	6E-9	2E-11		-
6	Carbon-11 ² -	Monoxide	-	1E+6	5E-4	2E-6		-
		Dioxide	-	6E+5	3E-4	9E-7		-
		Compounds	4E+5	4E+5	2E-4	6E-7		6E-3
6	Carbon-14 -	Monoxide	-	2E+6	7E-4	2E-6		-
		Dioxide	-	2E+5	9E-5	3E-7		-
		Compounds	2E+3	2E+3	1E-6	3E-9		3E-5
7	Nitrogen-13 ² -	Submersion ¹	-	-	4E-6	2E-8		-
8	Oxygen-15 ² -	Submersion ¹	-	-	4E-6	2E-8		-
9	Fluorine-18 ² -	D,	fluorides K, Rb, Cs, and Fr	5E+4	7E+4	H, 3E-5	Li, 1E-7	Na, -
			St wall (5E+4)	-	- 7E-3	-		7E-4
		W,	fluorides Sr, Ba, Ra, Al, Ga, In, Tl, As, Sb, Bi, Fe, Ru, Os, Co, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, V, Nb, Ta, Mn, Tc, and Re	-	9E+4	Be, 4E-5	Mg, 1E-7	Ca, -
		Y, Lanthanum fluoride	-	8E+4	3E-5	1E-7		-
11	Sodium-22 6E-5	D, all compounds	4E+2	6E+2	3E-7	9E-10		6E-6

11	Sodium-24 5E-4	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5
12	Magnesium-28 9E-5	D, W,	all those given for W	7E+2	2E+3	compounds 7E-7	except 9E-6
-	-	-	carbides, halides, and nitrates	-	1E+3	oxides, 5E-7	hydroxides, -
13	Aluminum-26 6E-5	D, W, oxides, hydroxides, carbides, halides, and nitrates	all those given for W	4E+2	6E+1	compounds 3E-8	except 6E-6
-	-	-	-	9E+1	4E-8	1E-10	-
14	Silicon-31 1E-4	D, 1E-3 W, oxides, hydroxides, carbides, and nitrates	all those given for W and Y	9E+3	9E+3	compounds 3E+4	except 4E-8
-	-	-	-	3E+4	1E-5	5E-8	-
-	-	-	Y, aluminosilicate glass	-	3E+4	1E-5	4E-8
14	Silicon-32 -	D. see ³¹ Si	2E+3	2E+2	1E-7	3E-10	-
-	-	LLI wall	(3E+3)	-	-	-	4E-5
-	4E-4	W, see ³¹ Si	-	1E+2	5E-8	2E-10	-
-	-	Y, see ³¹ Si	-	5E+0	2E-9	7E-12	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
15	Phosphorus-32 9E-6	D, 9E-5 W,	all phosphates given for W	6E+2	6E+2	compounds 9E+2	except 1E-9	
-	-	-	phosphates S^{3+} , Mg^{2+} , Fe^{3+} , Bi^{3+} , and Lanthanides	-	4E+2	of 2E-7	Zn^{2+} , -	
15	Phosphorus-33 8E-4	D, see ³² P W, see ³² P	6E+3	8E+3	4E-6	1E-8	8E-5	
-	-	-	-	3E+3	1E-6	4E-9	-	
16	Sulfur-35	Vapor D, -	1E+4	6E-6	2E-8	-	-	
-	-	-	sulfides except those given for W	1E+4	1E+4	and 2E+4	sulfates 2E-8	
-	-	-	LLI wall (8E+3)	-	-	-	1E-4	
-	1E-3	W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn,	6E+3	-	-	-	-	

			Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, W, and Mo. Sulfates of Ca, Sr, Ba, Ra, As, Sb, and Bi	-	2E+3	9E-7	3E-9
17	Chlorine-36 2E-4	D, W,	chlorides of K, Rb, Cs, and Fr2E+3 chlorides Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Cr, Mo, W, Mn, Tc, and Re -	2E+3	H, 1E-6	Li, 3E-9	Na, 2E-5 Lanthanides,
17	Chlorine-38 ²	D, see ³⁶ Cl	2E+4 St wall (3E+4)	4E+4 -	2E-5 -	6E-8 -	- 3E-4 3E-3
17	Chlorine-39 ²	W, see ³⁶ Cl D, see ³⁶ Cl	- St wall (4E+4)	5E+4 -	2E-5 -	6E-8 -	- 5E-4 5E-3
18	Argon-37	Submersion ¹	-	-	1E+0	6E-3	-
18	Argon-39	Submersion ¹	-	-	2E-4	8E-7	-
18	Argon-41	Submersion ¹	-	-	3E-6	1E-8	-
19	Potassium-40 4E-5	D, all compounds	3E+2	4E+2	2E-7	6E-10	4E-6
19	Potassium-42 6E-4	D, all compounds	5E+3	5E+3	2E-6	7E-9	6E-5
19	Potassium-43 9E-4	D, all compounds	6E+3	9E+3	4E-6	1E-8	9E-5
19	Potassium-44 ² -	D, all compounds	2E+4 St wall (4E+4)	7E+4 -	3E-5 -	9E-8 -	- 5E-4
19	Potassium-45 ² -	D, all compounds	3E+4 St watt (5E+4)	1E+5 -	5E-5 -	2E-7 -	- 7E-4

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
20	Calcium-41 -	W, all compounds	3E+3	4E+3	2E-6	-	-	
	6E-4		Bone surf (4E+3)	Bone surf (4E+3)	-	5E-9	6E-5	
20	Calcium-45 2E-4	W, all compounds	2E+3	8E+2	4E-7	1E-9	2E-5	

20	Calcium-47 1E-4	W, all compounds	8E+2	9E+2	4E-7	1E-9	1E-5
21	Scandium-43 1E-3	Y, all compounds	7E+3	2E+4	9E-6	3E-8	1E-4
21	Scandium-44m 7E-5	Y, all compounds	5E+2	7E+2	3E-7	1E-9	7E-6
21	Scandium-44 5E-4	Y, all compounds	4E+3	1E+4	5E-6	2E-8	5E-5
21	Scandium-46 1E-4	Y, all compounds	9E+2	2E+2	1E-7	3E-10	1E-5
21	Scandium-47 -	Y, all compounds	2E+3	3E+3	1E-6	4E-9	-
			LLI wall (3E+3)	-	-	-	4E-5
21	Scandium-48 1E-4	Y, all compounds	8E+2	1E+3	6E-7	2E-9	1E-5
21	Scandium-49 ² 3E-3	Y, all compounds	2E+4	5E+4	2E-5	8E-8	3E-4
22	Titanium-44 4E-6	D, 4E-5 W, -	all those given for W and Y		3E+2	compounds 1E+1	5E-9 2E-11
			oxides, carbides, halides, and nitrates	-	3E+1	1E-8	4E-11
							hydroxides, -
			Y, SrTiO	-	6E+0	2E-9	8E-12
22	Titanium-45 1E-3	D, see ⁴⁴ Ti	9E+3	3E+4	1E-5	3E-8	1E-4
		W, see ⁴⁴ Ti	-	4E+4	1E-5	5E-8	-
		Y, see ⁴⁴ Ti	-	3E+4	1E-5	4E-8	-
23	Vanadium-47 ² -	D, -	all those given for W3E+4		8E+4	compounds 3E-5	1E-7 -
			St wall (3E+4)	-	-	-	4E-4
			oxides, carbides, and halides-		1E+5	4E-5	1E-7
23	Vanadium-48 9E-5	D, see ⁴⁷ V	6E+2	1E+3	5E-7	2E-9	9E-6
		W, see ⁴⁷ V	-	6E+2	3E-7	9E-10	-
23	Vanadium-49 -	D, see ⁴⁷ V	7E+4	3E+4	1E-5	-	-
			LLI wall (9E+4)	Bone surf (3E+4)	-	5E-8	1E-3
			W, see ⁴⁷ V	-	2E+4	8E-6	2E-8
24	Chromium-48 8E-5	D, 8E-4	all those given for W and Y		6E+3	compounds 1E+4	5E-6 2E-8
		W, halides and nitrates	-	7E+3	3E-6	1E-8	-
		Y, oxides and hydroxides	-	7E+3	3E-6	1E-8	-

24	Chromium-49 ² 4E-3	D, see ⁴⁸ Cr	3E+4	8E+4	4E-5	1E-7	4E-4	
-	-	W, see ⁴⁸ Cr	-	1E+5	4E-5	1E-7	-	
-	-	Y, see ⁴⁸ Cr	-	9E+4	4E-5	1E-7	-	
24	Chromium-51 5E-3	D, see ⁴⁸ Cr	4E+4	5E+4	2E-5	6E-8	5E-4	
-	-	W, see ⁴⁸ Cr	-	2E+4	1E-5	3E-8	-	
-	-	Y, see ⁴⁸ Cr	-	2E+4	8E-6	3E-8	-	
25	Manganese-51 ² 3E-3	D,	all those given for W2E+4		5E+4	compounds 2E-5	7E-8	except 3E-4
-	-	W,	halides, and nitrates -		oxides, 6E+4	3E-5	8E-8	hydroxides, --

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μCi/ml)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC (μCi/ml)	Col. 1 Air (μCi/ml)	Col. 2 Water (μCi/ml)	
25	Manganese-52m ² -	D, see ⁵¹ Mn	3E+4	9E+4	4E-5	1E-7	-	
-	5E-3	-	St wall (4E+4)	-	-	-	5E-4	
-	-	W, see ⁵¹ Mn	-	1E+5	4E-5	1E-7	-	
25	Manganese-52 1E-4	D, see ⁵¹ Mn	7E+2	1E+3	5E-7	2E-9	1E-5	
-	-	W, see ⁵¹ Mn	-	9E+2	4E-7	1E-9	-	
25	Manganese-53 7E-3	D, see ⁵¹ Mn	5E+4	1E+4	5E-6	-	7E-4	
-	-	-	-	Bone surf (2E+4)	-	3E-8	-	
-	-	W, see ⁵¹ Mn	-	1E+4	5E-6	2E-8	-	
25	Manganese-54 3E-4	D, see ⁵¹ Mn	2E+3	9E+2	4E-7	1E-9	3E-5	
-	-	W, see ⁵¹ Mn	-	8E+2	3E-7	1E-9	-	
25	Manganese-56 7E-4	D, see ⁵¹ Mn	5E+3	2E+4	6E-6	2E-8	7E-5	
-	-	W, see ⁵¹ Mn	-	2E+4	9E-6	3E-8	-	
26	Iron-52 1E-4	D,	all those given for W9E+2		3E+3	compounds 1E-6	4E-9	except 1E-5
-	-	W,	and halides		oxides, 2E+3	1E-6	3E-9	hydroxides, -
26	Iron-55 1E-3	D, see ⁵² Fe	9E+3	2E+3	8E-7	3E-9	1E-4	

		W, see ⁵² Fe	-	4E+3	2E-6	6E-9	-	
26	Iron-59 1E-4	D, see ⁵² Fe	8E+2	3E+2	1E-7	5E-10	1E-5	
		W, see ⁵² Fe	-	5E+2	2E-7	7E-10	-	
26	Iron-60 4E-6	D, see ⁵² Fe	3E+1	6E+0	3E-9	9E-12	4E-7	
		W, see ⁵² Fe	-	2E+1	8E-9	3E-11	-	
27	Cob9alt-55 2E-4	W,	all those given for Y 1E+3			3E+3	compounds 1E-6	4E-9 except 2E-5
		Y,	halides, and nitrates -			oxides, 3E+3	1E-6	4E-9 hydroxides, -
27	Cobalt-56 6E-5	W, see ⁵⁵ Co	5E+2	3E+2	1E-7	4E-10	6E-6	
		Y, see ⁵⁵ Co	4E+2	2E+2	8E-8	3E-10	-	
27	Cobalt-57 6E-4	W, see ⁵⁵ Co	8E+3	3E+3	1E-6	4E-9	6E-5	
		Y, see ⁵⁵ Co	4E+3	7E+2	3E-7	9E-10	-	
27	Cobalt-58m 8E-3	W, see ⁵⁵ Co	6E+4	9E+4	4E-5	1E-7	8E-4	
		Y, see ⁵⁵ Co	-	6E+4	3E-5	9E-8	-	
27	Cobalt-58 2E-4	W, see ⁵⁵ Co	2E+3	1E+3	5E-7	2E-9	2E-5	
		Y, see ⁵⁵ Co	1E+3	7E+2	3E-7	1E-9	-	
27	Cobalt-60m ² -	W, see ⁵⁵ Co	1E+6	4E+6	2E-3	6E-6	-	
			St wall (1E+6)	-	-	-	2E-2	
	2E-1	Y, see ⁵⁵ Co	-	3E+6	1E-3	4E-6	-	
27	Cobalt-60 3E-5	W, see ⁵⁵ Co	5E+2	2E+2	7E-8	2E-10	3E-6	
		Y, see ⁵⁵ Co	2E+2	3E+1	1E-8	5E-11	-	
27	Cobalt-61 ² 3E-3	W, see ⁵⁵ Co	2E+4	6E+4	3E-5	9E-8	3E-4	
		Y, see ⁵⁵ Co	2E+4	6E+4	2E-5	8E-8	-	

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
27	Cobalt-62m ² -	W, see ⁵⁵ Co	4E+4	2E+5	7E-5	2E-7	-	
		St wall						

	7E-3		(5E+4)	-	-	-	7E-4
	-	Y, see ⁵⁵ Co	-	2E+5	6E-5	2E-7	-
28	Nickel-56	D,	all			compounds	except
	2E-4		those given for W	1E+3	2E+3	8E-7	2E-5
	-	W,	and carbides	-	oxides,	1E+3	hydroxides,
	-					5E-7	-
	-	Vapor	-	1E+3	5E-7	2E-9	-
28	Nickel-57	D, see ⁵⁶ Ni	2E+3	5E+3	2E-6	7E-9	2E-5
	2E-4	W, see ⁵⁶ Ni	-	3E+3	1E-6	4E-9	-
	-	Vapor	-	6E+3	3E-6	9E-	-
28	Nickel-59	D, see ⁵⁶ Ni	2E+4	4E+3	2E-6	5E-9	3E-4
	3E-3	W, see ⁵⁶ Ni	-	7E+3	3E-6	1E-8	-
	-	Vapor	-	2E+3	8E-7	3E-9	-
28	Nickel-63	D, see ⁵⁶ Ni	9E+3	2E+3	7E-7	2E-9	1E-4
	1E-3	W, see ⁵⁶ Ni	-	3E+3	1E-6	4E-9	-
	-	Vapor	-	8E+2	3E-7	1E-9	-
28	Nickel-65	D, see ⁵⁶ Ni	8E+3	2E+4	1E-5	3E-8	1E-4
	1E-3	W, see ⁵⁶ Ni	-	3E+4	1E-5	4E-8	-
	-	Vapor	-	2E+4	7E-6	2E-8	-
28	Nickel-66	D, see ⁵⁶ Ni	4E+2	2E+3	7E-7	2E-9	-
	-	LLI wall	(5E+2)	-	-	-	6E-6
	6E-5	W, see ⁵⁶ Ni	-	6E+2	3E-7	9E-10	-
	-	Vapor	-	3E+3	1E-6	4E-9	-
29	Copper-60 ²	D,	all			compounds	except
	-		those given for W and Y		3E+4	9E+4	1E-7
	-	St wall	(3E+4)	-	-	-	4E-4
	4E-3	W,	and nitrates	-	sulfides,	1E+5	halides,
	-					5E-5	-
	-	Y, oxides and hydroxides	-	1E+5	4E-5	1E-7	-
29	Copper-61	D, see ⁶⁰ Cu	1E+4	3E+4	1E-5	4E-8	2E-4
	2E-3	W, see ⁶⁰ Cu	-	4E+4	2E-5	6E-8	-
	-						

		Y, see ⁶⁰ Cu	-	4E+4	1E-5	5E-8	-
29	Copper-64 2E-3	D, see ⁶⁰ Cu	1E+4	3E+4	1E-5	4E-8	2E-4
		W, see ⁶⁰ Cu	-	2E+4	1E-5	3E-8	-
		Y, see ⁶⁰ Cu	-	2E+4	9E-6	3E-8	-
29	Copper-67 6E-4	D, see ⁶⁰ Cu	5E+3	8E+3	3E-6	1E-8	6E-5
		W, see ⁶⁰ Cu	-	5E+3	2E-6	7E-9	-
		Y, see ⁶⁰ Cu	-	5E+3	2E-6	6E-9	-
30	Zinc-62 2E-4	Y, all compounds	1E+3	3E+3	1E-6	4E-9	2E-5
30	Zinc-63 ²	Y, all compounds	2E+4	7E+4	3E-5	9E-8	-
		St wall	(3E+4)	-	-	-	3E-4
	3E-3						

Table I
Occupational Values
Col. 1 **Col. 2** **Col. 3** **Table II**
Oral Ingestion **Inhalation** **Effluent Concentrations**

Atomic No.	Radionuclide	Class	Table I			Table II		Table III
			ALI (μCi)	ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Releases to Sewers Monthly Average Concentration (μCi/ml)
30	Zinc-65 5E-5	Y, all compounds	4E+2	3E+2	1E-7	4E-10	5E-6	
30	Zinc-69m 6E-4	Y, all compounds	4E+3	7E+3	3E-6	1E-8	6E-5	
30	Zinc-69 ² 8E-3	Y, all compounds	6E+4	1E+5	6E-5	2E-7	8E-4	
30	Zinc-71m 8E-4	Y, all compounds	6E+3	2E+4	7E-6	2E-8	8E-5	
30	Zinc-72 1E-4	Y, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5	
31	Gallium-65 ²	D,	all those given for W5E+4		2E+5	compounds 7E-5	2E-7	except -
			St wall (6E+4),	-	-	-	9E-4	
	9E-3	W,	carbides, halides, and nitrates		oxides, - 2E+5	8E-5	3E-7	hydroxides, -
31	Gallium-66 1E-4	D, see ⁶⁵ Ga	1E+3	4E+3	1E-6	5E-9	1E-5	
		W, see ⁶⁵ Ga	-	3E+3	1E-6	4E-9	-	
31	Gallium-67 1E-3	D, see ⁶⁵ Ga	7E+3	1E+4	6E-6	2E-8	1E-4	
		W, see ⁶⁵ Ga	-	1E+4	4E-6	1E-8	-	
31	Gallium-68 ² 2E-3	D, see ⁶⁵ Ga	2E+4	4E+4	2E-5	6E-8	2E-4	

		W, see ⁶⁵ Ga	-	5E+4	2E-5	7E-8	-
31	Gallium-70 ²	D, see ⁶⁵ Ga	5E+4	2E+5	7E-5	2E-7	-
	-		St wall (7E+4)	-	-	-	1E-3
	1E-2	W, see ⁶⁵ Ga	-	2E+5	8E-5	3E-7	-
31	Gallium-72	D, see ⁶⁵ Ga	1E+3	4E+3	1E-6	5E-9	2E-5
	2E-4	W, see ⁶⁵ Ga	-	3E+3	1E-6	4E-9	-
31	Gallium-73	D, see ⁶⁵ Ga	5E+3	2E+4	6E-6	2E-8	7E-5
	7E-4	W, see ⁶⁵ Ga	-	2E+4	6E-6	2E-8	-
32	Germanium-66	D,	all those given for W	2E+4	3E+4	compounds 1E-5	4E-8 3E-4
	3E-3	W,	and halides	-	oxides, 2E+4	8E-6	3E-8 sulfides,
32	Germanium-67 ²	D, see ⁶⁶ Ge	3E+4	9E+4	4E-5	1E-7	-
	-		St wait (4E+4)	-	-	-	6E-4
	6E-3	W, see ⁶⁶ Ge	-	1E+5	4E-5	1E-7	-
32	Germanium-68	D, see ⁶⁶ Ge	5E+3	4E+3	2E-6	5E-9	6E-5
	6E-4	W, see ⁶⁶ Ge	-	1E+2	4E-8	1E-10	-
32	Germanium-69	D, see ⁶⁶ Ge	1E+4	2E+4	6E-6	2E-8	2E-4
	2E-3	W, see ⁶⁶ Ge	-	8E+3	3E-6	1E-8	-
32	Germanium-71	D, see ⁶⁶ Ge	5E+5	4E+5	2E-4	6E-7	7E-3
	7E-2	W, see ⁶⁶ Ge	-	4E+4	2E-5	6E-8	-
32	Germanium-75 ²	D, see ⁶⁶ Ge	4E+4	8E+4	3E-5	1E-7	-
	-		St wall (7E+4)	-	-	-	9E-4
	9E-3	W, see ⁶⁶ Ge	-	8E+4	4E-5	1E-7	-
32	Germanium-77	D, see ⁶⁶ Ge	9E+3	1E+4	4E-6	1E-8	1E-4
	1E-3	W, see ⁶⁶ Ge	-	6E+3	2E-6	8E-9	-

Table I
Occupational Values

Atomic	Radionuclide	Class	Table I			Table II		Table III
			Col. 1	Col. 2	Col. 3	Effluent Concentrations		Releases to Sewers
			Oral Ingestion ALI	Inhalation ALI	DAC	Col. 1 Air	Col. 2 Water	Monthly Average Concentration
			(μCi)	(μCi/ml)	(μCi/ml)	(μCi/ml)	(μCi/ml)	

No.			(μCi)					
32	Germanium-78 ²	D, see ⁶⁶ Ge	2E+4	2E+4	9E-6	3E-8	-	
	-		St wall (2E+4)	-	-	-	3E-4	
	3E-3							
	-	W, see ⁶⁶ Ge	-	2E+4	9E-6	3E-8	-	
33	Arsenic-69 ²	W, all compounds	3E+4	1E+5	5E-5	2E-7	-	
	-		St wall (4E+4)	-	-	-	6E-4	
	6E-3							
33	Arsenic-70 ²	W, all compounds	1E+4	5E+4	2E-5	7E-8	2E-4	
	2E-3							
33	Arsenic-71	W, all compounds	4E+3	5E+3	2E-6	6E-9	5E-5	
	5E-4							
33	Arsenic-72	W, all compounds	9E+2	1E+3	6E-7	2E-9	1E-5	
	1E-4							
33	Arsenic-73	W, all compounds	8E+3	2E+3	7E-7	2E-9	1E-4	
	1E-3							
33	Arsenic-74	W, all compounds	1E+3	8E+2	3E-7	1E-9	2E-5	
	2E-4							
33	Arsenic-76	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5	
	1E-4							
33	Arsenic-77	W, all compounds	4E+3	5E+3	2E-6	7E-9	-	
	-		LLI wall (5E+3)	-	-	-	6E-5	
	6E-4							
33	Arsenic-78 ²	W, all compounds	8E+3	2E+4	9E-6	3E-8	1E-4	
	1E-3							
34	Selenium-70 ²	D,	all those given for W	2E+4	4E+4	compounds 2E-5	5E-8 1E-4	
	1E-3	W,	carbides, and elemental Se	oxides, 1E+4	4E+4	2E-5	hydroxides, 6E-8	
	-						-	
34	Selenium-73m ²	D, see ⁷⁰ Se	6E+4	2E+5	6E-5	2E-7	4E-4	
	4E-3	W, see ⁷⁰ Se	3E+4	1E+5	6E-5	2E-7	-	
	-							
34	Selenium-73	D, see ⁷⁰ Se	3E+3	1E+4	5E-6	2E-8	4E-5	
	4E-4	W, see ⁷⁰ Se	-	2E+4	7E-6	2E-8	-	
	-							
34	Selenium-75	D, see ⁷⁰ Se	5E+2	7E+2	3E-7	1E-9	7E-6	
	7E-5	W, see ⁷⁰ Se	-	6E+2	3E-7	8E-10	-	
	-							
34	Selenium-79	D, see ⁷⁰ Se	6E+2	8E+2	3E-7	1E-9	8E-6	
	8E-5	W, see ⁷⁰ Se	-	6E+2	2E-7	8E-10	-	
	-							
34	Selenium-81m ²	D, see ⁷⁰ Se	4E+4	7E+4	3E-5	9E-8	3E-4	
	3E-3							

		W, see ⁷⁰ Se	2E+4	7E+4	3E-5	1E-7	-	
34	Selenium-81 ²	D, see ⁷⁰ Se	6E+4	2E+5	9E-5	3E-7	-	
			St wall (8E+4)	-	-	-	1E-3	
	1E-2	W, see ⁷⁰ Se	-	2E+5	1E-4	3E-7	-	
34	Selenium-83 ²	D, see ⁷⁰ Se	4E+4	1E+5	5E-5	2E-7	4E-4	
	4E-3	W, see ⁷⁰ Se	3E+4	1E+5	5E-5	2E-7	-	
35	Bromine-74m ²	D,	bromides Na, K, Rb, Cs, and Fr	1E+4	4E+4	2E-5	H, 5E-8	Li, -
			St wall (2E+4)	-	-	-	3E-4	
	3E-3							

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
		W,	Bromides Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Mn, Tc, and Re			of	lanthanides,	
35	Bromine-74 ²	D, see ^{74m} Br	2E+4	7E+4	3E-5	1E-7	-	
			St wall (4E+4)	-	-	-	5E-4	
	5E-3	W, see ^{74m} Br	-	8E+4	4E-5	1E-7	-	
35	Bromine-75 ²	D, see ^{74m} Br	3E+4	5E+4	2E-5	7E-8	-	
			St wall (4E+4)	-	-	-	5E-4	
	5E-3	W, see ^{74m} Br	-	5E+4	2E-5	7E-8	-	
35	Bromine-76	D, see ^{74m} Br	4E+3	5E+3	2E-6	7E-9	5E-5	
	5E-4	W, see ^{74m} Br	-	4E+3	2E-6	6E-9	-	
35	Bromine-77	D, see ^{74m} Br	2E+4	2E+4	1E-5	3E-8	2E-4	
	2E-3	W, see ^{74m} Br	-	2E+4	8E-6	3E-8	-	

35	Bromine-80m 3E-3	D, see ^{74m} Br	2E+4	2E+4	7E-6	2E-8	3E-4
	-	W, see ^{74m} Br	-	1E+4	6E-6	2E-8	-
35	Bromine-80 ² -	D, see ^{74m} Br	5E+4	2E+5	8E-5	3E-7	-
	1E-2		St wall (9E+4)	-	-	-	1E-3
	-	W, see ^{74m} Br	-	2E+5	9E-5	3E-7	-
35	Bromine-82 4E-4	D, see ^{74m} Br	3E+3	4E+3	2E-6	6E-9	4E-5
	-	W, see ^{74m} Br	-	4E+3	2E-6	5E-9	-
35	Bromine-83 -	D, see ^{74m} Br	5E+4	6E+4	3E-5	9E-8	-
	9E-3		St wall (7E+4)	-	-	-	9E-4
	-	W, see ^{74m} Br	-	6E+4	3E-5	9E-8	-
35	Bromine-84 ² -	D, see ^{74m} Br	2E+4	6E+4	2E-5	8E-8	-
	4E-3		St wall (3E+4)	-	-	-	4E-4
	-	W, see ^{74m} Br	-	6E+4	3E-5	9E-8	-
36	Krypton-74 ² -	Submersion ¹	-	-	3E-6	1E-8	-
36	Krypton-76 -	Submersion ¹	-	-	9E-6	4E-8	-
36	Krypton-77 ² -	Submersion ¹	-	-	4E-6	2E-8	-
36	Krypton-79 -	Submersion ¹	-	-	2E-5	7E-8	-
36	Krypton-81 -	Submersion ¹	-	-	7E-4	3E-6	-
36	Krypton-83m ² -	Submersion ¹	-	-	1E-2	5E-5	-
36	Krypton-85m -	Submersion ¹	-	-	2E-5	1E-7	-
36	Krypton-85 -	Submersion ¹	-	-	1E-4	7E-7	-
36	Krypton-87 ² -	Submersion ¹	-	-	5E-6	2E-8	-
36	Krypton-88 -	Submersion ¹	-	-	2E-6	9E-9	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	

37	Rubidium-79 ² -	D, all compounds	4E+4	1E+5	5E-5	2E-7	-
	8E-3		St wall (6E+4)	-	-	-	8E-4
37	Rubidium-81m ² -	D, all compounds	2E+5	3E+5	1E-4	5E-7	-
	4E-2		St wall (3E+5)	-	-	-	4E-3
37	Rubidium-81 5E-3	D, all compounds	4E+4	5E+4	2E-5	7E-8	5E-4
37	Rubidium 82m 2E-3	D, all compounds	1E+4	2E+4	7E-6	2E-8	2E-4
37	Rubidium-83 9E-5	D, all compounds	6E+2	1E+3	4E-7	1E-9	9E-6
37	Rubidium-84 7E-5	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6
37	Rubidium-86 7E-5	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6
37	Rubidium-87 1E-4	D, all compounds	1E+3	2E+3	6E-7	2E-9	1E-5
37	Rubidium-88 ² -	D, all compounds	2E+4	6E+4	3E-5	9E-8	-
	4E-3		St wall (3E+4)	-	-	-	4E-4
37	Rubidium-89 ² -	D, all compounds	4E+4	1E+5	6E-5	2E-7	-
	9E-3		St wall (6E+4)	-	-	-	9E-4
38	Strontium-80 ² 6E-4	D, all soluble compounds except SrTiO	4E+3	1E+4	5E-6	2E-8	6E-5
	-	Y, all insoluble compounds and SrTiO	-	1E+4	5E-6	2E-8	-
38	Strontium-81 ² 3E-3	D, see ⁸⁰ Sr	3E+4	8E+4	3E-5	1E-7	3E-4
	-	Y, see ⁸⁰ Sr	2E+4	8E+4	3E-5	1E-7	-
38	Strontium-82 -	D, see ⁸⁰ Sr	3E+2	4E+2	2E-7	6E-10	-
	3E-5		LLI wall (2E+2)	-	-	-	3E-6
	-	Y, see ⁸⁰ Sr	2E+2	9E+1	4E-8	1E-10	-
38	Strontium-83 3E-4	D, see ⁸⁰ Sr	3E+3	7E+3	3E-6	1E-8	3E-5
	-	Y, see ⁸⁰ Sr	2E+3	4E+3	1E-6	5E-9	-
38	Strontium-85m ² 3E-2	D, see ⁸⁰ Sr	2E+5	6E+5	3E-4	9E-7	3E-3
	-	Y, see ⁸⁰ Sr	-	8E+5	4E-4	1E-6	-
38	Strontium-85 4E-4	D, see ⁸⁰ Sr	3E+3	3E+3	1E-6	4E-9	4E-5

		Y, see ⁸⁰ Sr	-	2E+3	6E-7	2E-9	-
38	Strontium-87m 6E-3	D, see ⁸⁰ Sr	5E+4	1E+5	5E-5	2E-7	6E-4
		Y, see ⁸⁰ Sr	4E+4	2E+5	6E-5	2E-7	-
38	Strontium-89	D, see ⁸⁰ Sr	6E+2	8E+2	4E-7	1E-9	-
			LLI wall (6E+2)	-	-	-	8E-6
	8E-5	Y, see ⁸⁰ Sr	5E+2	1E+2	6E-8	2E-10	-
38	Strontium-90	D, see ⁸⁰ Sr	3E+1	2E+1	8E-9	-	-
			Bone surf (4E+1)	Bone surf (2E+1)	-	3E-11	5E-7
	5E-6	Y, see ⁸⁰ Sr	-	4E+0	2E-9	6E-12	-
38	Strontium-91 2E-4	D, see ⁸⁰ Sr	2E+3	6E+3	2E-6	8E-9	2E-5
		Y, see ⁸⁰ Sr	-	4E+3	1E-6	5E-9	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values		Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	
38	Strontium-92 4E-4	D, see ⁸⁰ Sr	3E+3	9E+3	4E-6	1E-8	4E-5
		Y, see ⁸⁰ Sr	-	7E+3	3E-6	9E-9	-
39	Yttrium-86m ² 3E-3	W, all compounds except those given for Y	2E+4	6E+4	2E-5	8E-8	3E-4
		Y, oxides and hydroxides	-	5E+4	2E-5	8E-8	-
39	Yttrium-86 2E-4	W, see ^{86m} Y	1E+3	3E+3	1E-6	5E-9	2E-5
		Y, see ^{86m} Y	-	3E+3	1E-6	5E-9	-
39	Yttrium-87 3E-4	W, see ^{86m} Y	2E+3	3E+3	1E-6	5E-9	3E-5
		Y, see ^{86m} Y	-	3E+3	1E-6	5E-9	-
39	Yttrium-88 1E-4	W, see ^{86m} Y	1E+3	3E+2	1E-7	3E-10	1E-5
		Y, see ^{86m} Y	-	2E+2	1E-7	3E-10	-
39	Yttrium-90m 1E-3	W, see ^{86m} Y	8E+3	1E+4	5E-6	2E-8	1E-4
		Y, see ^{86m} Y	-	1E+4	5E-6	2E-8	-
39	Yttrium-90	W, see ^{86m} Y	4E+2	7E+2	3E-7	9E-10	-

	7E-5		LLI wall (5E+2)	-	-	-	7E-6
	-	Y, see ^{86m} Y	-	6E+2	3E-7	9E-10	-
39	Yttrium-91m ² 2E-2	W, see ^{86m} Y	1E+5	2E+5	1E-4	3E-7	2E-3
	-	Y, see ^{86m} Y	-	2E+5	7E-5	2E-7	-
39	Yttrium-91	W, see ^{86m} Y	5E+2	2E+2	7E-8	2E-10	-
	-		LLI wall (6E+2)	-	-	-	8E-6
	8E-5	Y, see ^{86m} Y	-	1E+2	5E-8	2E-10	-
39	Yttrium-92 4E-4	W, see ^{86m} Y	3E+3	9E+3	4E-6	1E-8	4E-5
	-	Y, see ^{86m} Y	-	8E+3	3E-6	1E-8	-
39	Yttrium-93 2E-4	W, see ^{86m} Y	1E+3	3E+3	1E-6	4E-9	2E-5
	-	Y, see ^{86m} Y	-	2E+3	1E-6	3E-9	-
39	Yttrium-94 ²	W, see ^{86m} Y	2E+4	8E+4	3E-5	1E-7	-
	-		St wall (3E+4)	-	-	-	4E-4
	4E-3	Y, see ^{86m} Y	-	8E+4	3E-5	1E-7	-
39	Yttrium-95 ²	W, see ^{86m} Y	4E+4	2E+5	6E-5	2E-7	-
	-		St wall (5E+4)	-	-	-	7E-4
	7E-3	Y, see ^{86m} Y	-	1E+5	6E-5	2E-7	-
40	Zirconium-86 2E-4	D, all compounds except those given for W and Y	1E+3	4E+3	2E-6	6E-9	2E-5
	halides, and nitrates	W, oxides, hydroxides,	-	3E+3	1E-6	4E-9	-
	-	Y, carbide	-	2E+3	1E-6	3E-9	-
40	Zirconium-88 5E-4	D, see ⁸⁶ Zr	4E+3	2E+2	9E-8	3E-10	5E-5
	-	W, see ⁸⁶ Zr	-	5E+2	2E-7	7E-10	-
	-	Y, see ⁸⁶ Zr	-	3E+2	1E-7	4E-10	-

Atomic Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III
		Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
		Oral Ingestion ALI	Inhalation ALI	DAC	Air (μCi/ml)	Water (μCi/ml)	Monthly Average Concentration (μCi/ml)

No.			(μCi)				
40	Zirconium-89 2E-4	D, see ⁸⁶ Zr	2E+3	4E+3	1E-6	5E-9	2E-5
-	-	W, see ⁸⁶ Zr	-	2E+3	1E-6	3E-9	-
-	-	Y, see ⁸⁶ Zr	-	2E+3	1E-6	3E-9	-
40	Zirconium-93	D, see ⁸⁶ Zr	1E+3	6E+0	3E-9	-	-
-	-		Bone surf (3E+3)	Bone surf (2E+1)	-	2E-11	4E-5
-	4E-4	W, see ⁸⁶ Zr	-	2E+1	1E-8	-	-
-	-		-	Bone surf (6E+1)	-	9E-11	-
-	-	Y, see ⁸⁶ Zr	-	6E+1	2E-8	-	-
-	-		-	Bone surf (7E+1)	-	9E-11	-
40	Zirconium-95 2E-4	D, see ⁸⁶ Zr	1E+3	1E+2	5E-8	-	2E-5
-	-		-	Bone surf (3E+2)	-	4E-10	-
-	-	W, see ⁸⁶ Zr	-	4E+2	2E-7	5E-10	-
-	-	Y, see ⁸⁶ Zr	-	3E+2	1E-7	4E-10	-
40	Zirconium-97 9E-5	D, see ⁸⁶ Zr	6E+2	2E+3	8E-7	3E-9	9E-6
-	-	W, see ⁸⁶ Zr	-	1E+3	6E-7	2E-9	-
-	-	Y, see ⁸⁶ Zr	-	1E+3	5E-7	2E-9	-
41	Niobium-88 ²	W, all compounds except those given for Y	5E+4	2E+5	9E-5	3E-7	-
-	-		St wall (7E+4)	-	-	-	1E-3
-	1E-2	Y, oxides and hydroxides	-	2E+5	9E-5	3E-7	-
41	Niobium-89 ² 1E-3 (66 min)	W, see ⁸⁸ Nb	1E+4	4E+4	2E-5	6E-8	1E-4
-	-	Y, see ⁸⁸ Nb	-	4E+4	2E-5	5E-8	-
41	Niobium-89 7E-4 (122 min)	W, see ⁸⁸ Nb	5E+3	2E+4	8E-6	3E-8	7E-5
-	-	Y, see ⁸⁸ Nb	-	2E+4	6E-6	2E-8	-
41	Niobium-90 1E-4	W, see ⁸⁸ Nb	1E+3	3E+3	1E-6	4E-9	1E-5

		Y, see ⁸⁸ Nb	-	2E+3	1E-6	3E-9	-
41	Niobium-93m	W, see ⁸⁸ Nb	9E+3	2E+3	8E-7	3E-9	-
			LLI wall (1E+4)	-	-	-	2E-4
	2E-3	Y, see ⁸⁸ Nb	-	2E+2	7E-8	2E-10	-
41	Niobium-94 1E-4	W, see ⁸⁸ Nb	9E+2	2E+2	8E-8	3E-10	1E-5
		Y, see ⁸⁸ Nb	-	2E+1	6E-9	2E-11	-
41	Niobium-95m	W, see ⁸⁸ Nb	2E+3	3E+3	1E-6	4E-9	-
			LLI wall (2E+3)	-	-	-	3E-5
	3E-4	Y, see ⁸⁸ Nb	-	2E+3	9E-7	3E-9	-
41	Niobium-95 3E-4	W, see ⁸⁸ Nb	2E+3	1E+3	5E-7	2E-9	3E-5
		Y, see ⁸⁸ Nb	-	1E+3	5E-7	2E-9	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Col. 1	Col. 2	Col. 3	Table II Effluent Concentrations		Table III
			Oral Ingestion ALI (μ Ci)	Inhalation ALI (μ Ci)	DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	Releases to Sewers Monthly Average Concentration (μ Ci/ml)

41	Niobium-96 2E-4	W, see ⁸⁸ Nb	1E+3	3E+3	1E-6	4E-9	2E-5
		Y, see ⁸⁸ Nb	-	2E+3	1E-6	3E-9	-
41	Niobium-97 ² 3E-3	W, see ⁸⁸ Nb	2E+4	8E+4	3E-5	1E-7	3E-4
		Y, see ⁸⁸ Nb	-	7E+4	3E-5	1E-7	-
41	Niobium-98 ² 2E-3	W, see ⁸⁸ Nb	1E+4	5E+4	2E-5	8E-8	2E-4
		Y, see ⁸⁸ Nb	-	5E+4	2E-5	7E-8	-
42	Molybdenum-90 3E-4	D, all compounds except those given for Y	4E+3	7E+3	3E-6	1E-8	3E-5
		Y, oxides, hydroxides, and MoS	2E+3	5E+3	2E-6	6E-9	-
42	Molybdenum-93m 6E-4	D, see ⁹⁰ Mo	9E+3	2E+4	7E-6	2E-8	6E-5
		Y, see ⁹⁰ Mo	4E+3	1E+4	6E-6	2E-8	-
42	Molybdenum-93 5E-4	D, see ⁹⁰ Mo	4E+3	5E+3	2E-6	8E-9	5E-5
		Y, see ⁹⁰ Mo	2E+4	2E+2	8E-8	2E-10	-
42	Molybdenum-99	D, see ⁹⁰ Mo	2E+3	3E+3	1E-6	4E-9	-

			LLI wall (1E+3)	-	-	-	2E-5
	2E-4						
		Y, see ⁹⁰ Mo	1E+3	1E+3	6E-7	2E-9	-
42	Molybdenum-101 ²	D, see ⁹⁰ Mo	4E+4	1E+5	6E-5	2E-7	-
			St wall (5E+4)	-	-	-	7E-4
	7E-3						
		Y, see ⁹⁰ Mo	-	1E+5	6E-5	2E-7	-
43	Technetium-93m ²	D, All compounds except those given for W	7E+4	2E+5	6E-5	2E-7	1E-3
	1E-2						
		W, oxides, hydroxides, halides, and nitrates	-	3E+5	1E-4	4E-7	-
43	Technetium-93	D, see ^{93m} Tc	3E+4	7E+4	3E-5	1E-7	4E-4
	4E-3	W, see ^{93m} Tc	-	1E+5	4E-5	1E-7	-
43	Technetium-94m ²	D, see ^{93m} Tc	2E+4	4E+4	2E-5	6E-8	3E-4
	3E-3	W, see ^{93m} Tc	-	6E+4	2E-5	8E-8	-
43	Technetium-94	D, see ^{93m} Tc	9E+3	2E+4	8E-6	3E-8	1E-4
	1E-3	W, see ^{93m} Tc	-	2E+4	1E-5	3E-8	-
43	Technetium-95m	D, see ^{93m} Tc	4E+3	5E+3	2E-6	8E-9	5E-5
	5E-4	W, see ^{93m} Tc	-	2E+3	8E-7	3E-9	-
43	Technetium-95	D, see ^{93m} Tc	1E+4	2E+4	9E-6	3E-8	1E-4
	1E-3	W, see ^{93m} Tc	-	2E+4	8E-6	3E-8	-
43	Technetium-96m ²	D, see ^{93m} Tc	2E+5	3E+5	1E-4	4E-7	2E-3
	2E-2	W, see ^{93m} Tc	-	2E+5	1E-4	3E-7	-
43	Technetium-96	D, see ^{93m} Tc	2E+3	3E+3	1E-6	5E-9	3E-5
	3E-4	W, see ^{93m} Tc	-	2E+3	9E-7	3E-9	-
43	Technetium-97m	D, see ^{93m} Tc	5E+3	7E+3	3E-6	-	6E-5
	6E-4						
			St wall (7E+3)	-	-	1E-8	-
		W, see ^{93m} Tc	-	1E+3	5E-7	2E-9	-

Atomic Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration
		Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	(μ Ci/ml)
		Oral Ingestion ALI	Inhalation ALI	DAC	Air	Water	

No.			(μCi)	(μCi)	($\mu\text{Ci/ml}$)	($\mu\text{Ci/ml}$)	($\mu\text{Ci/ml}$)
43	Technetium-97 5E-3	D, see $^{93\text{m}}\text{Tc}$	4E+4	5E+4	2E-5	7E-8	5E-4
	-	W, see $^{93\text{m}}\text{Tc}$	-	6E+3	2E-6	8E-9	-
43	Technetium-98 1E-4	D, see $^{93\text{m}}\text{Tc}$	1E+3	2E+3	7E-7	2E-9	1E-5
	-	W, see $^{93\text{m}}\text{Tc}$	-	3E+2	1E-7	4E-10	-
43	Technetium-99m 1E-2	D, see $^{93\text{m}}\text{Tc}$	8E+4	2E+5	6E-5	2E-7	1E-3
	-	W, see $^{93\text{m}}\text{Tc}$	-	2E+5	1E-4	3E-7	-
43	Technetium-99 6E-4	D, see $^{93\text{m}}\text{Tc}$	4E+3	5E+3	2E-6	-	6E-5
	-		-	St wall (6E+3)	-	8E-9	-
	-	W, see $^{93\text{m}}\text{Tc}$	-	7E+2	3E-7	9E-10	-
43	Technetium-101 ² -	D, see $^{93\text{m}}\text{Tc}$	9E+4	3E+5	1E-4	5E-7	-
	2E-2		St wall (1E+5)	-	-	-	2E-3
	-	W, see $^{93\text{m}}\text{Tc}$	-	4E+5	2E-4	5E-7	-
43	Technetium-104 ² -	D, see $^{93\text{m}}\text{Tc}$	2E+4	7E+4	3E-5	1E-7	-
	4E-3		St wall (3E+4)	-	-	-	4E-4
	-	W, see $^{93\text{m}}\text{Tc}$	-	9E+4	4E-5	1E-7	-
44	Ruthenium-94 ² 2E-3	D, all compounds except those given for W and Y	2E+4	4E+4	2E-5	6E-8	2E-4
	-	W, halides	-	6E+4	3E-5	9E-8	-
	-	Y, oxides and hydroxides	-	6E+4	2E-5	8E-8	-
44	Ruthenium-97 1E-3	D, see ^{94}Ru	8E+3	2E+4	8E-6	3E-8	1E-4
	-	W, see ^{94}Ru	-	1E+4	5E-6	2E-8	-
	-	Y, see ^{94}Ru	-	1E+4	5E-6	2E-8	-
44	Ruthenium-103 3E-4	D, see ^{94}Ru	2E+3	2E+3	7E-7	2E-9	3E-5
	-	W, see ^{94}Ru	-	1E+3	4E-7	1E-9	-
	-	Y, see ^{94}Ru	-	6E+2	3E-7	9E-10	-
44	Ruthenium-105 7E-4	D, see ^{94}Ru	5E+3	1E+4	6E-6	2E-8	7E-5

		W, see ⁹⁴ Ru	-	1E+4	6E-6	2E-8	-
		Y, see ⁹⁴ Ru	-	1E+4	5E-6	2E-8	-
44	Ruthenium-106	D, see ⁹⁴ Ru	2E+2	9E+1	4E-8	1E-10	-
			LLI wall (2E+2)	-	-	-	3E-6
	3E-5	W, see ⁹⁴ Ru	-	5E+1	2E-8	8E-11	-
		Y, see ⁹⁴ Ru	-	1E+1	5E-9	2E-11	-
45	Rhodium-99m	D, all compounds except those given for W and Y	2E+4	6E+4	2E-5	8E-8	2E-4
	2E-3	W, halides	-	8E+4	3E-5	1E-7	-
		Y, oxides and hydroxides	-	7E+4	3E-5	9E-8	-
45	Rhodium-99	D, see ^{99m} Rh	2E+3	3E+3	1E-6	4E-9	3E-5
	3E-4	W, see ^{99m} Rh	-	2E+3	9E-7	3E-9	-
		Y, see ^{99m} Rh	-	2E+3	8E-7	3E-9	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
45	Rhodium-100	D, see ^{99m} Rh	2E+3	5E+3	2E-6	7E-9	2E-5	
	2E-4	W, see ^{99m} Rh	-	4E+3	2E-6	6E-9	-	
		Y, see ^{99m} Rh	-	4E+3	2E-6	5E-9	-	
45	Rhodium-101m	D, see ^{99m} Rh	6E+3	1E+4	5E-6	2E-8	8E-5	
	8E-4	W, see ^{99m} Rh	-	8E+3	4E-6	1E-8	-	
		Y, see ^{99m} Rh	-	8E+3	3E-6	1E-8	-	
45	Rhodium-101	D, see ^{99m} Rh	2E+3	5E+2	2E-7	7E-10	3E-5	
	3E-4	W, see ^{99m} Rh	-	8E+2	3E-7	1E-9	-	
		Y, see ^{99m} Rh	-	2E+2	6E-8	2E-10	-	
45	Rhodium-102m	D, see ^{99m} Rh	1E+3	5E+2	2E-7	7E-10	-	
			LLI wall (1E+3)	-	-	-	2E-5	
	2E-4							

		W, see ^{99m} Rh	-	4E+2	2E-7	5E-10	-
		Y, see ^{99m} Rh	-	1E+2	5E-8	2E-10	-
45	Rhodium-102 8E-5	D, see ^{99m} Rh	6E+2	9E+1	4E-8	1E-10	8E-6
		W, see ^{99m} Rh	-	2E+2	7E-8	2E-10	-
		Y, see ^{99m} Rh	-	6E+1	2E-8	8E-11	-
45	Rhodium-103m ² 6E-2	D, see ^{99m} Rh	4E+5	1E+6	5E-4	2E-6	6E-3
		W, see ^{99m} Rh	-	1E+6	5E-4	2E-6	-
		Y, see ^{99m} Rh	-	1E+6	5E-4	2E-6	-
45	Rhodium-105	D, see ^{99m} Rh	4E+3	1E+4	5E-6	2E-8	-
		LLI wall (4E+3)	-	-	-	-	5E-5
	5E-4	W, see ^{99m} Rh	-	6E+3	3E-6	9E-9	-
		Y, see ^{99m} Rh	-	6E+3	2E-6	8E-9	-
45	Rhodium-106m 1E-3	D, see ^{99m} Rh	8E+3	3E+4	1E-5	4E-8	1E-4
		W, see ^{99m} Rh	-	4E+4	2E-5	5E-8	-
		Y, see ^{99m} Rh	-	4E+4	1E-5	5E-8	-
45	Rhodium-107 ²	D, see ^{99m} Rh	7E+4	2E+5	1E-4	3E-7	-
		St wall (9E+4)	-	-	-	-	1E-3
	1E-2	W, see ^{99m} Rh	-	3E+5	1E-4	4E-7	-
		Y, see ^{99m} Rh	-	3E+5	1E-4	3E-7	-
46	Palladium-100	D, all compounds except those given for W and Y	1E+3	1E+3	6E-7	2E-9	2E-5
	2E-4	W, nitrates	-	1E+3	5E-7	2E-9	-
		Y, oxides and hydroxides	-	1E+3	6E-7	2E-9	-
46	Palladium-101 2E-3	D, see ¹⁰⁰ Pd	1E+4	3E+4	1E-5	5E-8	2E-4
		W, see ¹⁰⁰ Pd	-	3E+4	1E-5	5E-8	-
		Y, see ¹⁰⁰ Pd	-	3E+4	1E-5	4E-8	-

Table I
Occupational Values
Col. 1 **Col. 2** **Col. 3** **Table II**
Effluent Concentrations **Table III**
Releases to Sewers
Monthly Average
Concentration

Atomic No.	Radionuclide	Class	Oral Ingestion	Inhalation	Col. 1	Col. 2	($\mu\text{Ci/ml}$)
			ALI (μCi)	ALI (μCi)	DAC ($\mu\text{Ci/ml}$)	Air ($\mu\text{Ci/ml}$)	Water ($\mu\text{Ci/ml}$)
46	Palladium-103	D, see ^{100}Pd	6E+3	6E+3	3E-6	9E-9	-
	-		LLI wall (7E+3)	-	-	-	1E-4
	1E-3	W, see ^{100}Pd	-	4E+3	2E-6	6E-9	-
	-	Y, see ^{100}Pd	-	4E+3	1E-6	5E-9	-
46	Palladium-107	D, see ^{100}Pd	3E+4	2E+4	9E-6	-	-
	-		LLI wall (4E+4)	Kidneys (2E+4)	-	3E-8	5E-4
	5E-3	W, see ^{100}Pd	-	7E+3	3E-6	1E-8	-
	-	Y, see ^{100}Pd	-	4E+2	2E-7	6E-10	-
46	Palladium-109	D, see ^{100}Pd	2E+3	6E+3	3E-6	9E-9	3E-5
	3E-4	W, see ^{100}Pd	-	5E+3	2E-6	8E-9	-
	-	Y, see, ^{100}Pd	-	5E+3	2E-6	6E-9	-
47	Silver-102 ²	D, all compounds except those given for W and Y	5E+4	2E+5	8E-5	2E-7	-
	-		St wall (6E+4)	-	-	-	9E-4
	9E-3	W, nitrates and sulfides	-	2E+5	9E-5	3E-7	-
	-	Y, oxides and hydroxides	-	2E+5	8E-5	3E-7	-
47	Silver-103 ²	D, see ^{102}Ag	4E+4	1E+5	4E-5	1E-7	5E-4
	5E-3	W, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
	-	Y, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
47	Silver-104m ²	D, see ^{102}Ag	3E+4	9E+4	4E-5	1E-7	4E-4
	4E-3	W, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
	-	Y, see ^{102}Ag	-	1E+5	5E-5	2E-7	-
47	Silver-104 ²	D, see ^{102}Ag	2E+4	7E+4	3E-5	1E-7	3E-4
	3E-3	W, see ^{102}Ag	-	1E+5	6E-5	2E-7	-
	-	Y, see ^{102}Ag	-	1E+5	6E-5	2E-7	-

47	Silver-105 4E-4	D, see ¹⁰² Ag	3E+3	1E+3	4E-7	1E-9	4E-5
-	-	W, see ¹⁰² Ag	-	2E+3	7E-7	2E-9	-
-	-	Y, see ¹⁰² Ag	-	2E+3	7E-7	2E-9	-
47	Silver-106m 1E-4	D, see ¹⁰² Ag	8E+2	7E+2	3E-7	1E-9	1E-5
-	-	W, see ¹⁰² Ag	-	9E+2	4E-7	1E-9	-
-	-	Y, see ¹⁰² Ag	-	9E+2	4E-7	1E-9	-
47	Silver-106 ²	D, see ¹⁰² Ag	6E+4	2E+5	8E-5	3E-7	-
-	-		St Wall (6E+4)	-	-	-	9E-4
-	9E-3	W, see ¹⁰² Ag	-	2E+5	9E-5	3E-7	-
-	-	Y, see ¹⁰² Ag	-	2E+5	8E-5	3E-7	-
47	Silver-108m 9E-5	D, see ¹⁰² Ag	6E+2	2E+2	8E-8	3E-10	9E-6
-	-	W, see ¹⁰² Ag	-	3E+2	1E-7	4E-10	-
-	-	Y, see ¹⁰² Ag	-	2E+1	1E-8	3E-11	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
47	Silver-110m 6E-5	D, see ¹⁰² Ag	5E+2	1E+2	5E-8	2E-10	6E-6	
-	-	W, see ¹⁰² Ag	-	2E+2	8E-8	3E-10	-	
-	-	Y, see ¹⁰² Ag	-	9E+1	4E-8	1E-10	-	
47	Silver-111	D, see ¹⁰² Ag	9E+2	2E+3	6E-7	-	-	
-	-		LLI wall (1E+3)	Liver (2E+3)	-	2E-9	2E-5	
-	2E-4	W, see ¹⁰² Ag	-	9E+2	4E-7	1E-9	-	
-	-	Y, see ¹⁰² Ag	-	9E+2	4E-7	1E-9	-	
47	Silver-112 4E-4	D, see ¹⁰² Ag	3E+3	8E+3	3E-6	1E-8	4E-5	
-	-	W, see ¹⁰² Ag	-	1E+4	4E-6	1E-8	-	
-	-	Y, see ¹⁰² Ag	-	9E+3	4E-6	1E-8	-	

47	Silver-115 ²	D, see ¹⁰² Ag	3E+4	9E+4	4E-5	1E-7	-
	-		St wall (3E+4)	-	-	-	4E-4
	4E-3	W, see ¹⁰² Ag	-	9E+4	4E-5	1E-7	-
	-	Y, see ¹⁰² Ag	-	8E+4	3E-5	1E-7	-
48	Cadmium-104 ²	D, all compounds except those given for W and Y	2E+4	7E+4	3E-5	9E-8	3E-4
	3E-3	W, sulfides, halides, and nitrates	-	1E+5	5E-5	2E-7	-
	-	Y, oxides and hydroxides	-	1E+5	5E-5	2E-7	-
48	Cadmium-107	D, see ¹⁰⁴ Cd	2E+4	5E+4	2E-5	8E-8	3E-4
	3E-3	W, see ¹⁰⁴ Cd	-	6E+4	2E-5	8E-8	-
	-	Y, see ¹⁰⁴ Cd	-	5E+4	2E-5	7E-8	-
48	Cadmium-109	D, see ¹⁰⁴ Cd	3E+2	4E+1	1E-8	-	-
	-		Kidneys (4E+2)	Kidneys (5E+1)	-	7E-11	6E-6
	6E-5	W, see ¹⁰⁴ Cd	-	1E+2	5E-8	-	-
	-		-	Kidneys (1E+2)	-	2E-10	-
	-	Y, see ¹⁰⁴ Cd	-	1E+2	5E-8	2E-10	-
48	Cadmium-113m	D, see ¹⁰⁴ Cd	2E+1	2E+0	1E-9	-	-
	-		Kidneys (4E+1)	Kidneys (4E+0)	-	5E-12	5E-7
	5E-6	W, see ¹⁰⁴ Cd	-	8E+0	4E-9	-	-
	-		-	Kidneys (1E+1)	-	2E-11	-
	-	Y, see ¹⁰⁴ Cd	-	1E+1	5E-9	2E-11	-
48	Cadmium-113	D, see ¹⁰⁴ Cd	2E+1	2E+0	9E-10	-	-
	-		Kidneys (3E+1)	Kidneys (3E+0)	-	5E-12	4E-7
	4E-6	W, see ¹⁰⁴ Cd	-	8E+0	3E-9	-	-
	-		-	Kidneys (1E+1)	-	2E-11	-
	-	Y, see ¹⁰⁴ Cd	-	1E+1	6E-9	2E-11	-

Table I

Table II

Table III

Atomic No.	Radionuclide	Class	Occupational Values			Effluent Concentrations		Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	DAC ($\mu\text{Ci/ml}$)			
48	Cadmium-115m 4E-5	D, see ^{104}Cd	3E+2	5E+1	2E-8	-	4E-6	
-	-	-	-	Kidneys (8E+1)	-	1E-10	-	
-	-	W, see ^{104}Cd	-	1E+2	5E-8	2E-10	-	
-	-	Y, see ^{104}Cd	-	1E+2	6E-8	2E-10	-	
48	Cadmium-115	D, see ^{104}Cd	9E+2	1E+3	6E-7	2E-9	-	
-	-	-	LLI wall (1E+3)	-	-	-	1E-5	
-	1E-4	W, see ^{104}Cd	-	1E+3	5E-7	2E-9	-	
-	-	Y, see ^{104}Cd	-	1E+3	6E-7	2E-9	-	
48	Cadmium-117m 6E-4	D, see ^{104}Cd	5E+3	1E+4	5E-6	2E-8	6E-5	
-	-	W, see ^{104}Cd	-	2E+4	7E-6	2E-8	-	
-	-	Y, see ^{104}Cd	-	1E+4	6E-6	2E-8	-	
48	Cadmium-117 6E-4	D, see ^{104}Cd	5E+3	1E+4	5E-6	2E-8	6E-5	
-	-	W, see ^{104}Cd	-	2E+4	7E-6	2E-8	-	
-	-	Y, see ^{104}Cd	-	1E+4	6E-6	2E-8	-	
49	Indium-109 3E-3	D, all compounds except those given for W	2E+4	4E+4	2E-5	6E-8	3E-4	
-	-	W, oxides, hydroxides, halides, and nitrates	-	6E+4	3E-5	9E-8	-	
49	Indium-110 ² 2E-3 (69.1 min)	D, see ^{109}In	2E+4	4E+4	2E-5	6E-8	2E-4	
-	-	W, see ^{109}In	-	6E+4	2E-5	8E-8	-	
49	Indium-110 7E-4 (4.9 h)	D, see ^{109}In	5E+3	2E+4	7E-6	2E-8	7E-5	
-	-	W, see ^{109}In	-	2E+4	8E-6	3E-8	-	
49	Indium-111 6E-4	D, see ^{109}In	4E+3	6E+3	3E-6	9E-9	6E-5	
-	-	W, see ^{109}In	-	6E+3	3E-6	9E-9	-	
49	Indium-112 ² 2E-2	D, see ^{109}In	2E+5	6E+5	3E-4	9E-7	2E-3	

-	-	W, see ^{109}In	-	7E+5	3E-4	1E-6	-
49	Indium-113m ² 7E-3	D, see ^{109}In	5E+4	1E+5	6E-5	2E-7	7E-4
-	-	W, see ^{109}In	-	2E+5	8E-5	3E-7	-
49	Indium-114m	D, see ^{109}In	3E+2	6E+1	3E-8	9E-11	-
-	-		LLI wall (4E+2)	-	-	-	5E-6
-	5E-5	W, see ^{109}In	-	1E+2	4E-8	1E-10	-
49	Indium-115m 2E-3	D, see ^{109}In	1E+4	4E+4	2E-5	6E-8	2E-4
-	-	W, see ^{109}In	-	5E+4	2E-5	7E-8	-
49	Indium-115 5E-6	D, see ^{109}In	4E+1	1E+0	6E-10	2E-12	5E-7
-	-	W, see ^{109}In	-	5E+0	2E-9	8E-12	-
49	Indium-116m ² 3E-3	D, see ^{109}In	2E+4	8E+4	3E-5	1E-7	3E-4
-	-	W, see ^{109}In	-	1E+5	5E-5	2E-7	-
49	Indium-117m ² 2E-3	D, see ^{109}In	1E+4	3E+4	1E-5	5E-8	2E-4
-	-	W, see ^{109}In	-	4E+4	2E-5	6E-8	-
49	Indium-117 ² 8E-3	D, see ^{109}In	6E+4	2E+5	7E-5	2E-7	8E-4
-	-	W, see ^{109}In	-	2E+5	9E-5	3E-7	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
49	Indium-119m ² 7E-3	D, see ^{109}In	4E+4	1E+5	5E-5	2E-7	-	
-	-		St wall (5E+4)	-	-	-	7E-4	
-	-	W, see ^{109}In	-	1E+5	6E-5	2E-7	-	
50	Tin-110 5E-4	D, all compounds except those given for W	4E+3	1E+4	5E-6	2E-8	5E-5	
-	-	W, sulfides, oxides, hydroxides, halides, nitrates, and stannic phosphate	-	1E+4	5E-6	2E-8	-	
50	Tin-111 ² 1E-2	D, see ^{110}Sn	7E+4	2E+5	9E-5	3E-7	1E-3	

		W, see ^{110}Sn	-	3E+5	1E-4	4E-7	-
50	Tin-113	D, see ^{110}Sn	2E+3	1E+3	5E-7	2E-9	-
	-		LLI wall (2E+3)	-	-	-	3E-5
	3E-4	W, see ^{110}Sn	-	5E+2	2E-7	8E-10	-
50	Tin-117m	D, see ^{110}Sn	2E+3	1E+3	5E-7	-	-
	-		LLI wall (2E+3)	Bone surf (2E+3)	-	3E-9	3E-5
	3E-4	W, see ^{110}Sn	-	1E+3	6E-7	2E-9	-
50	Tin-119m	D, see ^{110}Sn	3E+3	2E+3	1E-6	3E-9	-
	-		LLI wall (4E+3)	-	-	-	6E-5
	6E-4	W, see ^{110}Sn	-	1E+3	4E-7	1E-9	-
50	Tin-121m	D, see ^{110}Sn	3E+3	9E+2	4E-7	1E-9	-
	-		LLI wall (4E+3)	-	-	-	5E-5
	5E-4	W, see ^{110}Sn	-	5E+2	2E-7	8E-10	-
50	Tin-121	D, see ^{110}Sn	6E+3	2E+4	6E-6	2E-8	-
	-		LLI wall (6E+3)	-	-	-	8E-5
	8E-4	W, see ^{110}Sn	-	1E+4	5E-6	2E-8	-
50	Tin-123m ²	D, see ^{110}Sn	5E+4	1E+5	5E-5	2E-7	7E-4
	7E-3	W, see ^{110}Sn	-	1E+5	6E-5	2E-7	-
50	Tin-123	D, see ^{110}Sn	5E+2	6E+2	3E-7	9E-10	-
	-		LLI wall (6E+2)	-	-	-	9E-6
	9E-5	W, see ^{110}Sn	-	2E+2	7E-8	2E-10	-
50	Tin-125	D, see ^{110}Sn	4E+2	9E+2	4E-7	1E-9	-
	-		LLI wall (5E+2)	-	-	-	6E-6
	6E-5	W, see ^{110}Sn	-	4E+2	1E-7	5E-10	-
50	Tin-126	D, see ^{110}Sn	3E+2	6E+1	2E-8	8E-11	4E-6
	4E-5	W, see ^{110}Sn	-	7E+1	3E-8	9E-11	-
	-						

50	Tin-127 9E-4	D, see ¹¹⁰ Sn	7E+3	2E+4	8E-6	3E-8	9E-5
-	-	W, see ¹¹⁰ Sn	-	2E+4	8E-6	3E-8	-

Table I
Occupational Values

Col. 1	Col. 2	Col. 3	Table II Effluent Concentrations		Table III Releases to Sewers
Oral Ingestion	Inhalation		Col. 1	Col. 2	Monthly Average
ALI	ALI	DAC	Air	Water	Concentration
(μCi)	(μCi)	(μCi/ml)	(μCi/ml)	(μCi/ml)	(μCi/ml)

Atomic	No.	Radionuclide	Class	Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	Col. 3 DAC (μCi/ml)	Table II Effluent Concentrations Col. 1 Air (μCi/ml)	Table II Effluent Concentrations Col. 2 Water (μCi/ml)	Table III Releases to Sewers Monthly Average Concentration (μCi/ml)
	50	Tin-128 ² 1E-3	D, see ¹¹⁰ Sn	9E+3	3E+4	1E-5	4E-8	1E-4	
	-	-	W, see ¹¹⁰ Sn	-	4E+4	1E-5	5E-8	-	
	51	Antimony-115 ² 1E-2	D, all compounds except those given for W	8E+4	2E+5	1E-4	3E-7	1E-3	
	-	-	W, oxides, hydroxides, halides, sulfides, sulfates, and nitrates	-	3E+5	1E-4	4E-7	-	
	51	Antimony-116m ² 3E-3	D, see ¹¹⁵ Sb	2E+4	7E+4	3E-5	1E-7	3E-4	
	-	-	W, see ¹¹⁵ Sb	-	1E+5	6E-5	2E-7	-	
	51	Antimony-116 ² 1E-2	D, see ¹¹⁵ Sb	7E+4	3E+5	1E-4	4E-7	-	
	-	-	St wall (9E+4)	-	-	-	-	1E-3	
	-	-	W, see ¹¹⁵ Sb	-	3E+5	1E-4	5E-7	-	
	51	Antimony-117 9E-3	D, see ¹¹⁵ Sb	7E+4	2E+5	9E-5	3E-7	9E-4	
	-	-	W, see ¹¹⁵ Sb	-	3E+5	1E-4	4E-7	-	
	51	Antimony-118m 7E-4	D, see ¹¹⁵ Sb	6E+3	2E+4	8E-6	3E-8	7E-5	
	-	-	W, see ¹¹⁵ Sb	5E+3	2E+4	9E-6	3E-8	-	
	51	Antimony-119 2E-3	D, see ¹¹⁵ Sb	2E+4	5E+4	2E-5	6E-8	2E-4	
	-	-	W, see ¹¹⁵ Sb	2E+4	3E+4	1E-5	4E-8	-	
	51	Antimony-120 ² (16 min) 2E-2	D, see ¹¹⁵ Sb	1E+5	4E+5	2E-4	6E-7	-	
	-	-	St wall (2E+5)	-	-	-	-	2E-3	
	-	-	W, see ¹¹⁵ Sb	-	5E+5	2E-4	7E-7	-	
	51	Antimony-120 1E-4 (5.76 d)	D, see ¹¹⁵ Sb	1E+3	2E+3	9E-7	3E-9	1E-5	
	-	-	W, see ¹¹⁵ Sb	9E+2	1E+3	5E-7	2E-9	-	
	51	Antimony-122 -	D, see ¹¹⁵ Sb	8E+2	2E+3	1E-6	3E-9	-	

LLI wall

	1E-4		(8E+2)	-	-	-	1E-5
	-	W, see ¹¹⁵ Sb	7E+2	1E+3	4E-7	2E-9	-
51	Antimony-124m ² 3E-2	D, see ¹¹⁵ Sb	3E+5	8E+5	4E-4	1E-6	3E-3
	-	W, see ¹¹⁵ Sb	2E+5	6E+5	2E-4	8E-7	-
51	Antimony-124 7E-5	D, see ¹¹⁵ Sb	6E+2	9E+2	4E-7	1E-9	7E-6
	-	W, see ¹¹⁵ Sb	5E+2	2E+2	1E-7	3E-10	-
51	Antimony-125 3E-4	D, see ¹¹⁵ Sb	2E+3	2E+3	1E-6	3E-9	3E-5
	-	W, see ¹¹⁵ Sb	-	5E+2	2E-7	7E-10	-
51	Antimony-126m ² -	D, see ¹¹⁵ Sb	5E+4	2E+5	8E-5	3E-7	-
	9E-3		St wall (7E+4)	-	-	-	9E-4
	-	W, see ¹¹⁵ Sb	-	2E+5	8E-5	3E-7	-
51	Antimony-126 7E-5	D, see ¹¹⁵ Sb	6E+2	1E+3	5E-7	2E-9	7E-6
	-	W, see ¹¹⁵ Sb	5E+2	5E+2	2E-7	7E-10	-
51	Antimony-127 -	D, see ¹¹⁵ Sb	8E+2	2E+3	9E-7	3E-9	-
	1E-4		LLI wall (8E+2)	-	-	-	1E-5
	-	W, see ¹¹⁵ Sb	7E+2	9E+2	4E-7	1E-9	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
51	Antimony-128 ² -	D, see ¹¹⁵ Sb	8E+4	4E+5	2E-4	5E-7	-	
	(10.4 min)		St wall (1E+5)	-	-	-	1E-3	
	1E-2	W, see ¹¹⁵ Sb	-	4E+5	2E-4	6E-7	-	
51	Antimony-128 2E-4	D, see ¹¹⁵ Sb	1E+3	4E+3	2E-6	6E-9	2E-5	
	(9.01 h)	W, see ¹¹⁵ Sb	-	3E+3	1E-6	5E-9	-	
51	Antimony-129 4E-4	D, see ¹¹⁵ Sb	3E+3	9E+3	4E-6	1E-8	4E-5	
	-	W, see ¹¹⁵ Sb	-	9E+3	4E-6	1E-8	-	
51	Antimony-130 ² 3E-3	D, see ¹¹⁵ Sb	2E+4	6E+4	3E-5	9E-8	3E-4	

		W, see ¹¹⁵ Sb	-	8E+4	3E-5	1E-7	-
51	Antimony-131 ²	D, see ¹¹⁵ Sb	1E+4	2E+4	1E-5	-	-
	-		Thyroid (2E+4)	Thyroid (4E+4)	-	6E-8	2E-4
	2E-3	W, see ¹¹⁵ Sb	-	2E+4	1E-5	-	-
	-		-	Thyroid (4E+4)	-	6E-8	-
52	Tellurium-116	D, all compounds except those given for W	8E+3	2E+4	9E-6	3E-8	1E-4
	1E-3	W, oxides, hydroxides, and nitrates	-	3E+4	1E-5	4E-8	-
52	Tellurium-121m	D, see ¹¹⁶ Te	5E+2	2E+2	8E-8	-	-
	-		Bone surf (7E+2)	Bone surf (4E+2)	-	5E-10	1E-5
	1E-4	W, see ¹¹⁶ Te	-	4E+2	2E-7	6E-10	-
52	Tellurium-121	D, see ¹¹⁶ Te	3E+3	4E+3	2E-6	6E-9	4E-5
	4E-4	W, see ¹¹⁶ Te	-	3E+3	1E-6	4E-9	-
52	Tellurium-123m	D, see ¹¹⁶ Te	6E+2	2E+2	9E-8	-	-
	-		Bone surf (1E+3)	Bone surf (5E+2)	-	8E-10	1E-5
	1E-4	W, see ¹¹⁶ Te	-	5E+2	2E-7	8E-10	-
52	Tellurium-123	D, see ¹¹⁶ Te	5E+2	2E+2	8E-8	-	-
	-		Bone surf (1E+3)	Bone surf (5E+2)	-	7E-10	2E-5
	2E-4	W, see ¹¹⁶ Te	-	4E+2	2E-7	-	-
	-		-	Bone surf (1E+3)	-	2E-9	-
52	Tellurium-125m	D, see ¹¹⁶ Te	1E+3	4E+2	2E-7	-	-
	-		Bone surf (1E+3)	Bone surf (1E+3)	-	1E-9	2E-5
	2E-4	W, see ¹¹⁶ Te	-	7E+2	3E-7	1E-9	-
52	Tellurium-127m	D, see ¹¹⁶ Te	6E+2	3E+2	1E-7	-	9E-6
	9E-5		-	Bone surf (4E+2)	-	6E-10	-
	-	W, see ¹¹⁶ Te	-	3E+2	1E-7	4E-10	-
	-		-	-	-	-	-

52	Tellurium-127 1E-3	D, see ¹¹⁶ Te	7E+3	2E+4	9E-6	3E-8	1E-4
-	-	W, see ¹¹⁶ Te	-	2E+4	7E-6	2E-8	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
52	Tellurium-129m 7E-5	D, see ¹¹⁶ Te	5E+2	6E+2	3E-7	9E-10	7E-6	
-	-	W, see ¹¹⁶ Te	-	2E+2	1E-7	3E-10	-	
52	Tellurium-129 ² 4E-3	D, see ¹¹⁶ Te	3E+4	6E+4	3E-5	9E-8	4E-4	
-	-	W, see ¹¹⁶ Te	-	7E+4	3E-5	1E-7	-	
52	Tellurium-131m -	D, see ¹¹⁶ Te	3E+2	4E+2	2E-7	-	-	
-	8E-5	-	Thyroid (6E+2)	Thyroid (1E+3)	-	2E-9	8E-6	
-	-	W, see ¹¹⁶ Te	-	4E+2	2E-7	-	-	
-	-	-	-	Thyroid (9E+2)	-	1E-9	-	
52	Tellurium-131 ² -	D, see ¹¹⁶ Te	3E+3	5E+3	2E-6	-	-	
-	8E-4	-	Thyroid (6E+3)	Thyroid (1E+4)	-	2E-8	8E-5	
-	-	W, see ¹¹⁶ Te	-	5E+3	2E-6	-	-	
-	-	-	-	Thyroid (1E+4)	-	2E-8	-	
52	Tellurium-132 -	D, see ¹¹⁶ Te	2E+2	2E+2	9E-8	-	-	
-	9E-5	-	Thyroid (7E+2)	Thyroid (8E+2)	-	1E-9	9E-6	
-	-	W, see ¹¹⁶ Te	-	2E+2	9E-8	-	-	
-	-	-	-	Thyroid (6E+2)	-	9E-10	-	
52	Tellurium-133m ² -	D, see ¹¹⁶ Te	3E+3	5E+3	2E-6	-	-	
-	9E-4	-	Thyroid (6E+3)	Thyroid (1E+4)	-	2E-8	9E-5	
-	-	W, see ¹¹⁶ Te	-	5E+3	2E-6	-	-	
-	-	-	-	Thyroid	-	-	-	

	-			(1E+4)	-	2E-8	-
52	Tellurium-133 ²	D, see ¹¹⁶ Te	1E+4	2E+4	9E-6	-	-
	-		Thyroid (3E+4)	Thyroid (6E+4)	-	8E-8	4E-4
	4E-3						
	-	W, see ¹¹⁶ Te	-	2E+4	9E-6	-	-
	-		-	Thyroid (6E+4)	-	8E-8	-
52	Tellurium-134 ²	D, see ¹¹⁶ Te	2E+4	2E+4	1E-5	-	-
	-		Thyroid (2E+4)	Thyroid (5E+4)	-	7E-8	3E-4
	3E-3						
	-	W, see ¹¹⁶ Te	-	2E+4	1E-5	-	-
	-		-	Thyroid (5E+4)	-	7E-8	-
53	Iodine-120m ²	D, all compounds	1E+4	2E+4	9E-6	3E-8	-
	-		Thyroid (1E+4)	-	-	-	2E-4
	2E-3						
53	Iodine-120 ²	D, all compounds	4E+3	9E+3	4E-6	-	-
	-		Thyroid (8E+3)	Thyroid (1E+4)	-	2E-8	1E-4
	1E-3						

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
53	Iodine-121	D, all compounds	1E+4	2E+4	8E-6	-	-	
	-		Thyroid (3E+4)	Thyroid (5E+4)	-	7E-8	4E-4	
	4E-3							
53	Iodine-123	D, all compounds	3E+3	6E+3	3E-6	-	-	
	-		Thyroid (1E+4)	Thyroid (2E+4)	-	2E-8	1E-4	
	1E-3							
53	Iodine-124	D, all compounds	5E+1	8E+1	3E-8	-	-	
	-		Thyroid (2E+2)	Thyroid (3E+2)	-	4E-10	2E-6	
	2E-5							
53	Iodine-125	D, all compounds	4E+1	6E+1	3E-8	-	-	
	-		Thyroid	Thyroid				

	2E-5			(1E+2)	(2E+2)	-	3E-10	2E-6
53	Iodine-126	D, all compounds		2E+1	4E+1	1E-8	-	-
	-			Thyroid (7E+1)	Thyroid (1E+2)	-	2E-10	1E-6
53	Iodine-128 ²	D, all compounds		4E+4	1E+5	5E-5	2E-7	-
	-			St wall (6E+4)	-	-	-	8E-4
53	Iodine-129	D, all compounds		5E+0	9E+0	4E-9	-	-
	-			Thyroid (2E+1)	Thyroid (3E+1)	-	4E-11	2E-7
53	Iodine-130	D, all compounds		4E+2	7E+2	3E-7	-	-
	-			Thyroid (1E+3)	Thyroid (2E+3)	-	3E-9	2E-5
53	Iodine-131	D, all compounds		3E+1	5E+1	2E-8	-	-
	-			Thyroid (9E+1)	Thyroid (2E+2)	-	2E-10	1E-6
53	Iodine-132m ²	D, all compounds		4E+3	8E+3	4E-6	-	-
	-			Thyroid (1E+4)	Thyroid (2E+4)	-	3E-8	1E-4
53	Iodine-132	D, all compounds		4E+3	8E+3	3E-6	-	-
	-			Thyroid (9E+3)	Thyroid (1E+4)	-	2E-8	1E-4
53	Iodine-133	D, all compounds		1E+2	3E+2	1E-7	-	-
	-			Thyroid (5E+2)	Thyroid (9E+2)	-	1E-9	7E-6
53	Iodine-134 ²	D, all compounds		2E+4	5E+4	2E-5	6E-8	-
	-			Thyroid (3E+4)	-	-	-	4E-4
53	Iodine-135	D, all compounds		8E+2	2E+3	7E-7	-	-
	-			Thyroid (3E+3)	Thyroid (4E+3)	-	6E-9	3E-5
54	Xenon-120 ²	Submersion ¹		-	-	1E-5	4E-8	-
54	Xenon-121 ²	Submersion ¹		-	-	2E-6	1E-8	-
54	Xenon-122	Submersion ¹		-	-	7E-5	3E-7	-
54	Xenon-123	Submersion ¹		-	-	6E-6	3E-8	-
54	Xenon-125	Submersion ¹		-	-	2E-5	7E-8	-

54	Xenon-127	Submersion ¹	-	-	1E-5	6E-8	-
54	Xenon-129m	Submersion ¹	-	-	2E-4	9E-7	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
54	Xenon-131m	Submersion ¹	-	-	4E-4	2E-6	-	
54	Xenon-133m	Submersion ¹	-	-	1E-4	6E-7	-	
54	Xenon-133	Submersion ¹	-	-	1E-4	5E-7	-	
54	Xenon-135m ²	Submersion ¹	-	-	9E-6	4E-8	-	
54	Xenon-135	Submersion ¹	-	-	1E-5	7E-8	-	
54	Xenon-138 ²	Submersion ¹	-	-	4E-6	2E-8	-	
55	Cesium-125 ²	D, all compounds	5E+4	1E+5	6E-5	2E-7	-	
			St wall (9E+4)	-	-	-	1E-3	
55	Cesium-127 9E-3	D, all compounds	6E+4	9E+4	4E-5	1E-7	9E-4	
55	Cesium-129 3E-3	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4	
55	Cesium-130 ²	D, all compounds	6E+4	2E+5	8E-5	3E-7	-	
			St wall (1E+5)	-	-	-	1E-3	
55	Cesium-131 3E-3	D, all compounds	2E+4	3E+4	1E-5	4E-8	3E-4	
55	Cesium-132 4E-4	D, all compounds	3E+3	4E+3	2E-6	6E-9	4E-5	
55	Cesium-134m	D, all compounds	1E+5	1E+5	6E-5	2E-7	-	
			St wall (1E+5)	-	-	-	2E-3	
55	Cesium-134 9E-6	D, all compounds	7E+1	1E+2	4E-8	2E-10	9E-7	
55	Cesium-135m ² 1E-2	D, all compounds	1E+5	2E+5	8E-5	3E-7	1E-3	
55	Cesium-135 1E-4	D, all compounds	7E+2	1E+3	5E-7	2E-9	1E-5	
55	Cesium-136 6E-5	D, all compounds	4E+2	7E+2	3E-7	9E-10	6E-6	
55	Cesium-137 1E-5	D, all compounds	1E+2	2E+2	6E-8	2E-10	1E-6	
55	Cesium-138 ²	D, all compounds	2E+4	6E+4	2E-5	8E-8	-	
			St wall					

	4E-3		(3E+4)	-	-	-	4E-4
56	Barium-126 ² 8E-4	D, all compounds	6E+3	2E+4	6E-6	2E-8	8E-5
56	Barium-128 7E-5	D, all compounds	5E+2	2E+3	7E-7	2E-9	7E-6
56	Barium-131m ² -	D, all compounds	4E+5	1E+6	6E-4	2E-6	-
			St wall (5E+5)	-	-	-	7E-3
56	Barium-131 4E-4	D, all compounds	3E+3	8E+3	3E-6	1E-8	4E-5
56	Barium-133m -	D, all compounds	2E+3	9E+3	4E-6	1E-8	-
			LLI wall (3E+3)	-	-	-	4E-5
56	Barium-133 2E-4	D, all compounds	2E+3	7E+2	3E-7	9E-10	2E-5
56	Barium-135m 4E-4	D, all compounds	3E+3	1E+4	5E-6	2E-8	4E-5
56	Barium-139 ² 2E-3	D, all compounds	1E+4	3E+4	1E-5	4E-8	2E-4
56	Barium-140 -	D, all compounds	5E+2	1E+3	6E-7	2E-9	-
			LLI wall (6E+2)	-	-	-	8E-6
56	Barium-141 ² 3E-3	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4
56	Barium-142 ² 7E-3	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4
57	Lanthanum-131 ² 6E-3	D, all compounds except those given for W	5E+4	1E+5	5E-5	2E-7	6E-4
		W, oxides and hydroxides	-	2E+5	7E-5	2E-7	-

Table I
Occupational Values

Col. 1	Col. 2	Col. 3	Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration
Oral Ingestion ALI	Inhalation	DAC	Col. 1 Air	Col. 2 Water	(μCi/ml)
(μCi)	ALI (μCi)	(μCi/ml)	(μCi/ml)	(μCi/ml)	(μCi/ml)

Atomic			Col. 1	Col. 2	Col. 3	Table II Effluent Concentrations	Table III Releases to Sewers Monthly Average Concentration
No.	Radionuclide	Class	Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)
57	Lanthanum-132 4E-4	D, see ¹³¹ La	3E+3	1E+4	4E-6	1E-8	4E-5
	-	W, see ¹³¹ La	-	1E+4	5E-6	2E-8	-
57	Lanthanum-135 5E-3	D, see ¹³¹ La	4E+4	1E+5	4E-5	1E-7	5E-4
	-	W, see ¹³¹ La	-	9E+4	4E-5	1E-7	-
57	Lanthanum-137 2E-3	D, see ¹³¹ La	1E+4	6E+1	3E-8	-	2E-4
				Liver (7E+1)	-	1E-10	-

-	-	W, see ¹³¹ La	-	3E+2	1E-7	-	-
-	-	-	-	Liver (3E+2)	-	4E-10	-
57	Lanthanum-138 1E-4	D, see ¹³¹ La	9E+2	4E+0	1E-9	5E-12	1E-5
-	-	W, see ¹³¹ La	-	1E+1	6E-9	2E-11	-
57	Lanthanum-140 9E-5	D, see ¹³¹ La	6E+2	1E+3	6E-7	2E-9	9E-6
-	-	W, see ¹³¹ La	-	1E+3	5E-7	2E-9	-
57	Lanthanum-141 5E-4	D, see ¹³¹ La	4E+3	9E+3	4E-6	1E-8	5E-5
-	-	W, see ¹³¹ La	-	1E+4	5E-6	2E-8	-
57	Lanthanum-142 ² 1E-3	D, see ¹³¹ La	8E+3	2E+4	9E-6	3E-8	1E-4
-	-	W, see ¹³¹ La	-	3E+4	1E-5	5E-8	-
57	Lanthanum-143 ² -	D, see ¹³¹ La	4E+4	1E+5	4E-5	1E-7	-
-	5E-3	-	St wall (4E+4)	-	-	-	5E-4
-	-	W, see ¹³¹ La	-	9E+4	4E-5	1E-7	-
58	Cerium-134 -	W, all compounds except those given for Y	5E+2	7E+2	3E-7	1E-9	-
-	8E-5	-	LLI wall (6E+2)	-	-	-	8E-6
-	-	Y, and fluorides	-	oxides, 7E+2	3E-7	9E-10	hydroxides, -
58	Cerium-135 2E-4	W, see ¹³⁴ Ce	2E+3	4E+3	2E-6	5E-9	2E-5
-	-	Y, see ¹³⁴ Ce	-	4E+3	1E-6	5E-9	-
58	Cerium-137m -	W, see ¹³⁴ Ce	2E+3	4E+3	2E-6	6E-9	-
-	3E-4	-	LLI wall (2E+3)	-	-	-	3E-5
-	-	Y, see ¹³⁴ Ce	-	4E+3	2E-6	5E-9	-
58	Cerium-137 7E-3	W, see ¹³⁴ Ce	5E+4	1E+5	6E-5	2E-7	7E-4
-	-	Y, see ¹³⁴ Ce	-	1E+5	5E-5	2E-7	-
58	Cerium-139 7E-4	W, see ¹³⁴ Ce	5E+3	8E+2	3E-7	1E-9	7E-5
-	-	Y, see ¹³⁴ Ce	-	7E+2	3E-7	9E-10	-
58	Cerium-141 -	W, see ¹³⁴ Ce	2E+3	7E+2	3E-7	1E-9	-
-	3E-4	-	LLI wall (2E+3)	-	-	-	3E-5

		Y, see ¹³⁴ Ce	-	6E+2	2E-7	8E-10	-
58	Cerium-143	W, see ¹³⁴ Ce	1E+3	2E+3	8E-7	3E-9	-
			LLI wall (1E+3)	-	-	-	2E-5
	2E-4						
		Y, see ¹³⁴ Ce	-	2E+3	7E-7	2E-9	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
58	Cerium-144	W, see ¹³⁴ Ce	2E+2	3E+1	1E-8	4E-11	-	
			LLI wall (3E+2)	-	-	-	3E-6	
	3E-5							
		Y, see ¹³⁴ Ce	-	1E+1	6E-9	2E-11	-	
59	Praseodymium-136 ²	W, all compounds except those given for Y	5E+4	2E+5	1E-4	3E-7	-	
			St wall (7E+4)	-	-	-	1E-3	
	1E-2							
		Y, oxides, hydroxides, carbides, and fluorides	-	2E+5	9E-5	3E-7	-	
59	Praseodymium-137 ²	W, see ¹³⁶ Pr	4E+4	2E+5	6E-5	2E-7	5E-4	
	5E-3							
		Y, see ¹³⁶ Pr	-	1E+5	6E-5	2E-7	-	
59	Praseodymium-138m	W, see ¹³⁶ Pr	1E+4	5E+4	2E-5	8E-8	1E-4	
	1E-3							
		Y, see ¹³⁶ Pr	-	4E+4	2E-5	6E-8	-	
59	Praseodymium-139	W, see ¹³⁶ Pr	4E+4	1E+5	5E-5	2E-7	6E-4	
	6E-3							
		Y, see ¹³⁶ Pr	-	1E+5	5E-5	2E-7	-	
59	Praseodymium-142m ²	W, see ¹³⁶ Pr	8E+4	2E+5	7E-5	2E-7	1E-3	
	1E-2							
		Y, see ¹³⁶ Pr	-	1E+5	6E-5	2E-7	-	
59	Praseodymium-142	W, see ¹³⁶ Pr	1E+3	2E+3	9E-7	3E-9	1E-5	
	1E-4							
		Y, see ¹³⁶ Pr	-	2E+3	8E-7	3E-9	-	
59	Praseodymium-143	W, see ¹³⁶ Pr	9E+2	8E+2	3E-7	1E-9	-	
			LLI wall (1E+3)	-	-	-	2E-5	
	2E-4							

		Y, see ¹³⁶ Pr	-	7E+2	3E-7	9E-10	-
59	Praseodymium-144 ²	W, see ¹³⁶ Pr	3E+4	1E+5	5E-5	2E-7	-
			St wall (4E+4)	-	-	-	6E-4
	6E-3	Y, see ¹³⁶ Pr	-	1E+5	5E-5	2E-7	-
59	Praseodymium-145 4E-4	W, see ¹³⁶ Pr	3E+3	9E+3	4E-6	1E-8	4E-5
		Y, see ¹³⁶ Pr	-	8E+3	3E-6	1E-8	-
59	Praseodymium-147 ²	W, see ¹³⁶ Pr	5E+4	2E+5	8E-5	3E-7	-
			St wall (8E+4)	-	-	-	1E-3
	1E-2	Y, see ¹³⁶ Pr	-	2E+5	8E-5	3E-7	-
60	Neodymium-136 ²	W, all compounds except those given for Y	1E+4	6E+4	2E-5	8E-8	2E-4
	2E-3	Y, oxides, hydroxides, carbides, and fluorides	-	5E+4	2E-5	8E-8	-
60	Neodymium-138 3E-4	W, see ¹³⁶ Nd	2E+3	6E+3	3E-6	9E-9	3E-5
		Y, see ¹³⁶ Nd	-	5E+3	2E-6	7E-9	-
60	Neodymium-139m 7E-4	W, see ¹³⁶ Nd		5E+3	2E+4	7E-6	2E-8
		Y, see ¹³⁶ Nd	-	1E+4	6E-6	2E-8	-
60	Neodymium-139 ² 1E-2	W, see ¹³⁶ Nd	9E+4	3E+5	1E-4	5E-7	1E-3
		Y, see ¹³⁶ Nd	-	3E+5	1E-4	4E-7	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μCi/ml)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC (μCi/ml)	Col. 1 Air (μCi/ml)	Col. 2 Water (μCi/ml)	
60	Neodymium-141 2E-2	W, see ¹³⁶ Nd	2E+5	7E+5	3E-4	1E-6	2E-3	
		Y, see ¹³⁶ Nd	-	6E+5	3E-4	9E-7	-	
60	Neodymium-147	W, see ¹³⁶ Nd	1E+3	9E+2	4E-7	1E-9	-	
			LLI wall (1E+3)	-	-	-	2E-5	
	2E-4	Y, see ¹³⁶ Nd	-	8E+2	4E-7	1E-9	-	
60	Neodymium-149 ² 1E-3	W, see ¹³⁶ Nd	1E+4	3E+4	1E-5	4E-8	1E-4	

	-	Y, see ¹³⁶ Nd	-	2E+4	1E-5	3E-8	-
60	Neodymium-151 ² 9E-3	W, see ¹³⁶ Nd	7E+4	2E+5	8E-5	3E-7	9E-4
	-	Y, see ¹³⁶ Nd	-	2E+5	8E-5	3E-7	-
61	Promethium-141 ²	W, all compounds except those given for Y	5E+4	2E+5	8E-5	3E-7	-
	-		St wall (6E+4)	-	-	-	8E-4
	8E-3	Y, oxides, hydroxides, carbides, and fluorides	-	2E+5	7E-5	2E-7	-
61	Promethium-143 7E-4	W, see ¹⁴¹ Pm	5E+3	6E+2	2E-7	8E-10	7E-5
	-	Y, see ¹⁴¹ Pm	-	7E+2	3E-7	1E-9	-
61	Promethium-144 2E-4	W, see ¹⁴¹ Pm	1E+3	1E+2	5E-8	2E-10	2E-5
	-	Y, see ¹⁴¹ Pm	-	1E+2	5E-8	2E-10	-
61	Promethium-145 1E-3	W, see ¹⁴¹ Pm	1E+4	2E+2	7E-8	-	1E-4
	-			Bone surf (2E+2)	-	3E-10	-
	-	Y, see ¹⁴¹ Pm	-	2E+2	8E-8	3E-10	-
61	Promethium-146 2E-4	W, see ¹⁴¹ Pm	2E+3	5E+1	2E-8	7E-11	2E-5
	-	Y see ¹⁴¹ Pm	-	4E+1	2E-8	6E-11	-
61	Promethium-147	W see ¹⁴¹ Pm	4E+3	1E+2	5E-8	-	-
	-		LLI wall (5E+3)	Bone surf (2E+2)	-	3E-10	7E-5
	7E-4	Y, see ¹⁴¹ Pm	-	1E+2	6E-8	2E-10	-
61	Promethium-148m 1E-4	W, see ¹⁴¹ Pm	7E+2	3E+2	1E-7	4E-10	1E-5
	-	Y, see ¹⁴¹ Pm	-	3E+2	1E-7	5E-10	-
61	Promethium-148	W, see ¹⁴¹ Pm	4E+2	5E+2	2E-7	8E-10	-
	-		LLI wall (5E+2)	-	-	-	7E-6
	7E-5	Y, see ¹⁴¹ Pm	-	5E+2	2E-7	7E-10	-
0	-		LLI wall (1E+3)	-	-	-	2E-5
	2E-4	Y, see ¹⁴¹ Pm	-	2E+3	8E-7	2E-9	-
61	Promethium-150 7E-4	W, see ¹⁴¹ Pm	5E+3	2E+4	8E-6	3E-8	7E-5

		Y, see ¹⁴¹ Pm	-	2E+4	7E-6	2E-8	-
61	Promethium-151 2E-4	W, see ¹⁴¹ Pm	2E+3	4E+3	1E-6	5E-9	2E-5
		Y, see ¹⁴¹ Pm	-	3E+3	1E-6	4E-9	-
62	Samarium-141m ² 4E-3	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
62	Samarium-141 ²	W, all compounds	5E+4	2E+5	8E-5	2E-7	-	
	-		St wall (6E+4)	-	-	-	8E-4	
	8E-3							
62	Samarium-142 ² 1E-3	W, all compounds	8E+3	3E+4	1E-5	4E-8	1E-4	
62	Samarium-145 8E-4	W, all compounds	6E+3	5E+2	2E-7	7E-10	8E-5	
62	Samarium-146	W, all compounds	1E+1	4E2	1E-11	-	-	
	-		Bone surf (3E+1)	Bone surf (6E-2)	-	9E-14	3E-7	
	3E-6							
62	Samarium-147	W, all compounds	2E+1	4E2	2E-11	-	-	
	-		Bone surf (3E+1)	Bone surf (7E-2)	-	1E-13	4E-7	
	4E-6							
62	Samarium-151	W, all compounds	1E+4	1E+2	4E-8	-	-	
	-		LLI wall (1E+4)	Bone surf (2E+2)	-	2E-10	2E-4	
	2E-3							
62	Samarium-153	W, all compounds	2E+3	3E+3	1E-6	4E-9	-	
	-		LLI wall (2E+3)	-	-	-	3E-5	
	3E-4							
62	Samarium-155 ²	W, all compounds	6E+4	2E+5	9E-5	3E-7	-	
	-		St wall (8E+4)	-	-	-	1E-3	
	1E-2							
62	Samarium-156 7E-4	W, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5	
63	Europium-145 2E-4	W, all compounds	2E+3	2E+3	8E-7	3E-9	2E-5	
63	Europium-146 1E-4	W, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5	
63	Europium-147 4E-4	W, all compounds	3E+3	2E+3	7E-7	2E-9	4E-5	
63	Europium-148 1E-4	W, all compounds	1E+3	4E+2	1E-7	5E-10	1E-5	

63	Europium-149 2E-3	W, all compounds	1E+4	3E+3	1E-6	4E-9	2E-4
63	Europium-150 4E-4 (12.62 h)	W, all compounds	3E+3	8E+3	4E-6	1E-8	4E-5
63	Europium-150 1E-4 (34.2 y)	W, all compounds	8E+2	2E+1	8E-9	3E-11	1E-5
63	Europium-152m 4E-4	W, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5
63	Europium-152 1E-4	W, all compounds	8E+2	2E+1	1E-8	3E-11	1E-5
63	Europium-154 7E-5	W, all compounds	5E+2	2E+1	8E-9	3E-11	7E-6
63	Europium-155 5E-4	W, all compounds	4E+3	9E+1	4E-8	-	5E-5
-	-			Bone surf (1E+2)	-	2E-10	-
63	Europium-156 8E-5	W, all compounds	6E+2	5E+2	2E-7	6E-10	8E-6
63	Europium-157 3E-4	W, all compounds	2E+3	5E+3	2E-6	7E-9	3E-5
63	Europium-158 ² 3E-3	W, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4
64	Gadolinium-145 ² -	D, all compounds except those given for W	5E+4	2E+5	6E-5	2E-7	-
-	6E-3		St wall (5E+4)	-	-	-	6E-4
-	-	W, oxides, hydroxides, and fluorides	-	2E+5	7E-5	2E-7	-
64	Gadolinium-146 2E-4	D, see ¹⁴⁵ Gd	1E+3	1E+2	5E-8	2E-10	2E-5
-	-	W, see ¹⁴⁵ Gd	-	3E+2	1E-7	4E-10	-
64	Gadolinium-147 3E-4	D, see ¹⁴⁵ Gd	2E+3	4E+3	2E-6	6E-9	3E-5
-	-	W, see ¹⁴⁵ Gd	-	4E+3	1E-6	5E-9	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
64	Gadolinium-148 -	D, see ¹⁴⁵ Gd	1E+1	8E+3	3E-12	-	-	-
-	3E-6		Bone surf (2E+1)	Bone surf (2E+2)	-	2E-14	3E-7	
-	-	W, see ¹⁴⁵ Gd	-	3E-2	1E-11	-	-	
-	-			Bone surf				

			-	(6E-2)	-	8E-14	-
64	Gadolinium-149 4E-4	D, see ¹⁴⁵ Gd	3E+3	2E+3	9E-7	3E-9	4E-5
		W, see ¹⁴⁵ Gd	-	2E+3	1E-6	3E-9	-
64	Gadolinium-151 9E-4	D, see ¹⁴⁵ Gd	6E+3	4E+2	2E-7	-	9E-5
				Bone surf (6E+2)	-	9E-10	-
		W, see ¹⁴⁵ Gd	-	1E+3	5E-7	2E-9	-
64	Gadolinium-152	D, see ¹⁴⁵ Gd	2E+1	1E-2	4E-12	-	-
				Bone surf (3E+1)	Bone surf (2E-2)	-	3E-14
	4E-6	W, see ¹⁴⁵ Gd	-	4E-2	2E-11	-	-
				Bone surf (8E-2)	-	1E-13	-
64	Gadolinium-153 6E-4	D, see ¹⁴⁵ Gd	5E+3	1E+2	6E-8	-	6E-5
				Bone surf (2E+2)	-	3E-10	-
		W, see ¹⁴⁵ Gd	-	6E+2	2E-7	8E-10	-
64	Gadolinium-159 4E-4	D, see ¹⁴⁵ Gd	3E+3	8E+3	3E-6	1E-8	4E-5
		W, see ¹⁴⁵ Gd	-	6E+3	2E-6	8E-9	-
65	Terbium-147 ² 1E-3	W, all compounds	9E+3	3E+4	1E-5	5E-8	1E-4
65	Terbium-149 7E-4	W, all compounds	5E+3	7E+2	3E-7	1E-9	7E-5
65	Terbium-150 7E-4	W, all compounds	5E+3	2E+4	9E-6	3E-8	7E-5
65	Terbium-151 5E-4	W, all compounds	4E+3	9E+3	4E-6	1E-8	5E-5
65	Terbium-153 7E-4	W, all compounds	5E+3	7E+3	3E-6	1E-8	7E-5
65	Terbium-154 2E-4	W, all compounds	2E+3	4E+3	2E-6	6E-9	2E-5
65	Terbium-155 8E-4	W, all compounds	6E+3	8E+3	3E-6	1E-8	8E-5
65	Terbium-156m 2E-3 (5.0 h)	W, all compounds	2E+4	3E+4	1E-5	4E-8	2E-4
65	Terbium-156m 1E-3 (24.4 h)	W, all compounds	7E+3	8E+3	3E-6	1E-8	1E-4
65	Terbium-156 1E-4	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5
65	Terbium-157	W, all compounds	5E+4	3E+2	1E-7	-	-

LLI wall Bone surf

	7E-3		(5E+4)	(6E+2)	-	8E-10	7E-4
65	Terbium-158 2E-4	W, all compounds	1E+3	2E+1	8E-9	3E-11	2E-5
65	Terbium-160 1E-4	W, all compounds	8E+2	2E+2	9E-8	3E-10	1E-5
65	Terbium-161 -	W, all compounds	2E+3	2E+3	7E-7	2E-9	-
			LLI wall (2E+3)	-	-	-	3E-5
66	Dysprosium-155 1E-3	W, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4
66	Dysprosium-157 3E-3	W, all compounds	2E+4	6E+4	3E-5	9E-8	3E-4
66	Dysprosium-159 2E-3	W, all compounds	1E+4	2E+3	1E-6	3E-9	2E-4
66	Dysprosium-165 2E-3	W, all compounds	1E+4	5E+4	2E-5	6E-8	2E-4

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I	Table II	Table II		Table III	
			Col. 1	Col. 2	Col. 3	Effluent Concentrations		Releases to Sewers Monthly Average Concentration
			Oral Ingestion ALI (μ Ci)	Inhalation ALI (μ Ci)	DAC (μ Ci/ml)	Air (μ Ci/ml)	Water (μ Ci/ml)	(μ Ci/ml)
66	Dysprosium-166 -	W, all compounds	6E+2	7E+2	3E-7	1E-9	-	-
			LLI wall (8E+2)	-	-	-	-	1E-5
67	Holmium-155 ² 6E-3	W, all compounds	4E+4	2E+5	6E-5	2E-7	2E-6	6E-4
67	Holmium-157 ² 4E-2	W, all compounds	3E+5	1E+6	6E-4	2E-6	2E-6	4E-3
67	Holmium-159 ² 3E-2	W, all compounds	2E+5	1E+6	4E-4	1E-6	1E-6	3E-3
67	Holmium-161 1E-2	W, all compounds	1E+5	4E+5	2E-4	6E-7	6E-7	1E-3
67	Holmium-162m ² 7E-3	W, all compounds	5E+4	3E+5	1E-4	4E-7	4E-7	7E-4
67	Holmium-162 ² -	W, all compounds	5E+5	2E+6	1E-3	3E-6	3E-6	-
			St wall (8E+5)	-	-	-	-	1E-2
67	Holmium-164m ² 1E-2	W, all compounds	1E+5	3E+5	1E-4	4E-7	4E-7	1E-3
67	Holmium-164 ² -	W, all compounds	2E+5	6E+5	3E-4	9E-7	9E-7	-
			St wall (2E+5)	-	-	-	-	3E-3
67	Holmium-166m 9E-5	W, all compounds	6E+2	7E+0	3E-9	9E-12	9E-12	9E-6
67	Holmium-166 -	W, all compounds	9E+2	2E+3	7E-7	2E-9	2E-9	-
			LLI wall					

			(9E+2)	-	-	-	1E-5
67	1E-4 Holmium-167 2E-3	W, all compounds	2E+4	6E+4	2E-5	8E-8	2E-4
68	2E-3 Erbium-161	W, all compounds	2E+4	6E+4	3E-5	9E-8	2E-4
68	2E-3 Erbium-165 9E-3	W, all compounds	6E+4	2E+5	8E-5	3E-7	9E-4
68	Erbium-169 -	W, all compounds	3E+3	3E+3	1E-6	4E-9	-
			LLI wall (4E+3)	-	-	-	5E-5
68	5E-4 Erbium-171 5E-4	W, all compounds	4E+3	1E+4	4E-6	1E-8	5E-5
68	Erbium-172 -	W, all compounds	1E+3	1E+3	6E-7	2E-9	-
			LLI wall (E+3)	-	-	-	2E-5
69	2E-4 Thulium-162 ² -	W, all compounds	7E+4	3E+5	1E-4	4E-7	-
			St wall (7E+4)	-	-	-	1E-3
69	1E-2 Thulium-166 6E-4	W, all compounds	4E+3	1E+4	6E-6	2E-8	6E-5
69	Thulium-167 -	W, all compounds	2E+3	2E+3	8E-7	3E-9	-
			LLI wall (2E+3)	-	-	-	3E-5
69	3E-4 Thulium-170 -	W, all compounds	8E+2	2E+2	9E-8	3E-10	-
			LLI wall (1E+3)	-	-	-	1E-5
69	1E-4 Thulium-171 -	W, all compounds	1E+4	3E+2	1E-7	-	-
			LLI wall	Bone surf (1E+4) (6E+2)	-	8E-10	2E-4
69	2E-3 Thulium-172 -	W, all compounds	7E+2	1E+3	5E-7	2E-9	-
			LLI wall (8E+2)	-	-	-	1E-5
69	1E-4 Thulium-173 6E-4	W, all compounds	4E+3	1E+4	5E-6	2E-8	6E-5
69	Thulium-175 ² -	W, all compounds	7E+4	3E+5	1E-4	4E-7	-
			St wall (9E+4)	-	-	-	1E-3
	1E-2						

Atomic Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III
		Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
		Oral Ingestion	Inhalation		Air	Water	Monthly Average
		ALI	ALI	DAC	(μ Ci/ml)	(μ Ci/ml)	Concentration
			(μ Ci)	(μ Ci/ml)	(μ Ci/ml)	(μ Ci/ml)	

No.			(μCi)				
70	Ytterbium-162 ² 1E-2	W, all compounds except those given for Y	7E+4	3E+5	1E-4	4E-7	1E-3
-	-	Y, oxides, hydroxides, and fluorides	-	3E+5	1E-4	4E-7	-
70	Ytterbium-166 2E-4	W, see ¹⁶² Yb	1E+3	2E+3	8E-7	3E-9	2E-5
-	-	Y, see ¹⁶² Yb	-	2E+3	8E-7	3E-9	-
70	Ytterbium-167 ² 4E-2	W, see ¹⁶² Yb	3E+5	8E+5	3E-4	1E-6	4E-3
-	-	Y, see ¹⁶² Yb	-	7E+5	3E-4	1E-6	-
70	Ytterbium-169 2E-4	W, see ¹⁶² Yb	2E+3	8E+2	4E-7	1E-9	2E-5
-	-	Y, see ¹⁶² Yb	-	7E+2	3E-7	1E-9	-
70	Ytterbium-175 -	W, see ¹⁶² Yb	3E+3	4E+3	1E-6	5E-9	-
-	4E-4	LLI wall (3E+3)	-	-	-	-	4E-5
-	-	Y, see ¹⁶² Yb	-	3E+3	1E-6	5E-9	-
70	Ytterbium-177 ² 2E-3	W, see ¹⁶² Yb	2E+4	5E+4	2E-5	7E-8	2E-4
-	-	Y, see ¹⁶² Yb	-	5E+4	2E-5	6E-8	-
70	Ytterbium-178 ² 2E-3	W, see ¹⁶² Yb	1E+4	4E+4	2E-5	6E-8	2E-4
-	-	Y, see ¹⁶² Yb	-	4E+4	2E-5	5E-8	-
71	Lutetium-169 3E-4	W, all compounds except those given for Y	3E+3	4E+3	2E-6	6E-9	3E-5
-	-	Y, oxides, hydroxides, and fluorides	-	4E+3	2E-6	6E-9	-
71	Lutetium-170 2E-4	W, see ¹⁶⁹ Lu	1E+3	2E+3	9E-7	3E-9	2E-5
-	-	Y, see ¹⁶⁹ Lu	-	2E+3	8E-7	3E-9	-
71	Lutetium-171 3E-4	W, see ¹⁶⁹ Lu	2E+3	2E+3	8E-7	3E-9	3E-5
-	-	Y, see ¹⁶⁹ Lu	-	2E+3	8E-7	3E-9	-
71	Lutetium-172 1E-4	W, see ¹⁶⁹ Lu	1E+3	1E+3	5E-7	2E-9	1E-5
-	-	Y, see ¹⁶⁹ Lu	-	1E+3	5E-7	2E-9	-
71	Lutetium-173 7E-4	W, see ¹⁶⁹ Lu	5E+3	3E+2	1E-7	-	7E-5
-	-	Bone surf (5E+2)	-	-	-	6E-10	-

		Y, see ¹⁶⁹ Lu	-	3E+2	1E-7	4E-10	-
71	Lutetium-174m	W, see ¹⁶⁹ Lu	2E+3	2E+2	1E-7	-	-
			LLI wall (3E+3)	Bone surf (3E+2)	-	5E-10	4E-5
	4E-4	Y, see ¹⁶⁹ Lu	-	2E+2	9E-8	3E-10	-
71	Lutetium-174 7E-4	W, see ¹⁶⁹ Lu	5E+3	1E+2	5E-8	-	7E-5
			-	Bone surf (2E+2)	-	3E-10	-
		Y, see ¹⁶⁹ Lu	-	2E+2	6E-8	2E-10	-
71	Lutetium-176m 1E-3	W, see ¹⁶⁹ Lu	8E+3	3E+4	1E-5	3E-8	1E-4
		Y, see ¹⁶⁹ Lu	-	2E+4	9E-6	3E-8	-
71	Lutetium-176 1E-4	W, see ¹⁶⁹ Lu	7E+2	5E+0	2E-9	-	1E-5
			-	Bone surf (1E+1)	-	2E-11	-
		Y, see ¹⁶⁹ Lu	-	8E+0	3E-9	1E-1	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Col. 1	Col. 2	Col. 3	Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μCi/ml)
			Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	DAC (μCi/ml)	Col. 1 Air (μCi/ml)	Col. 2 Water (μCi/ml)	

71	Lutetium-177m 1E-4	W, see ¹⁶⁹ Lu	7E+2	1E+2	5E-8	-	-	1E-5
			-	Bone surf (1E+2)	-	2E-10	-	-
		Y, see ¹⁶⁹ Lu	-	8E+1	3E-8	1E-10	-	-
71	Lutetium-177	W, see ¹⁶⁹ Lu	2E+3	2E+3	9E-7	3E-9	-	-
			LLI wall (3E+3)	-	-	-	-	4E-5
	4E-4	Y, see ¹⁶⁹ Lu	-	2E+3	9E-7	3E-9	-	-
71	Lutetium-178m ²	W, see ¹⁶⁹ Lu	5E+4	2E+5	8E-5	3E-7	-	-
			St. wall (6E+4)	-	-	-	-	8E-4
	8E-3	Y, see ¹⁶⁹ Lu	-	2E+5	7E-5	2E-7	-	-
71	Lutetium-178 ²	W, see ¹⁶⁹ Lu	4E+4	1E+5	5E-5	2E-7	-	-
			St wall					

	6E-3		(4E+4)	-	-	-	6E-4
	-	Y, see ¹⁶⁹ Lu	-	1E+5	5E-5	2E-7	-
71	Lutetium-179 9E-4	W, see ¹⁶⁹ Lu	6E+3	2E+4	8E-6	3E-8	9E-5
	-	Y, see ¹⁶⁹ Lu	-	2E+4	6E-6	3E-8	-
72	Hafnium-170 4E-4	D, all compounds except those given for W	3E+3	6E+3	2E-6	8E-9	4E-5
	-	W, oxides, hydroxides, carbides, and nitrates	-	5E+3	2E-6	6E-9	-
72	Hafnium-172 2E-4	D, see ¹⁷⁰ Hf	1E+3	9E+0	4E-9	-	2E-5
	-		-	Bone surf (2E+1)	-	3E-11	-
	-	W, see ¹⁷⁰ Hf	-	4E+1	2E-8	-	-
	-		-	Bone surf (6E+1)	-	8E-11	-
72	Hafnium-173 7E-4	D, see ¹⁷⁰ Hf	5E+3	1E+4	5E-6	2E-8	7E-5
	-	W, see ¹⁷⁰ Hf	-	1E+4	5E-6	2E-8	-
72	Hafnium-175 4E-4	D, see ¹⁷⁰ Hf	3E+3	9E+2	4E-7	-	4E-5
	-		-	Bone surf (1E+3)	-	1E-9	-
	-	W, see ¹⁷⁰ Hf	-	1E+3	5E-7	2E-9	-
72	Hafnium-177m ² 3E-3	D, see ¹⁷⁰ Hf	2E+4	6E+4	2E-5	8E-8	3E-4
	-	W, see ¹⁷⁰ Hf	-	9E+4	4E-5	1E-7	-
72	Hafnium-178m 3E-5	D, see ¹⁷⁰ Hf	3E+2	1E+0	5E-10	-	3E-6
	-		-	Bone surf (2E+0)	-	3E-12	-
	-	W, see ¹⁷⁰ Hf	-	5E+0	2E-9	-	-
	-		-	Bone surf (9E+0)	-	1E-11	-
72	Hafnium-179m 1E-4	D, see ¹⁷⁰ Hf	1E+3	3E+2	1E-7	-	1E-5
	-		-	Bone surf (6E+2)	-	8E-10	-
	-	W, see ¹⁷⁰ Hf	-	6E+2	3E-7	8E-10	-
	-		-				

Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
Oral Ingestion	Inhalation				

Atomic No.	Radionuclide	Class	ALI				
			(μCi)	ALI (μCi)	DAC ($\mu\text{Ci/ml}$)	Air ($\mu\text{Ci/ml}$)	Water ($\mu\text{Ci/ml}$)
72	Hafnium-180m 1E-3	D, see ^{170}Hf	7E+3	2E+4	9E-6	3E-8	1E-4
		W, see ^{170}Hf	-	3E+4	1E-5	4E-8	-
72	Hafnium-181 2E-4	D, see ^{170}Hf	1E+3	2E+2	7E-8	-	2E-5
				Bone surf (4E+2)	-	6E-10	-
		W, see ^{170}Hf	-	4E+2	2E-7	6E-10	-
72	Hafnium-182m ² 5E-3	D, see ^{170}Hf	4E+4	9E+4	4E-5	1E-7	5E-4
		W, see ^{170}Hf	-	1E+5	6E-5	2E-7	-
72	Hafnium-182 -	D, see ^{170}Hf	2E+2	8E-1	3E-10	-	-
			Bone surf (4E+2)	Bone surf (2E+0)	-	2E-12	5E-6
		W, see ^{170}Hf	-	3E+0	1E-9	-	-
				Bone surf (7E+0)	-	1E-11	-
72	Hafnium-183 ² 3E-3	D, see ^{170}Hf	2E+4	5E+4	2E-5	6E-8	3E-4
		W, see ^{170}Hf	-	6E+4	2E-5	8E-8	-
72	Hafnium-184 3E-4	D, see ^{170}Hf	2E+3	8E+3	3E-6	1E-8	3E-5
		W, see ^{170}Hf	-	6E+3	3E-6	9E-9	-
73	Tantalum-172 ² 5E-3	W, all compounds except those given for Y	4E+4	1E+5	5E-5	2E-7	5E-4
		Y, elemental Ta, oxides, hydroxides, halides, carbides, nitrates, and nitrides	-	1E+5	4E-5	1E-7	-
73	Tantalum-173 9E-4	W, see ^{172}Ta	7E+3	2E+4	8E-6	3E-8	9E-5
		Y, see ^{172}Ta	-	2E+4	7E-6	2E-8	-
73	Tantalum-174 ² 4E-3	W, see ^{172}Ta	3E+4	1E+5	4E-5	1E-7	4E-4
		Y, see ^{172}Ta	-	9E+4	4E-5	1E-7	-
73	Tantalum-175 8E-4	W, see ^{172}Ta	6E+3	2E+4	7E-6	2E-8	8E-5
		Y, see ^{172}Ta	-	1E+4	6E-6	2E-8	-

73	Tantalum-176 5E-4	W, see ¹⁷² Ta	4E+3	1E+4	5E-6	2E-8	5E-5
	-	Y, see ¹⁷² Ta	-	1E+4	5E-6	2E-8	-
73	Tantalum-177 2E-3	W, see ¹⁷² Ta	1E+4	2E+4	8E-6	3E-8	2E-4
	-	Y, see ¹⁷² Ta	-	2E+4	7E-6	2E-8	-
73	Tantalum-178 2E-3	W, see ¹⁷² Ta	2E+4	9E+4	4E-5	1E-7	2E-4
	-	Y, see ¹⁷² Ta	-	7E+4	3E-5	1E-7	-
73	Tantalum-179 3E-3	W, see ¹⁷² Ta	2E+4	5E+3	2E-6	8E-9	3E-4
	-	Y, see ¹⁷² Ta	-	9E+2	4E-7	1E-9	-
73	Tantalum-180m 3E-3	W, see ¹⁷² Ta	2E+4	7E+4	3E-5	9E-8	3E-4
	-	Y, see ¹⁷² Ta	-	6E+4	2E-5	8E-8	-
73	Tantalum-180 2E-4	W, see ¹⁷² Ta	1E+3	4E+2	2E-7	6E-10	2E-5
	-	Y, see ¹⁷² Ta	-	2E+1	1E-8	3E-11	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
73	Tantalum-182m ²	W, see ¹⁷² Ta	2E+5	5E+5	2E-4	8E-7	-	
	-		St wall (2E+5)	-	-	-	3E-3	
	3E-2	Y, see ¹⁷² Ta	-	4E+5	2E-4	6E-7	-	
73	Tantalum-182 1E-4	W, see ¹⁷² Ta	8E+2	3E+2	1E-7	5E-10	1E-5	
	-	Y, see ¹⁷² Ta	-	1E+2	6E-8	2E-10	-	
73	Tantalum-183	W, see ¹⁷² Ta	9E+2	1E+3	5E-7	2E-9	-	
	-		LLI wall (1E+3)	-	-	-	2E-5	
	2E-4	Y, see ¹⁷² Ta	-	1E+3	4E-7	1E-9	-	
73	Tantalum-184 3E-4	W, see ¹⁷² Ta	2E+3	5E+3	2E-6	8E-9	3E-5	
	-	Y, see ¹⁷² Ta	-	5E+3	2E-6	7E-9	-	
73	Tantalum-185 ² 4E-3	W, see ¹⁷² Ta	3E+4	7E+4	3E-5	1E-7	4E-4	

		Y, see ¹⁷² Ta	-	6E+4	3E-5	9E-8	-
73	Tantalum-186 ²	W, see ¹⁷² Ta	5E+4	2E+5	1E-4	3E-7	-
	-		St wall (7E+4)	-	-	-	1E-3
	1E-2	Y, see ¹⁷² Ta	-	2E+5	9E-5	3E-7	-
	-						
74	Tungsten-176	D, all compounds	1E+4	5E+4	2E-5	7E-8	1E-4
	1E-3						
74	Tungsten-177	D, all compounds	2E+4	9E+4	4E-5	1E-7	3E-4
	3E-3						
74	Tungsten-178	D, all compounds	5E+3	2E+4	8E-6	3E-8	7E-5
	7E-4						
74	Tungsten-179 ²	D, all compounds	5E+5	2E+6	7E-4	2E-6	7E-3
	7E-2						
74	Tungsten-181	D, all compounds	2E+4	3E+4	1E-5	5E-8	2E-4
	2E-3						
74	Tungsten-185	D, all compounds	2E+3	7E+3	3E-6	9E-9	-
	-		LLI wall (3E+3)	-	-	-	4E-5
	4E-4						
74	Tungsten-187	D, all compounds	2E+3	9E+3	4E-6	1E-8	3E-5
	3E-4						
74	Tungsten-188	D, all compounds	4E+2	1E+3	5E-7	2E-9	-
	-		LLI wall (5E+2)	-	-	-	7E-6
	7E-5						
75	Rhenium-177 ²	D, all compounds except those given for W	9E+4	3E+5	1E-4	4E-7	-
	-		St wall (1E+5)	-	-	-	2E-3
	2E-2						
	-	W, oxides, hydroxides, and nitrates	-	4E+5	1E-4	5E-7	-
75	Rhenium-178 ²	D, see ¹⁷⁷ Re	7E+4	3E+5	1E-4	4E-7	-
	-		St wall (1E+5)	-	-	-	1E-3
	1E-2						
	-	W, see ¹⁷⁷ Re	-	3E+5	1E-4	4E-7	-
75	Rhenium-181	D, see ¹⁷⁷ Re	5E+3	9E+3	4E-6	1E-8	7E-5
	7E-4						
	-	W, see ¹⁷⁷ Re	-	9E+3	4E-6	1E-8	-
	-						
75	Rhenium-182	D, see ¹⁷⁷ Re	7E+3	1E+4	5E-6	2E-8	9E-5
	9E-4						
	(12.7 h)	W, see ¹⁷⁷ Re	-	2E+4	6E-6	2E-8	-
	-						
75	Rhenium-182	D, see ¹⁷⁷ Re	1E+3	2E+3	1E-6	3E-9	2E-5
	2E-4						
	(64.0 h)	W, see ¹⁷⁷ Re	-	2E+3	9E-7	3E-9	-
	-						

Table I

Table II

Table III

Atomic No.	Radionuclide	Class	Occupational Values			Effluent Concentrations		Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI	Inhalation ALI	DAC			
			(μCi)	(μCi)	($\mu\text{Ci/ml}$)	Air ($\mu\text{Ci/ml}$)	Water ($\mu\text{Ci/ml}$)	
75	Rhenium-184m 3E-4	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	3E-5	
		W, see ^{177}Re	-	4E+2	2E-7	6E-10	-	
75	Rhenium-184 3E-4	D, see ^{177}Re	2E+3	4E+3	1E-6	5E-9	3E-5	
		W, see ^{177}Re	-	1E+3	6E-7	2E-9	-	
75	Rhenium-186m -	D, see ^{177}Re	1E+3	2E+3	7E-7	-	-	
	2E-4		St wall (2E+3)	St wall (2E+3)	-	3E-9	2E-5	
		W, see ^{177}Re	-	2E+2	6E-8	2E-10	-	
75	Rhenium-186 3E-4	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	3E-5	
		W, see ^{177}Re	-	2E+3	7E-7	2E-9	-	
75	Rhenium-187 8E-2	D, see ^{177}Re	6E+5	8E+5	4E-4	-	8E-3	
			St wall -	(9E+5)	-	1E-6	-	
		W, see ^{177}Re	-	1E+5	4E-5	1E-7	-	
75	Rhenium-188m ² 1E-2	D, see ^{177}Re	8E+4	1E+5	6E-5	2E-7	1E-3	
		W, see ^{177}Re	-	1E+5	6E-5	2E-7	-	
75	Rhenium-188 2E-4	D, see ^{177}Re	2E+3	3E+3	1E-6	4E-9	2E-5	
		W, see ^{177}Re	-	3E+3	1E-6	4E-9	-	
75	Rhenium-189 4E-4	D, see ^{177}Re	3E+3	5E+3	2E-6	7E-9	4E-5	
		W, see ^{177}Re	-	4E+3	2E-6	6E-9	-	
76	Osmium-180 ² 1E-2	D, all compounds except those given for W and Y	1E+5	4E+5	2E-4	5E-7	1E-3	
		W, halides and nitrates	-	5E+5	2E-4	7E-7	-	
		Y, oxides and hydroxides	-	5E+5	2E-4	6E-7	-	
76	Osmium-181 ² 2E-3	D, see ^{180}Os	1E+4	4E+4	2E-5	6E-8	2E-4	
		W, see ^{180}Os	-	5E+4	2E-5	6E-8	-	
		Y, see ^{180}Os	-	4E+4	2E-5	6E-8	-	

76	Osmium-182 3E-4	D, see ¹⁸⁰ Os	2E+3	6E+3	2E-6	8E-9	3E-5
-	-	W, see ¹⁸⁰ Os	-	4E+3	2E-6	6E-9	-
-	-	Y, see ¹⁸⁰ Os	-	4E+3	2E-6	6E-9	-
76	Osmium-185 3E-4	D, see ¹⁸⁰ Os	2E+3	5E+2	2E-7	7E-10	3E-5
-	-	W, see ¹⁸⁰ Os	-	8E+2	3E-7	1E-9	-
-	-	Y, see ¹⁸⁰ Os	-	8E+2	3E-7	1E-9	-
76	Osmium-189m 1E-2	D, see ¹⁸⁰ Os	8E+4	2E+5	1E-4	3E-7	1E-3
-	-	W, see ¹⁸⁰ Os	-	2E+5	9E-5	3E-7	-
-	-	Y, see ¹⁸⁰ Os	-	2E+5	7E-5	2E-7	-
76	Osmium-191m 2E-3	D, see ¹⁸⁰ Os	1E+4	3E+4	1E-5	4E-8	2E-4
-	-	W, see ¹⁸⁰ Os	-	2E+4	8E-6	3E-8	-
-	-	Y, see ¹⁸⁰ Os	-	2E+4	7E-6	2E-8	-
76	Osmium-191	D, see ¹⁸⁰ Os	2E+3	2E+3	9E-7	3E-9	-
-	-		LLI wall (3E+3)	-	-	-	3E-5
-	3E-4	W, see ¹⁸⁰ Os	-	2E+3	7E-7	2E-9	-
-	-	Y, see ¹⁸⁰ Os	-	1E+3	6E-7	2E-9	-
-	-						

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	

76	Osmium-193	D, see ¹⁸⁰ Os	2E+3	5E+3	2E-6	6E-9	-
-	-		LLI wall (2E+3)	-	-	-	2E-5
-	2E-4	W, see ¹⁸⁰ Os	-	3E+3	1E-6	4E-9	-
-	-	Y, see ¹⁸⁰ Os	-	3E+3	1E-6	4E-9	-
76	Osmium-194	D, see ¹⁸⁰ Os	4E+2	4E+1	2E-8	6E-11	-
-	-		LLI wall (6E+2)	-	-	-	8E-6
-	8E-5	W, see ¹⁸⁰ Os	-	6E+1	2E-8	8E-11	-
-	-	Y, see ¹⁸⁰ Os	-	8E+0	3E-9	1E-11	-
-	-						

77	Iridium-182 ²	D, all compounds except those given for W and Y	4E+4	1E+5	6E-5	2E-7	-
	-		St wall (4E+4)	-	-	-	6E-4
	6E-3	W, halides, nitrates, and metallic iridium	-	2E+5	6E-5	2E-7	-
	-	Y, oxides and hydroxides	-	1E+5	5E-5	2E-7	-
77	Iridium-184 1E-3	D, see ¹⁸² Ir	8E+3	2E+4	1E-5	3E-8	1E-4
	-	W, see ¹⁸² Ir	-	3E+4	1E-5	5E-8	-
	-	Y, see ¹⁸² Ir	-	3E+4	1E-5	4E-8	-
77	Iridium-185 7E-4	D, see ¹⁸² Ir	5E+3	1E+4	5E-6	2E-8	7E-5
	-	W, see ¹⁸² Ir	-	1E+4	5E-6	2E-8	-
	-	Y, see ¹⁸² Ir	-	1E+4	4E-6	1E-8	-
77	Iridium-186 3E-4	D, see ¹⁸² Ir	2E+3	8E+3	3E-6	1E-8	3E-5
	-	W, see ¹⁸² Ir	-	6E+3	3E-6	9E-9	-
	-	Y, see ¹⁸² Ir	-	6E+3	2E-6	8E-9	-
77	Iridium-187 1E-3	D, see ¹⁸² Ir	1E+4	3E+4	1E-5	5E-8	1E-4
	-	W, see ¹⁸² Ir	-	3E+4	1E-5	4E-8	-
	-	Y, see ¹⁸² Ir	-	3E+4	1E-5	4E-8	-
77	Iridium-188 3E-4	D, see ¹⁸² Ir	2E+3	5E+3	2E-6	6E-9	3E-5
	-	W, see ¹⁸² Ir	-	4E+3	1E-6	5E-9	-
	-	Y, see ¹⁸² Ir	-	3E+3	1E-6	5E-9	-
77	Iridium-189	D, see ¹⁸² Ir	5E+3	5E+3	2E-6	7E-9	-
	-		LLI wall (5E+3)	-	-	-	7E-5
	7E-4	W, see ¹⁸² Ir	-	4E+3	2E-6	5E-9	-
	-	Y, see ¹⁸² Ir	-	4E+3	1E-6	5E-9	-
77	Iridium-190m ² 2E-2	D, see ¹⁸² Ir	2E+5	2E+5	8E-5	3E-7	2E-3
	-	W, see ¹⁸² Ir	-	2E+5	9E-5	3E-7	-
	-	Y, see ¹⁸² Ir	-	2E+5	8E-5	3E-7	-
77	Iridium-190 1E-4	D, see ¹⁸² Ir	1E+3	9E+2	4E-7	1E-9	1E-5

-	W, see ¹⁸² Ir	-	1E+3	4E-7	1E-9	-
-	Y, see ¹⁸² Ir	-	9E+2	4E-7	1E-9	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
			Oral Ingestion ALI (μ Ci)	Inhalation ALI (μ Ci)	DAC (μ Ci/ml)	Air (μ Ci/ml)	Water (μ Ci/ml)	Monthly Average Concentration (μ Ci/ml)

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
			Oral Ingestion ALI (μ Ci)	Inhalation ALI (μ Ci)	DAC (μ Ci/ml)	Air (μ Ci/ml)	Water (μ Ci/ml)	Monthly Average Concentration (μ Ci/ml)
77	Iridium-192m 4E-4	D, see ¹⁸² Ir	3E+3	9E+1	4E-8	1E-10	4E-5	
-	-	W, see ¹⁸² Ir	-	2E+2	9E-8	3E-10	-	
-	-	Y, see ¹⁸² Ir	-	2E+1	6E-9	2E-11	-	
77	Iridium-192 1E-4	D, see ¹⁸² Ir	9E+2	3E+2	1E-7	4E-10	1E-5	
-	-	W, see ¹⁸² Ir	-	4E+2	2E-7	6E-10	-	
-	-	Y, see ¹⁸² Ir	-	2E+2	9E-8	3E-10	-	
77	Iridium-194m 9E-5	D, see ¹⁸² Ir	6E+2	9E+1	4E-8	1E-10	9E-6	
-	-	W, see ¹⁸² Ir	-	2E+2	7E-8	2E-10	-	
-	-	Y, see ¹⁸² Ir	-	1E+2	4E-8	1E-10	-	
77	Iridium-194 1E-4	D, see ¹⁸² Ir	1E+3	3E+3	1E-6	4E-9	1E-5	
-	-	W, see ¹⁸² Ir	-	2E+3	9E-7	3E-9	-	
-	-	Y, see ¹⁸² Ir	-	2E+3	8E-7	3E-9	-	
77	Iridium-195m 1E-3	D, see ¹⁸² Ir	8E+3	2E+4	1E-5	3E-8	1E-4	
-	-	W, see ¹⁸² Ir	-	3E+4	1E-5	4E-8	-	
-	-	Y, see ¹⁸² Ir	-	2E+4	9E-6	3E-8	-	
77	Iridium-195 2E-3	D, see ¹⁸² Ir	1E+4	4E+4	2E-5	6E-8	2E-4	
-	-	W, see ¹⁸² Ir	-	5E+4	2E-5	7E-8	-	
-	-	Y, see ¹⁸² Ir	-	4E+4	2E-5	6E-8	-	
78	Platinum-186 2E-3	D, all compounds	1E+4	4E+4	2E-5	5E-8	2E-4	
78	Platinum-188 2E-4	D, all compounds	2E+3	2E+3	7E-7	2E-9	2E-5	
78	Platinum-189 1E-3	D, all compounds	1E+4	3E+4	1E-5	4E-8	1E-4	
78	Platinum-191 5E-4	D, all compounds	4E+3	8E+3	4E-6	1E-8	5E-5	
78	Platinum-193m	D, all compounds	3E+3	6E+3	3E-6	8E-9	-	

			LLI wall (3E+4)	-	-	-	4E-5
78	4E-4 Platinum-193	D, all compounds	4E+4	2E+4	1E-5	3E-8	-
			LLI wall (5E+4)	-	-	-	6E-4
78	6E-3 Platinum-195m	D, all compounds	2E+3	4E+3	2E-6	6E-9	-
			LLI wall (2E+3)	-	-	-	3E-5
78	3E-4 Platinum-197m ²	D, all compounds	2E+4	4E+4	2E-5	6E-8	2E-4
78	2E-3 Platinum-197	D, all compounds	3E+3	1E+4	4E-6	1E-8	4E-5
78	4E-4 Platinum-199 ²	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4
78	7E-3 Platinum-200	D, all compounds	1E+3	3E+3	1E-6	5E-9	2E-5
79	Gold-193	D, all compounds except those given for W and Y	9E+3	3E+4	1E-5	4E-8	1E-4
	1E-3	W, halides and nitrates	-	2E+4	9E-6	3E-8	-
		Y, oxides and hydroxides	-	2E+4	8E-6	3E-8	-
79	Gold-194	D, see ¹⁹³ Au	3E+3	8E+3	3E-6	1E-8	4E-5
	4E-4	W, see ¹⁹³ Au	-	5E+3	2E-6	8E-9	-
		Y, see ¹⁹³ Au	-	5E+3	2E-6	7E-9	-
79	Gold-195	D see ¹⁹³ Au	5E+3	1E+4	5E-6	2E-8	7E-5
	7E-4	W see ¹⁹³ Au	-	1E+3	6E-7	2E-9	-
		Y see ¹⁹³ Au	-	4E+2	2E-7	6E-10	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
79	Gold-198m	D see ¹⁹³ Au	1E+3	3E+3	1E-6	4E-9	1E-5	
	1E-4	W see ¹⁹³ Au	-	1E+3	5E-7	2E-9	-	
		Y see ¹⁹³ Au	-	1E+3	5E-7	2E-9	-	
79	Gold-198	D see ¹⁹³ Au	1E+3	4E+3	2E-6	5E-9	2E-5	
	2E-4	W see ¹⁹³ Au	-	2E+3	8E-7	3E-9	-	
		Y see ¹⁹³ Au	-	2E+3	7E-7	2E-9	-	

79	Gold-199	D see ¹⁹³ Au	3E+3	9E+3	4E-6	1E-8	-
	-		LLI wall (3E+3)	-	-	-	4E-5
	4E-4	W, see ¹⁹³ Au	-	4E+3	2E-6	6E-9	-
	-	Y, see ¹⁹³ Au	-	4E+3	2E-6	5E-9	-
79	Gold-200m 2E-4	D, see ¹⁹³ Au	1E+3	4E+3	1E-6	5E-9	2E-5
	-	W, see ¹⁹³ Au	-	3E+3	1E-6	4E-9	-
	-	Y, see ¹⁹³ Au	-	2E+4	1E-6	3E-9	-
79	Gold-200 ² 4E-3	D, see ¹⁹³ Au	3E+4	6E+4	3E-5	9E-8	4E-4
	-	W, see ¹⁹³ Au	-	8E+4	3E-5	1E-7	-
	-	Y, see ¹⁹³ Au	-	7E+4	3E-5	1E-7	-
79	Gold-201 ²	D, see ¹⁹³ Au	7E+4	2E+5	9E-5	3E-7	-
	-		St wall (9E+4)	-	-	-	1E-3
	1E-2	W, see ¹⁹³ Au	-	2E+5	1E-4	3E-7	-
	-	Y, see ¹⁹³ Au	-	2E+5	9E-5	3E-7	-
80	Mercury-193m	Vapor	-	8E+3	4E-6	1E-8	-
	-	Organic D	4E+3	1E+4	5E-6	2E-8	6E-5
	6E-4	D, sulfates	3E+3	9E+3	4E-6	1E-8	4E-5
	4E-4		W, oxides, hydroxides, halides, nitrates, and sulfides	-	8E+3	3E-6	1E-8
	-			-	3E+4	1E-5	4E-8
80	Mercury-193	Vapor	-	3E+4	1E-5	4E-8	-
	-	Organic D	2E+4	6E+4	3E-5	9E-8	3E-4
	3E-3	D, see ^{193m} Hg	2E+4	4E+4	2E-5	6E-8	2E-4
	2E-3	W, see ^{193m} Hg	-	4E+4	2E-5	6E-8	-
80	Mercury-194	Vapor	-	3E+1	1E-8	4E-11	-
	-	Organic D	2E+1	3E+1	1E-8	4E-11	2E-7
	2E-6	D, see ^{193m} Hg	8E+2	4E+1	2E-8	6E-11	1E-5
	1E-4	W, see ^{193m} Hg	-	1E+2	5E-8	2E-10	-
	-			-	4E+3	2E-6	6E-9
80	Mercury-195m	Vapor	-	4E+3	2E-6	6E-9	-
	-						

	4E-4	Organic D	3E+3	6E+3	3E-6	8E-9	4E-5
	3E-4	D, see ^{193m} Hg	2E+3	5E+3	2E-6	7E-9	3E-5
	-	W, see ^{193m} Hg	-	4E+3	2E-6	5E-9	-
80	Mercury-195	Vapor	-	3E+4	1E-5	4E-8	-
	2E-3	Organic D	2E+4	5E+4	2E-5	6E-8	2E-4
	2E-3	D, see ^{193m} Hg	1E+4	4E+4	1E-5	5E-8	2E-4
	-	W, see ^{193m} Hg	-	3E+4	1E-5	5E-8	-

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μCi/ml)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC (μCi/ml)	Col. 1 Air (μCi/ml)	Col. 2 Water (μCi/ml)	

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μCi/ml)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC (μCi/ml)	Col. 1 Air (μCi/ml)	Col. 2 Water (μCi/ml)	
80	Mercury-197m	Vapor	-	5E+3	2E-6	7E-9	-	
	5E-4	Organic D	4E+3	9E+3	4E-6	1E-8	5E-5	
	4E-4	D, see ^{193m} Hg	3E+3	7E+3	3E-6	1E-8	4E-5	
	-	W, see ^{193m} Hg	-	5E+3	2E-6	7E-9	-	
80	Mercury-197	Vapor	-	8E+3	4E-6	1E-8	-	
	9E-4	Organic D	7E+3	1E+4	6E-6	2E-8	9E-5	
	8E-4	D, see ^{193m} Hg	6E+3	1E+4	5E-6	2E-8	8E-5	
	-	W, see ^{193m} Hg	-	9E+3	4E-6	1E-8	-	
80	Mercury-199m ²	Vapor	-	8E+4	3E-5	1E-7	-	
	1E-2	Organic D	6E+4	2E+5	7E-5	2E-7	-	
	8E-3		St wall (1E+5)	-	-	-	1E-3	
	8E-3	D, see ^{193m} Hg	6E+4	1E+5	6E-5	2E-7	8E-4	
	-	W, see ^{193m} Hg	-	2E+5	7E-5	2E-7	-	
80	Mercury-203	Vapor	-	8E+2	4E-7	1E-9	-	
	7E-5	Organic D	5E+2	8E+2	3E-7	1E-9	7E-6	
	3E-4	D, see ^{193m} Hg	2E+3	1E+3	5E-7	2E-9	3E-5	
	-	W, see ^{193m} Hg	-	1E+3	5E-7	2E-9	-	
81	Thallium-194m ²	D, all compounds	5E+4	2E+5	6E-5	2E-7	-	

			St wall (7E+4)	-	-	-	1E-3
81	1E-2 Thallium-194 ²	D, all compounds	3E+5	6E+5	2E-4	8E-7	-
			St wall (3E+5)	-	-	-	4E-3
81	4E-2 Thallium-195 ²	D, all compounds	6E+4	1E+5	5E-5	2E-7	9E-4
81	9E-3 Thallium-197	D, all compounds	7E+4	1E+5	5E-5	2E-7	1E-3
81	1E-2 Thallium-198m ²	D, all compounds	3E+4	5E+4	2E-5	8E-8	4E-4
81	4E-3 Thallium-198	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4
81	3E-3 Thallium-199	D, all compounds	6E+4	8E+4	4E-5	1E-7	9E-4
81	9E-3 Thallium-200	D, all compounds	8E+3	1E+4	5E-6	2E-8	1E-4
81	1E-3 Thallium-201	D, all compounds	2E+4	2E+4	9E-6	3E-8	2E-4
81	2E-3 Thallium-202	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5
81	5E-4 Thallium-204	D, all compounds	2E+3	2E+3	9E-7	3E-9	2E-5
82	2E-4 Lead-195m ²	D, all compounds	6E+4	2E+5	8E-5	3E-7	8E-4
82	8E-3 Lead-198	D, all compounds	3E+4	6E+4	3E-5	9E-8	4E-4
82	4E-3 Lead-199 ²	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4
82	3E-3 Lead-200	D, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5
82	4E-4 Lead-201	D, all compounds	7E+3	2E+4	8E-6	3E-8	1E-4
82	1E-3 Lead-202m	D, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4
82	1E-3 Lead-202	D, all compounds	1E+2	5E+1	2E-8	7E-11	2E-6
82	2E-5 Lead-203	D, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5
82	7E-4 Lead-205	D, all compounds	4E+3	1E+3	6E-7	2E-9	5E-5
82	5E-4 Lead-209	D, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4
82	3E-3 Lead-210	D, all compounds	6E1	2E1	1E-10	-	-
			Bone surf (1E+0)	Bone surf (4E-1)	-	6E-13	1E-8
82	1E-7 Lead-211 ²	D, all compounds	1E+4	6E+2	3E-7	9E-10	2E-4
			2E+3				

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	

82	Lead-212	D, all compounds	8E+1	3E+1	1E-8	5E-11	-
	-						
			Bone surf				
			(1E+2)	-	-	-	2E-6
82	Lead-214 ²	D, all compounds	9E+3	8E+2	3E-7	1E-9	1E-4
	1E-3						
83	Bismuth-200 ²	D, nitrates	3E+4	8E+4	4E-5	1E-7	4E-4
	4E-3						
	-	W, all other compounds	-	1E+5	4E-5	1E-7	-
83	Bismuth-201 ²	D, see ²⁰⁰ Bi	1E+4	3E+4	1E-5	4E-8	2E-4
	2E-3						
	-	W, see ²⁰⁰ Bi	-	4E+4	2E-5	5E-8	-
83	Bismuth-202 ²	D, see ²⁰⁰ Bi	1E+4	4E+4	2E-5	6E-8	2E-4
	2E-3						
	-	W, see ²⁰⁰ Bi	-	8E+4	3E-5	1E-7	-
83	Bismuth-203	D, see ²⁰⁰ Bi	2E+3	7E+3	3E-6	9E-9	3E-5
	3E-4						
	-	W, see ²⁰⁰ Bi	-	6E+3	3E-6	9E-9	-
83	Bismuth-205	D, see ²⁰⁰ Bi	1E+3	3E+3	1E-6	3E-9	2E-5
	2E-4						
	-	W, see ²⁰⁰ Bi	-	1E+3	5E-7	2E-9	-
83	Bismuth-206	D, see ²⁰⁰ Bi	6E+2	1E+3	6E-7	2E-9	9E-6
	9E-5						
	-	W, see ²⁰⁰ Bi	-	9E+2	4E-7	1E-9	-
83	Bismuth-207	D, see ²⁰⁰ Bi	1E+3	2E+3	7E-7	2E-9	1E-5
	1E-4						
	-	W, see ²⁰⁰ Bi	-	4E+2	1E-7	5E-10	-
83	Bismuth-210m	D, see ²⁰⁰ Bi	4E+1	5E+0	2E-9	-	-
	-						
			Kidneys	Kidneys			
			(6E+1)	(6E+0)	-	9E-12	8E-7
	8E-6						
		W, see ²⁰⁰ Bi	-	7E-1	3E-10	9E-13	
83	Bismuth-210	D, see ²⁰⁰ Bi	8E+2	2E+2	1E-7	-	1E-5
	1E-4						
	-			Kidneys			
			-	(4E+2)	-	5E-10	-
	-	W, see ²⁰⁰ Bi	-	3E+1	1E-8	4E-11	-
83	Bismuth-212 ²	D, see ²⁰⁰ Bi	5E+3	2E+2	1E-7	3E-10	7E-5
	7E-4						
	-	W, see ²⁰⁰ Bi	-	3E+2	1E-7	4E-10	-
83	Bismuth-213 ²	D, see ²⁰⁰ Bi	7E+3	3E+2	1E-7	4E-10	1E-4
	1E-3						
	-	W, see ²⁰⁰ Bi	-	4E+2	1E-7	5E-10	-
	-						

83	Bismuth-214 ²	D, see ²⁰⁰ Bi	2E+4	8E+2	3E-7	1E-9	-
	-		St wall (2E+4)	-	-	-	3E-4
	3E-3						
	-	W, see ²⁰⁰ Bi	-	9E-2	4E-7	1E-9	-
84	Polonium-203 ²	D, all compounds except those given for W	3E+4	6E+4	3E-5	9E-8	3E-4
	3E-3						
	-	W, oxides, hydroxides, and nitrates	-	9E+4	4E-5	1E-7	-
84	Polonium-205 ²	D, see ²⁰³ Po	2E+4	4E+4	2E-5	5E-8	3E-4
	3E-3						
	-	W, see ²⁰³ Po	-	7E+4	3E-5	1E-7	-
84	Polonium-207	D, see ²⁰³ Po	8E+3	3E+4	1E-5	3E-8	1E-4
	1E-3						
	-	W, see ²⁰³ Po	-	3E+4	1E-5	4E-8	-
84	Polonium-210	D, see ²⁰³ Po	3E+0	6E-1	3E-10	9E-13	4E-8
	4E-7						
	-	W, see ²⁰³ Po	-	6E-1	3E-10	9E-13	-
	-						

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
85	Astatine-207 ²	D, halides	6E+3	3E+3	1E-6	4E-9	8E-5	
	8E-4							
	-	W	-	2E+3	9E-7	3E-9	-	
85	Astatine-211	D, halides	1E+2	8E+1	3E-8	1E-10	2E-6	
	2E-5							
	-	W	-	5E+1	2E-8	8E-11	-	
86	Radon-220	With daughters removed	-	2E+4	7E-6	2E-8	-	
	-							
	-	With daughters present	-	2E+1	9E-9	3E-11	-	
	-							
	-			(or 12 working level months)		(or 1.0 working level)		
86	Radon-222	With daughters removed	-	1E+4	4E-6	1E-8	-	
	-							
	-	With daughters present	-	1E+2	3E-8	1E-10	-	
	-							
	-			(or 4 working level months)		(or 0.33 working level)		
87	Francium-222 ²	D, all compounds	2E+3	5E+2	2E-7	6E-10	3E-5	
	3E-4							
87	Francium-223 ²	D, all compounds	6E+2	8E+2	3E-7	1E-9	8E-6	
	8E-5							

88	Radium-223	W, all compounds	5E+0	7E-1	3E-10	9E-13	-
	-		Bone surf (9E+0)	-	-	-	1E-7
88	Radium-224	W, all compounds	8E+0	2E+0	7E-10	2E-12	-
	-		Bone surf (2E+1)	-	-	-	2E-7
88	Radium-225	W, all compounds	8E+0	7E-1	3E-10	9E-13	-
	-		Bone surf (2E+1)	-	-	-	2E-7
88	Radium-226	W, all compounds	2E+0	6E-1	3E-10	9E-13	-
	-		Bone surf (5E+0)	-	-	-	6E-8
88	Radium-227 ²	W, all compounds	2E+4	1E+4	6E-6	-	-
	-		Bone surf (2E+4)	Bone surf (2E+4)	-	3E-8	3E-4
88	Radium-228	W, all compounds	2E+0	1E+0	5E-10	2E-12	-
	-		Bone surf (4E+0)	-	-	-	6E-8
89	Actinium-224	D, all compounds except those given for W and Y	2E+3	3E+1	1E-8	-	-
	-		LLI wall (2E+3)	Bone surf (4E+1)	-	5E-11	3E-5
	3E-4	W, halides and nitrates	-	5E+1	2E-8	7E-11	-
	-	Y, oxides and hydroxides	-	5E+1	2E-8	6E-11	-
89	Actinium-225	D, see ²²⁴ Ac	5E+1	3E-1	1E-10	-	-
	-		LLI wall (5E+1)	Bone surf (5E-1)	-	7E-13	7E-7
	7E-6	W, see ²²⁴ Ac	-	6E-1	3E-10	9E-13	-
	-	Y, see ²²⁴ Ac	-	6E-1	3E-10	9E-13	-
	-						

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Col. 1	Col. 2	Col. 3	Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Oral Ingestion ALI (μ Ci)	Inhalation ALI (μ Ci)	DAC (μ Ci/ml)	Air (μ Ci/ml)	Water (μ Ci/ml)	

89	Actinium-226	D, see ²²⁴ Ac	1E+2	3E+0	1E-9	-	-
	-		LLI wall (1E+2)	Bone surf (4E+0)	-	5E-12	2E-6
	2E-5	W, see ²²⁴ Ac	-	5E+0	2E-9	7E-12	-
	-	Y, see ²²⁴ Ac	-	5E+0	2E-9	6E-12	-
89	Actinium-227	D, see ²²⁴ Ac	2E-1	4E-4	2E-13	-	-
	-		Bone surf (4E-1)	Bone surf (8E-4)	-	1E-15	5E-9
	5E-8	W, see ²²⁴ Ac	-	2E-3	7E-13	-	-
	-		-	Bone surf (3E-3)	-	4E-15	-
	-	Y, see ²²⁴ Ac	-	4E-3	2E-12	6E-15	-
89	Actinium-228	D, see ²²⁴ Ac	2E+3	9E+0	4E-9	-	3E-5
	3E-4		-	Bone surf (2E+1)	-	2E-11	-
	-	W see ²²⁴ Ac	-	4E+1	2E-8	-	-
	-		-	Bone surf (6E+1)	-	8E-11	-
	-	Y see ²²⁴ Ac	-	4E+1	2E-8	6E-11	-
90	Thorium-226 ²	W, all compounds except those given for Y	5E+3	2E+2	6E-8	2E-10	-
	-		St wall (5E+3)	-	-	-	7E-5
	7E-4	Y, oxides and hydroxides	-	1E+2	6E-8	2E-10	-
90	Thorium-227	W, see ²²⁶ Th	1E+2	3E-1	1E-10	5E-13	2E-6
	2E-5	Y, see ²²⁶ Th	-	3E-1	1E-10	5E-13	-
90	Thorium-228	W, see ²²⁶ Th	6E+0	1E-2	4E-12	-	-
	-		Bone surf (1E+1)	Bone surf (2E-2)	-	3E-14	2E-7
	2E-6	Y, see ²²⁶ Th	-	2E-2	7E-12	2E-14	-
90	Thorium-229	W, see ²²⁶ Th	6E-1	9E-4	4E-13	-	-
	-		Bone surf (1E+0)	Bone surf (2E-3)	-	3E-15	2E-8
	2E-7	Y, see ²²⁶ Th	-	2E-3	1E-12	-	-
	-						

90	Thorium-230	W, see ^{226}Th		Bone surf					
			-	(3E-3)	-	4E-15	-	-	
			4E+0	6E-3	3E-12	-	-	-	
				Bone surf	Bone surf				
			(9E+0)	(2E-2)	-	2E-14	1E-7	1E-6	
		Y, see ^{226}Th	-	2E-2	6E-12	-	-	-	
				Bone surf					
			-	(2E-2)	-	3E-14	-	-	
90	Thorium-231	W, see ^{228}Th	4E+3	6E+3	3E-6	9E-9	-	5E-5	
	5E-4								
		Y, see ^{228}Th	-	6E+3	3E-6	9E-9	-	-	

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
90	Thorium-232	W, see ^{228}Th	7E-1	1E-3	5E-13	-	-	
				Bone surf	Bone surf			
			(2E+0)	(3E-3)	-	4E-15	-	3E-8
	3E-7	Y, see ^{228}Th	-	3E-3	1E-12	-	-	
				Bone surf				
			-	(4E-3)	-	6E-15	-	-
90	Thorium-234	W, see ^{228}Th	3E+2	2E+2	8E-8	3E-10	-	
				LLI wall				
			(4E+2)	-	-	-	-	5E-6
	5E-5	Y, see ^{228}Th	-	2E+2	6E-8	2E-10	-	
91	Protactinium-227 ²	W, all compounds except those given for Y	4E+3	1E+2	5E-8	2E-10	-	5E-5
	5E-4	Y, oxides and hydroxides	-	1E+2	4E-8	1E-10	-	
91	Protactinium-228	W, see ^{227}Pa	1E+3	1E+1	5E-9	-	-	2E-5
	2E-4			Bone surf				
			-	(2E+1)	-	3E-11	-	-
		Y, see ^{227}Pa	-	1E+1	5E-9	2E-11	-	
91	Protactinium-230	W, see ^{227}Pa	6E+2	5E+0	2E-9	7E-12	-	
				Bone surf				
			(9E+2)	-	-	-	-	1E-5
	1E-4	Y, see ^{227}Pa	-	4E+0	1E-9	5E-12	-	

91	Protactinium-231	W, see ²²⁷ Pa	2E-1	2E-3	6E-13	-	-
	-		Bone surf (5E-1)	Bone surf (4E-3)	-	6E-15	6E-9
	6E-8	Y, see ²²⁷ Pa	-	4E-3	2E-12	-	-
	-		-	Bone surf (6E-3)	-	8E-15	-
91	Protactinium-232	W, see ²²⁷ Pa	1E+3	2E+1	9E-9	-	2E-5
	2E-4		-	Bone surf (6E+1)	-	8E-11	-
	-	Y, see ²²⁷ Pa	-	6E+1	2E-8	-	-
	-		-	Bone surf (7E+1)	-	1E-10	-
91	Protactinium-233	W, see ²²⁷ Pa	1E+3	7E+2	3E-7	1E-9	-
	-		LLI wall (2E+3)	-	-	-	2E-5
	2E-4	Y, see ²²⁷ Pa	-	6E+2	2E-7	8E-10	-
91	Protactinium-234	W, see ²²⁷ Pa	2E+3	8E+3	3E-6	1E-8	3E-5
	3E-4	Y, see ²²⁷ Pa	-	7E+3	3E-6	9E-9	-
92	Uranium-230	D, UF, UOF, UO(NO)	4E+0	4E-1	2E-10	-	-
	-		Bone surf (6E+0)	Bone surf (6E-1)	-	8E-13	8E-8
	8E-7	W, UO, UF, UCI	-	4E-1	1E-10	5E-13	-
	-	Y, UO, UO	-	3E-1	1E-10	4E-13	-
	-						

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
92	Uranium-231	D, see ²³⁰ U	5E+3	8E+3	3E-6	1E-8	-	
	-		LLI wall (4E+3)	-	-	-	6E-5	
	6E-4	W, see ²³⁰ U	-	6E+3	2E-6	8E-9	-	
	-	Y, see ²³⁰ U	-	5E+3	2E-6	6E-9	-	
92	Uranium-232	D, see ²³⁰ U	2E+0	2E-1	9E-11	-	-	
	-							

			Bone surf (4E+0)	Bone surf (4E-1)	-	6E-13	6E-8
	6E-7	W, see ²³⁰ U	-	4E-1	2E-10	5E-13	-
	-	Y, see ²³⁰ U	-	8E-3	3E-12	1E-14	-
92	Uranium-233	D, see ²³⁰ U	1E+1	1E+0	5E-10	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
	3E-6	W, see ²³⁰ U	-	7E-1	3E-10	1E-12	-
	-	Y, see ²³⁰ U	-	4E-2	2E-11	5E-14	-
92	Uranium-234 ³	D, see ²³⁰ U	1E+1	1E+0	5E-10	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
	3E-6	W, see ²³⁰ U	-	7E-1	3E-10	1E-12	-
	-	Y, see ²³⁰ U	-	4E-2	2E-11	5E-14	-
92	Uranium-235 ³	D, see ²³⁰ U	1E+1	1E+0	6E-10	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
	3E-6	W, see ²³⁰ U	-	8E-1	3E-10	1E-12	-
	-	Y, see ²³⁰ U	-	4E-2	2E-11	6E-14	-
92	Uranium-236	D, see ²³⁰ U	1E+1	1E+0	5E-10	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
	3E-6	W, see ²³⁰ U	-	8E-1	3E-10	1E-12	-
	-	Y, see ²³⁰ U	-	4E-2	2E-11	6E-14	-
92	Uranium-237	D, see ²³⁰ U	2E+3	3E+3	1E-6	4E-9	-
			LLI wall (2E+3)	-	-	-	3E-5
	3E-4	W, see ²³⁰ U	-	2E+3	7E-7	2E-9	-
	-	Y, see ²³⁰ U	-	2E+3	6E-7	2E-9	-
92	Uranium-238 ³	D, see ²³⁰ U	1E+1	1E+0	6E-10	-	-
			Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7
	3E-6	W, see ²³⁰ U	-	8E-1	3E-10	1E-12	-
	-						

			(1E+0)	(1E-2)	-	1E-14	2E-8
93	2E-7 Neptunium-238 2E-4	W, all compounds	1E+3	6E+1	3E-8	-	2E-5
				Bone surf (2E+2)	-	2E-10	-
93	- Neptunium-239 -	W, all compounds	2E+3	2E+3	9E-7	3E-9	-
			LLI wall (2E+3)	-	-	-	2E-5
93	2E-4 Neptunium-240 ² 3E-3	W, all compounds	2E+4	8E+4	3E-5	1E-7	3E-4
94	Plutonium-234 1E-3	W, all compounds except PuO	8E+3	2E+2	9E-8	3E-10	1E-4
		Y, PuO	-	2E+2	8E-8	3E-10	-
94	Plutonium-235 ² 1E-1	W, see ²³⁴ Pu	9E+5	3E+6	1E-3	4E-6	1E-2
		Y, see ²³⁴ Pu	-	3E+6	1E-3	3E-6	-
94	Plutonium-236 -	W, see ²³⁴ Pu	2E+0	2E-2	8E-12	-	-
			Bone surf (4E+0)	Bone surf (4E-2)	-	5E-14	6E-8
	6E-7	Y, see ²³⁴ Pu	-	4E-2	2E-11	6E-14	-
94	Plutonium-237 2E-3	W, see ²³⁴ Pu	1E+4	3E+3	1E-6	5E-9	2E-4
		Y, see ²³⁴ Pu	-	3E+3	1E-6	4E-9	-
94	Plutonium-238 -	W, see ²³⁴ Pu	9E-1	7E-3	3E-12	-	-
			Bone surf (2E+0)	Bone surf (1E-2)	-	2E-14	2E-8
	2E-7	Y, see ²³⁴ Pu	-	2E-2	8E-12	2E-14	-

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (μ Ci/ml)
			Col. 1 Oral Ingestion ALI (μ Ci)	Col. 2 Inhalation ALI (μ Ci)	Col. 3 DAC (μ Ci/ml)	Col. 1 Air (μ Ci/ml)	Col. 2 Water (μ Ci/ml)	
94	Plutonium-239 -	W, see ²³⁴ Pu	8E-1	6E-3	3E-12	-	-	
			Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8	
	2E-7	Y, see ²³⁴ Pu	-	2E-2	7E-12	-	-	
			-	Bone surf (2E-2)	-	2E-14	-	

94	Plutonium-240	W, see ²³⁴ Pu	8E-1	6E-3	3E-12	-	-
	-		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
	2E-7	Y, see ²³⁴ Pu	-	2E-2	7E-12	-	-
	-		-	Bone surf (2E-2)	-	2E-14	-
94	Plutonium-241	W, see ²³⁴ Pu	4E+1	3E-1	1E-10	-	-
	-		Bone surf (7E+1)	Bone surf (6E-1)	-	8E-13	1E-6
	1E-5	Y, see ²³⁴ Pu	-	8E-1	3E-10	-	-
	-		-	Bone surf (1E+0)	-	1E-12	-
94	Plutonium-242	W, see ²³⁴ Pu	8E-1	7E-3	3E-12	-	-
	-		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
	2E-7	Y, see ²³⁴ Pu	-	2E-2	7E-12	-	-
	-		-	Bone surf (2E-2)	-	2E-14	-
94	Plutonium-243	W, see ²³⁴ Pu	2E+4	4E+4	2E-5	5E-8	2E-4
	2E-3	Y, see ²³⁴ Pu	-	4E+4	2E-5	5E-8	-
94	Plutonium-244	W, see ²³⁴ Pu	8E-1	7E-3	3E-12	-	-
	-		Bone surf (2E+0)	Bone surf (1E-2)	-	2E-14	2E-8
	2E-7	Y, see ²³⁴ Pu	-	2E-2	7E-12	-	-
	-		-	Bone surf (2E-2)	-	2E-14	-
94	Plutonium-245	W, see ²³⁴ Pu	2E+3	5E+3	2E-6	6E-9	3E-5
	3E-4	Y, see ²³⁴ Pu	-	4E+3	2E-6	6E-9	-
94	Plutonium-246	W, see ²³⁴ Pu	4E+2	3E+2	1E-7	4E-10	-
	-		LLI wall (4E+2)	-	-	-	6E-6
	6E-5	Y, see ²³⁴ Pu	-	3E+2	1E-7	4E-10	-
95	Americium-237 ²	W, all compounds	8E+4	3E+5	1E-4	4E-7	1E-3
	1E-2						
95	Americium-238 ²	W, all compounds	4E+4	3E+3	1E-6	-	5E-4
	5E-3						

				Bone surf (6E+3)	-	9E-9	-
95	Americium-239 7E-4	W, all compounds	5E+3	1E+4	5E-6	2E-8	7E-5
95	Americium-240 3E-4	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5
95	Americium-241 -	W, all compounds	8E-1	6E-3	3E-12	-	-
	2E-7		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
95	Americium-242m -	W, all compounds	8E-1	6E-3	3E-12	-	-	
	2E-7		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8	
95	Americium-242 5E-4	W, all compounds	4E+3	8E+1	4E-8	-	5E-5	
	-		-	Bone surf (9E+1)	-	1E-10	-	
95	Americium-243 -	W, all compounds	8E-1	6E-3	3E-12	-	-	
	2E-7		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8	
95	Americium-244m ² -	W, all compounds	6E+4	4E+3	2E-6	-	-	
	1E-2		St wall (8E+4)	Bone surf (7E+3)	-	1E-8	1E-3	
95	Americium-244 4E-4	W, all compounds	3E+3	2E+2	8E-8	-	4E-5	
	-		-	Bone surf (3E+2)	-	4E-1	0	
95	Americium-245 4E-3	W, all compounds	3E+4	8E+4	3E-5	1E-7	4E-4	
95	Americium-246m ² -	W, all compounds	5E+4	2E+5	8E-5	3E-7	-	
	8E-3		St wall (6E+4)	-	-	-	8E-4	
95	Americium-246 ² 4E-3	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4	
96	Curium-238 2E-3	W, all compounds	2E+4	1E+3	5E-7	2E-9	2E-4	
96	Curium-240 -	W, all compounds	6E+1	6E-1	2E-10	-	-	
	1E-5		Bone surf (8E+1)	Bone surf (6E-1)	-	9E-13	1E-6	

96	Curium-241 2E-4	W, all compounds	1E+3	3E+1	1E-8	-	2E-5
				Bone surf (4E+1)	-	5E-11	-
96	Curium-242 -	W, all compounds	3E+1	3E-1	1E-10	-	-
	7E-6		Bone surf (5E+1)	Bone surf (3E-1)	-	4E-13	7E-7
96	Curium-243 -	W, all compounds	1E+0	9E-3	4E-12	-	-
	3E-7		Bone surf (2E+0)	Bone surf (2E-2)	-	2E-14	3E-8
96	Curium-244 -	W, all compounds	1E+0	1E-2	5E-12	-	-
	3E-7		Bone surf (3E+0)	Bone surf (2E-2)	-	3E-14	3E-8
96	Curium-245 -	W, all compounds	7E-1	6E-3	3E-12	-	-
	2E-7		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
96	Curium-246 -	W, all compounds	7E-1	6E-3	3E-12	-	-
	2E-7		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
96	Curium-247 -	W, all compounds	8E-1	6E-3	3E-12	-	-
	2E-7		Bone surf (1E+0)	Bone surf (1E-2)	-	2E-14	2E-8
96	Curium-248 -	W, all compounds	2E-1	2E-3	7E-13	-	-
	5E-8		Bone surf (4E-1)	Bone surf (3E-3)	-	4E-15	5E-9

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration ($\mu\text{Ci/ml}$)
			Col. 1 Oral Ingestion ALI (μCi)	Col. 2 Inhalation ALI (μCi)	Col. 3 DAC ($\mu\text{Ci/ml}$)	Col. 1 Air ($\mu\text{Ci/ml}$)	Col. 2 Water ($\mu\text{Ci/ml}$)	
96	Curium-249 ² 7E-3	W, all compounds	5E+4	2E+4	7E-6	-	7E-4	
	-			Bone surf (3E+4)	-	4E-8	-	
96	Curium-250 -	W, all compounds	4E-2	3E-4	1E-13	-	-	
	9E-9		Bone surf (6E-2)	Bone surf (5E-4)	-	8E-16	9E-10	
97	Berkelium-245 3E-4	W, all compounds	2E+3	1E+3	5E-7	2E-9	3E-5	

97	Berkelium-246 4E-4	W, all compounds	3E+3	3E+3	1E-6	4E-9	4E-5
97	Berkelium-247 -	W, all compounds	5E-1	4E-3	2E-12	-	-
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8
97	2E-7 Berkelium-249 -	W, all compounds	2E+2	2E+0	7E-10	-	-
			Bone surf (5E+2)	Bone surf (4E+0)	-	5E-12	6E-6
97	6E-5 Berkelium-250 1E-3	W, all compounds	9E+3	3E+2	1E-7	-	1E-4
			-	Bone surf (7E+2)	-	1E-9	-
98	Californium-244 ² -	W, all compounds except those given for Y	3E+4	6E+2	2E-7	8E-10	-
			St wall (3E+4)	-	-	-	4E-4
	4E-3	Y, oxides and hydroxides	-	6E+2	2E-7	8E-10	-
98	Californium-246 5E-5	W, see ²⁴⁴ Cf	4E+2	9E+0	4E-9	1E-11	5E-6
		Y, see ²⁴⁴ Cf	-	9E+0	4E-9	1E-11	-
98	Californium-248 -	W, see ²⁴⁴ Cf	8E+0	6E-2	3E-11	-	-
			Bone surf (2E+1)	Bone surf (1E-1)	-	2E-13	2E-7
	2E-6	Y, see ²⁴⁴ Cf	-	1E-1	4E-11	1E-13	-
98	Californium-249 -	W, see ²⁴⁴ Cf	5E-1	4E-3	2E-12	-	-
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8
	2E-7	Y, see ²⁴⁴ Cf	-	1E-2	4E-12	-	-
			-	Bone surf (1E-2)	-	2E-14	-
98	Californium-250 -	W, see ²⁴⁴ Cf	1E+0	9E-3	4E-12	-	-
			Bone surf (2E+0)	Bone surf (2E-2)	-	3E-14	3E-8
	3E-7	Y, see ²⁴⁴ Cf	-	3E-2	1E-11	4E-14	-
98	Californium-251 -	W, see ²⁴⁴ Cf	5E-1	4E-3	2E-12	-	-
			Bone surf (1E+0)	Bone surf (9E-3)	-	1E-14	2E-8
	2E-7	Y, see ²⁴⁴ Cf	-	1E-2	4E-12	-	-
				Bone surf			

	-		-	(1E-2)	-	2E-14	-
98	Californium-252	W, see ²⁴⁴ Cf	2E+0	2E-2	8E-12	-	-
	-		Bone surf (5E+0)	Bone surf (4E-2)	-	5E-14	7E-8
	7E-7	Y, see ²⁴⁴ Cf	-	3E-2	1E-11	5E-14	-
	-						

Table I
Occupational Values

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
			Oral Ingestion ALI (μCi)	Inhalation ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Monthly Average Concentration (μCi/ml)

98	Californium-253	W, see ²⁴⁴ Cf	2E+2	2E+0	8E-10	3E-12	-
	-		Bone surf (4E+2)	-	-	-	5E-6
	5E-5	Y, see ²⁴⁴ Cf	-	2E+0	7E-10	2E-12	-
98	Californium-254	W, see ²⁴⁴ Cf	2E+0	2E-2	9E-12	3E-14	3E-8
	3E-7	Y, see ²⁴⁴ Cf	-	2E-2	7E-12	2E-14	-
99	Einsteinium-250	W, all compounds	4E+4	5E+2	2E-7	-	6E-4
	6E-3		-	Bone surf (1E+3)	-	2E-9	-
99	Einsteinium-251	W, all compounds	7E+3	9E+2	4E-7	-	1E-4
	1E-3		-	Bone surf (1E+3)	-	2E-9	-
99	Einsteinium-253	W, all compounds	2E+2	1E+0	6E-10	2E-12	2E-6
99	Einsteinium-254m	W, all compounds	3E+2	1E+1	4E-9	1E-11	-
	-		LLI wall (3E+2)	-	-	-	4E-6
99	Einsteinium-254	W, all compounds	8E+0	7E-2	3E-11	-	-
	-		Bone surf (2E+1)	Bone surf (1E-1)	-	2E-13	2E-7
100	Fermium-252	W, all compounds	5E+2	1E+1	5E-9	2E-11	6E-6
100	Fermium-253	W, all compounds	1E+3	1E+1	4E-9	1E-11	1E-5
100	Fermium-254	W, all compounds	3E+3	9E+1	4E-8	1E-10	4E-5
100	Fermium-255	W, all compounds	5E+2	2E+1	9E-9	3E-11	7E-6
100	Fermium-257	W, all compounds	2E+1	2E-1	7E-11	-	-
	-						

			Bone surf (4E+1)	Bone surf (2E-1)	-	3E-13	5E-7	
101	Mendelevium-257 1E-3	W, all compounds	7E+3	8E+1	4E-8	-	1E-4	
				Bone surf (9E+1)	-	1E-10	-	
101	Mendelevium-258 -	W, all compounds	3E+1	2E-1	1E-10	-	-	
			Bone surf (5E+1)	Bone surf (3E-1)	-	5E-13	6E-7	6E-6
-	Any single radionuclide not listed above with decay mode other than alpha emission or half-life less than 2 hours	Submersion ¹	-	2E+2	1E-7	1E-9	-	radioactive -
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with half-life greater than 2 hours	...	-	2E-1	1E-10	1E-12	1E-8	radioactive half-life 1E-7

**Table I
Occupational Values**

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers Monthly Average Concentration (µCi/ml)
			Col. 1 Oral Ingestion ALI (µCi)	Col. 2 Inhalation ALI (µCi)	Col. 3 DAC (µCi/ml)	Col. 1 Air (µCi/ml)	Col. 2 Water (µCi/ml)	
	Any not decays or or either concentration radionuclide is not known	...	single	spontaneous mixture identity of	4E-4	2E-13	1E-15	radionuclide that emission fission, which the any mixture 2E-9
	2E-8	-	4E-4	2E-13	1E-15	2E-9

FOOTNOTES:

¹ "Submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

² These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1E-7 µCi/ml for the listed DAC to account for the submersion dose prospectively but shall use individual monitoring devices or other radiation-measuring instruments that measure external exposure to demonstrate compliance with the limits. (See R12-1-410)

³ For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (see R12-1-408(E)). If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour work week is 0.2 milligrams uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour work week shall not exceed 8E-3 (SA) µCi-hr/ml, where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is 6.77E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:

$$SA = \frac{3.6E-7 \text{ curies/gram U}}{[0.4 + 0.38 (\text{enrichment}) + 0.0034 (\text{enrichment})^2]} \text{ E-6, enrichment} > 0.72$$

where enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this Appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture are the lowest values specified in this Appendix for any radionuclide that is not known to be absent from the mixture; or\

		Table I Occupational Values			Table II Effluent Concentrations		Table III
		Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
		Oral Ingestion	Inhalation		Air	Water	Monthly Average
		ALI	ALI	DAC	(μCi/ml)	(μCi/ml)	Concentration
No.	Radionuclide	(μCi)	(μCi)	(μCi/ml)	(μCi/ml)	(μCi/ml)	(μCi/ml)

	If it is known that Ac-227-D and Cm-250-W are not present	-	7E-4	3E-13	-	-	-
	If, in addition, it is known that Ac-227-W,Y,Th-229-W,Y, Th-230-W, Th-232-W,Y, Pa-231-W,Y, Np-237-W, Pu-239-W, Pu-240-W, Pu-242-W, Am-241-W, Am-242m-W, Am-243-W, Cm-245-W, Cm-246-W, Cm-247-W, Cm-248-W, Bk-247-W, Cf-249-W, and Cf-251-W are not present	-	7E-3	3E-12	-	-	-

		Table I Occupational Values			Table II Effluent Concentrations		Table III
		Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Releases to Sewers
		Oral Ingestion	Inhalation		Air	Water	Monthly Average
		ALI	ALI	DAC	(μCi/ml)	(μCi/ml)	Concentration
No.	Radionuclide	(μCi)	(μCi)	(μCi/ml)	(μCi/ml)	(μCi/ml)	(μCi/ml)

	If, in addition, it is known that Sm-146-W, Sm-147-W, Gd-148-D,W, Gd-152-D,W, Th-228-W,Y, Th-230-Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, Np-236-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-Y, Pu-240-Y, Pu-242-Y, Pu-244-W,Y, Cm-243-W, Cm-244-W, Cf-248-W, Cf-249-Y, Cf-250-W,Y, Cf-251-Y, Cf-252-W,Y, and Cf-254-W,Y are not present	7E-2	3E-11	-	-	-	-
	If, in addition, it is known that Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-Y, Es-254-W, Fm-257-W, and Md-258-W are not present	-	7E-1	3E-10	-	-	-
	If, in addition, it is known that Si-32-Y, Ti-44-Y, Fe-60-D, Sr-90-Y, Zr-93-D, Cd-113m-D, Cd-113-D, In-115-D,W, La-138-D, Lu-176-W, Hf-178m-D,W, Hf-182-D,W, Bi-210m-D, Ra-224-W, Ra-228-W, Ac-226-D,W,Y, Pa-230-W,Y, U-233-D,W, U-234-D,W, U-235-D,W, U-236-D,W, U-238-D,W, Pu-241-Y, Bk-249-W, Cf-253-W,Y, and Es-253-W are not present	7E+0	3E-9	-	-	-	-
	If it is known that Ac-227-D,W,Y, Th-229-W,Y, Th-232-W,Y, Pa-231-W,Y, Cm-248-W, and Cm-250-W are not present	-	-	1E-14	-	-	-
	If, in addition, it is known that Sm-146-W,Gd-148-D,W, Gd-152-D, Th-228-W,Y, Th-230-W,Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, U-Nat-Y, Np-236-W, Np-237-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-W,Y, Pu-240-W,Y, Pu-242-W,Y, Pu-244-W,Y, Am-241-W, Am-242m-W, Am-243-W, Cm-243-W, Cm-244-W, Cm-245-W, Cm-246-W, Cm-247-W, Bk-247-W, Cf-249-W,Y, Cf-250-W,Y, Cf-251-W,Y, Cf-252-W,Y, and Cf-254-W,Y are not present	1E-13	-	-	-	-	-
	If, in addition, it is known that Sm-147-W, Gd-152-W, Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, U-Nat-W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-W,Y, Es-254-W, Fm-257-W, and Md-258-W are not present	1E-12	-	-	-	-	-
	If, in addition it is known that Fe-60, Sr-90, Cd-113m, Cd-113, In-115, I-129, Cs-134, Sm-145, Sm-147, Gd-148, Gd-152, Hg-194 (organic), Bi-210m, Ra-223, Ra-224, Ra-225, Ac-225, Th-228, Th-230, U-233, U-234, U-235, U-236, U-238, U-Nat, Cm-242,Cf-248, Es-254, Fm-257, and Md-258 are not present	1E-6	1E-5	-	-	-	-

3. If a mixture of radionuclides consists of Uranium and its daughters in ore dust (10 μm AMAD particle distribution assumed) prior to chemical separation of the Uranium from the ore, the following values may be used for the DAC of the mixture: 6E-11 μCi of gross alpha activity from Uranium-238, Uranium-234, Thorium-230, and Radium-226 per milliliter of air; 3E-11 μCi of natural uranium per milliliter of air; or 45 micrograms of natural uranium per cubic meter of air.
4. If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the

concentration otherwise established in Appendix B to Article 4 for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed “1” (i.e., “unity”).

Example: If radionuclides “A,” “B,” and “C” are present in concentrations C_A , C_B , and C_C , and if the applicable DACs are DAC_A , DAC_B , and DAC_C respectively then the concentrations shall be limited so that the following relationship exists:

$$\frac{C_A}{DAC_A} + \frac{C_B}{DAC_B} + \frac{C_C}{DAC_C} \leq 1$$

Historical Note

New Appendix B recodified from 12 A.A.C. 1, Article 4, Appendix B, effective March 22, 2018 (Supp. 18-1).

Appendix C. Quantities¹ of Licensed or Registered Material Requiring Labeling

Radionuclide	Quantity (μCi)
Hydrogen-3	1,000
Beryllium-7	1,000
Beryllium-10	1
Carbon-11	1,000
Carbon-14	1,000
Fluorine-18	1,000
Sodium-22	10
Sodium-24	100
Magnesium-28	100
Aluminum-26	10
Silicon-31	1,000
Silicon-32	1
Phosphorus-32	10
Phosphorus-33	100
Sulfur-35	100
Chlorine-36	10
Chlorine-38	1,000
Chlorine-39	1,000
Argon-39	1,000
Argon-41	1,000
Potassium-40	100
Potassium-42	1,000
Potassium-43	1,000
Potassium-44	1,000
Potassium-45	1,000
Calcium-41	100
Calcium-45	100
Calcium-47	100
Scandium-43	1,000
Scandium-44m	100
Scandium-44	100
Scandium-46	10
Scandium-47	100
Scandium-48	100
Scandium-49	1,000
Titanium-44	1
Titanium-45	1,000
Vanadium-47	1,000
Vanadium-48	100
Vanadium-49	1,000
Chromium-48	1,000
Chromium-49	1,000
Chromium-51	1,000
Manganese-51	1,000
Manganese-52m	1,000

Manganese-52	100
Manganese-53	1,000
Manganese-54	100
Manganese-56	1,000
Iron-52	100
Iron-55	100
Iron-59	10
Iron-60	1
Cobalt-55	100
Cobalt-56	10
Cobalt-57	100
Cobalt-58m	1,000
Cobalt-58	100
Cobalt-60m	1,000
Cobalt-60	1
Cobalt-61	1,000
Cobalt-62m	1,000
Nickel-56	100
Radionuclide	Quantity (μCi)
Nickel-57	100
Nickel-59	100
Nickel-63	100
Nickel-65	1,000
Nickel-66	10
Copper-60	1,000
Copper-61	1,000
Copper-64	1,000
Copper-67	1,000
Zinc-62	100
Zinc-63	1,000
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zinc-71m	1,000
Zinc-72	100
Gallium-65	1,000
Gallium-66	100
Gallium-67	1,000
Gallium-68	1,000
Gallium-70	1,000
Gallium-72	100
Gallium-73	1,000
Germanium-66	1,000
Germanium-67	1,000
Germanium-68	10
Germanium-69	1,000
Germanium-71	1,000
Germanium-75	1,000
Germanium-77	1,000
Germanium-78	1,000
Arsenic-69	1,000
Arsenic-70	1,000
Arsenic-71	100
Arsenic-72	100
Arsenic-73	100
Arsenic-74	100
Arsenic-76	100
Arsenic-77	100
Arsenic-78	1,000
Selenium-70	1,000
Selenium-73m	1,000
Selenium-73	100

Selenium-75	100
Selenium-79	100
Selenium-81m	1,000
Selenium-81	1,000
Selenium-83	1,000
Bromine-74m	1,000
Bromine-74	1,000
Bromine-75	1,000
Bromine-76	100
Bromine-77	1,000
Bromine-80m	1,000
Bromine-80	1,000
Bromine-82	100
Bromine-83	1,000
Bromine-84	1,000
Krypton-74	1,000
Krypton-76	1,000
Krypton-77	1,000
Krypton-79	1,000
Krypton-81	1,000
Radionuclide	Quantity (μCi)
Krypton-83m	1,000
Krypton-85m	1,000
Krypton-85	1,000
Krypton-87	1,000
Krypton-88	1,000
Rubidium-79	1,000
Rubidium-81m	1,000
Rubidium-81	1,000
Rubidium-82m	1,000
Rubidium-83	100
Rubidium-84	100
Rubidium-86	100
Rubidium-87	100
Rubidium-88	1,000
Rubidium-89	1,000
Strontium-80	100
Strontium-81	1,000
Strontium-83	100
Strontium-85m	1,000
Strontium-85	100
Strontium-87m	1,000
Strontium-89	10
Strontium-90	0.1
Strontium-91	100
Strontium-92	100
Yttrium-86m	1,000
Yttrium-86	100
Yttrium-87	100
Yttrium-88	10
Yttrium-90m	1,000
Yttrium-90	10
Yttrium-91m	1,000
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Yttrium-94	1,000
Yttrium-95	1,000
Zirconium-86	100
Zirconium-88	10
Zirconium-89	100
Zirconium-93	1

Zirconium-95	10
Zirconium-97	100
Niobium-88	1,000
Niobium-89m (66 min)	1,000
Niobium-89 (122 min)	1,000
Niobium-90	100
Niobium-93m	10
Niobium-94	1
Niobium-95m	100
Niobium-95	100
Niobium-96	100
Niobium-97	1,000
Niobium-98	1,000
Molybdenum-90	100
Molybdenum-93m	100
Molybdenum-93	10
Molybdenum-99	100
Molybdenum-101	1,000
Technetium-93m	1,000
Technetium-93	1,000

Appendix C. Continued

Radionuclide	Quantity (μCi)
Technetium-94m	1,000
Technetium-94	1,000
Technetium-96m	1,000
Technetium-96	100
Technetium-97m	100
Technetium-97	1,000
Technetium-98	10
Technetium-99m	1,000
Technetium-99	100
Technetium-101	1,000
Technetium-104	1,000
Ruthenium-94	1,000
Ruthenium-97	1,000
Ruthenium-103	100
Ruthenium-105	1,000
Ruthenium-106	1
Rhodium-99m	1,000
Rhodium-99	100
Rhodium-100	100
Rhodium-101m	1,000
Rhodium-101	10
Rhodium-102m	10
Rhodium-102	10
Rhodium-103m	1,000
Rhodium-105	100
Rhodium-106m	1,000
Rhodium-107	1,000
Palladium-100	100
Palladium-101	1,000
Palladium-103	100
Palladium-107	10
Palladium-109	100
Silver-102	1,000
Silver-103	1,000
Silver-104m	1,000
Silver-104	1,000
Silver-105	100

Silver-106m	100
Silver-106	1,000
Silver-108m	1
Silver-110m	10
Silver-111	100
Silver-112	100
Silver-115	1,000
Cadmium-104	1,000
Cadmium-107	1,000
Cadmium-109	1
Cadmium-113m	0.1
Cadmium-113	100
Cadmium-115m	10
Cadmium-115	100
Cadmium-117m	1,000
Cadmium-117	1,000
Indium-109	1,000
Indium-110m	
(69.1m)	1,000
Indium-110	
(4.9h)	1,000
Indium-111	100
Indium-112	1,000
Indium-113m	1,000
Indium-114m	10
Indium-115m	1,000
Indium-115	100
Radionuclide	Quantity (μCi)
Indium-116m	1,000
Indium-117m	1,000
Indium-117	1,000
Indium-119m	1,000
Tin-110	100
Tin-111	1,000
Tin-113	100
Tin-117m	100
Tin-119m	100
Tin-121m	100
Tin-121	1,000
Tin-123m	1,000
Tin-123	10
Tin-125	10
Tin-126	10
Tin-127	1,000
Tin-128	1,000
Antimony-115	1,000
Antimony-116m	1,000
Antimony-116	1,000
Antimony-117	1,000
Antimony-118m	1,000
Antimony-119	1,000
Antimony-120	
(16m)	1,000
Antimony-120	
(5.76d)	100
Antimony-122	100
Antimony-124m	1,000
Antimony-124	10
Antimony-125	100
Antimony-126m	1,000
Antimony-126	100
Antimony-127	100

Antimony-128 (10.4m)	1,000
Antimony-128 (9.01h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100
Tellurium-132	10
Tellurium-133m	100
Tellurium-133	1,000
Tellurium-134	1,000
Iodine-120m	1,000
Iodine-120	100
Iodine-121	1,000
Iodine-123	100
Iodine-124	10
Iodine-125	1
Iodine-126	1
Radionuclide	Quantity (μCi)
Iodine-128	1,000
Iodine-129	1
Iodine-130	10
Iodine-131	1
Iodine-132m	100
Iodine-132	100
Iodine-133	10
Iodine-134	1,000
Iodine-135	100
Xenon-120	1,000
Xenon-121	1,000
Xenon-122	1,000
Xenon-123	1,000
Xenon-125	1,000
Xenon-127	1,000
Xenon-129m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000

Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Barium-126	1,000
Barium-128	100
Barium-131m	1,000
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000

Appendix C. Continued

Radionuclide	Quantity (μCi)	
Praseodymium-137	1,000	
Praseodymium-138m		1,000
Praseodymium-139	1,000	
Praseodymium-142m		1,000
Praseodymium-142	100	
Praseodymium-143	100	
Praseodymium-144	1,000	
Praseodymium-145	100	
Praseodymium-147	1,000	
Neodymium-136	1,000	
Neodymium-138	100	
Neodymium-139m	1,000	
Neodymium-139	1,000	
Neodymium-141	1,000	
Neodymium-147	100	
Neodymium-149	1,000	
Neodymium-151	1,000	
Promethium-141	1,000	
Promethium-143	100	
Promethium-144	10	
Promethium-145	10	
Promethium-146	1	
Promethium-147	10	
Promethium-148m	10	
Promethium-148	10	
Promethium-149	100	

Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100
Europium-150 (12.62h)	100
Europium-150 (34.2y)	1
Europium-152m	100
Europium-152	1
Europium-154	1
Europium-155	10
Europium-156	100
Europium-157	100
Europium-158	1,000
Gadolinium-145	1,000
Gadolinium-146	10
Gadolinium-147	100
Gadolinium-148	0.001
Gadolinium-149	100
Gadolinium-151	10
Gadolinium-152	100
Gadolinium-153	10
Gadolinium-159	100
Terbium-147	1,000
Radionuclide	Quantity (μCi)
Terbium-149	100
Terbium-150	1,000
Terbium-151	100
Terbium-153	1,000
Terbium-154	100
Terbium-155	1,000
Terbium-156m (5.0h)	1,000
Terbium-156m (24.4h)	1,000
Terbium-156	100
Terbium-157	10
Terbium-158	1
Terbium-160	10
Terbium-161	100
Dysprosium-155	1,000
Dysprosium-157	1,000
Dysprosium-159	100
Dysprosium-165	1,000
Dysprosium-166	100
Holmium-155	1,000
Holmium-157	1,000
Holmium-159	1,000

Holmium-161	1,000
Holmium-162m	1,000
Holmium-162	1,000
Holmium-164m	1,000
Holmium-164	1,000
Holmium-166m	1
Holmium-166	100
Holmium-167	1,000
Erbium-161	1,000
Erbium-165	1,000
Erbium-169	100
Erbium-171	100
Erbium-172	100
Thulium-162	1,000
Thulium-166	100
Thulium-167	100
Thulium-170	10
Thulium-171	10
Thulium-172	100
Thulium-173	100
Thulium-175	1,000
Ytterbium-162	1,000
Ytterbium-166	100
Ytterbium-167	1,000
Ytterbium-169	100
Ytterbium-175	100
Ytterbium-177	1,000
Ytterbium-178	1,000
Lutetium-169	100
Lutetium-170	100
Lutetium-171	100
Lutetium-172	100
Lutetium-173	10
Lutetium-174m	10
Lutetium-174	10
Lutetium-176m	1,000
Lutetium-176	100
Lutetium-177m	10
Lutetium-177	100
Lutetium-178m	1,000
Lutetium-178	1,000
Radionuclide	Quantity (μCi)
Lutetium-179	1,000
Hafnium-170	100
Hafnium-172	1
Hafnium-173	1,000
Hafnium-175	100
Hafnium-177m	1,000
Hafnium-178m	0.1
Hafnium-179m	10
Hafnium-180m	1,000
Hafnium-181	10
Hafnium-182m	1,000
Hafnium-182	0.1
Hafnium-183	1,000
Hafnium-184	100
Tantalum-172	1,000
Tantalum-173	1,000
Tantalum-174	1,000
Tantalum-175	1,000
Tantalum-176	100
Tantalum-177	1,000

Tantalum-178	1,000
Tantalum-179	100
Tantalum-180m	1,000
Tantalum-180	100
Tantalum-182m	1,000
Tantalum-182	10
Tantalum-183	100
Tantalum-184	100
Tantalum-185	1,000
Tantalum-186	1,000
Tungsten-176	1,000
Tungsten-177	1,000
Tungsten-178	1,000
Tungsten-179	1,000
Tungsten-181	1,000
Tungsten-185	100
Tungsten-187	100
Tungsten-188	10
Rhenium-177	1,000
Rhenium-178	1,000
Rhenium-181	1,000
Rhenium-182	
(12.7h)	1,000
Rhenium-182	
(64.0h)	100
Rhenium-184m	10
Rhenium-184	100
Rhenium-186m	10
Rhenium-186	100
Rhenium-187	1,000
Rhenium-188m	1,000
Rhenium-188	100
Rhenium-189	100
Osmium-180	1,000
Osmium-181	1,000
Osmium-182	100
Osmium-185	100
Osmium-189m	1,000
Osmium-191m	1,000
Osmium-191	100
Osmium-193	100
Osmium-194	1
Iridium-182	1,000
Iridium-184	1,000

Appendix C. Continued

Radionuclide	Quantity (μCi)
Iridium-185	1,000
Iridium-186	100
Iridium-187	1,000
Iridium-188	100
Iridium-189	100
Iridium-190m	1,000
Iridium-190	100
Iridium-192m	
(1.4m)	10
Iridium-192	
(73.8d)	1
Iridium-194m	10
Iridium-194	100
Iridium-195m	1,000
Iridium-195	1,000

Platinum-186	1,000
Platinum-188	100
Platinum-189	1,000
Platinum-191	100
Platinum-193m	100
Platinum-193	1,000
Platinum-195m	100
Platinum-197m	1,000
Platinum-197	100
Platinum-199	1,000
Platinum-200	100
Gold-193	1,000
Gold-194	100
Gold-195	10
Gold-198m	100
Gold-198	100
Gold-199	100
Gold-200m	100
Gold-200	1,000
Gold-201	1,000
Mercury-193m	100
Mercury-193	1,000
Mercury-194	1
Mercury-195m	100
Mercury-195	1,000
Mercury-197m	100
Mercury-197	1,000
Mercury-199m	1,000
Mercury-203	100
Thallium-194m	1,000
Thallium-194	1,000
Thallium-195	1,000
Thallium-197	1,000
Thallium-198m	1,000
Thallium-198	1,000
Thallium-199	1,000
Thallium-201	1,000
Thallium-200	1,000
Thallium-202	100
Thallium-204	100
Lead-195m	1,000
Lead-198	1,000
Lead-199	1,000
Lead-200	100
Lead-201	1,000
Lead-202m	1,000
Lead-202	10
Lead-203	1,000
Lead-205	100
Radionuclide	Quantity (μCi)
Lead-209	1,000
Lead-210	0.01
Lead-211	100
Lead-212	1
Lead-214	100
Bismuth-200	1,000
Bismuth-201	1,000
Bismuth-202	1,000
Bismuth-203	100
Bismuth-205	100
Bismuth-206	100
Bismuth-207	10

Bismuth-210m	0.1
Bismuth-210	1
Bismuth-212	10
Bismuth-213	10
Bismuth-214	100
Polonium-203	1,000
Polonium-205	1,000
Polonium-207	1,000
Polonium-210	0.1
Astatine-207	100
Astatine-211	10
Radon-220	1
Radon-222	1
Francium-222	100
Francium-223	100
Radium-223	0.1
Radium-224	0.1
Radium-225	0.1
Radium-226	0.1
Radium-227	1,000
Radium-228	0.1
Actinium-224	1
Actinium-225	0.01
Actinium-226	0.1
Actinium-227	0.001
Actinium-228	1
Thorium-226	10
Thorium-227	0.01
Thorium-228	0.001
Thorium-229	0.001
Thorium-230	0.001
Thorium-231	100
Thorium-232	100
Thorium-234	10
Thorium-natural	100
Protactinium-227	10
Protactinium-228	1
Protactinium-230	0.1
Protactinium-231	0.001
Protactinium-232	1
Protactinium-233	100
Protactinium-234	100
Uranium-230	0.01
Uranium-231	100
Uranium-232	0.001
Uranium-233	0.001
Uranium-234	0.001
Uranium-235	0.001
Uranium-236	0.001
Uranium-237	100
Uranium-238	100
Uranium-239	1,000
Radionuclide	Quantity (μCi)
Uranium-240	100
Uranium-natural	100
Neptunium-232	100
Neptunium-233	1,000
Neptunium-234	100
Neptunium-235	100
Neptunium-236	
(1.15E + 5)	0.001
Neptunium-236	

(22.5h)	1
Neptunium-237	0.001
Neptunium-238	10
Neptunium-239	100
Neptunium-240	1,000
Plutonium-234	10
Plutonium-235	1,000
Plutonium-236	0.001
Plutonium-237	100
Plutonium-238	0.001
Plutonium-239	0.001
Plutonium-240	0.001
Plutonium-241	0.01
Plutonium-242	0.001
Plutonium-243	1,000
Plutonium-244	0.001
Plutonium-245	100
Americium-237	1,000
Americium-238	100
Americium-239	1,000
Americium-240	100
Americium-241	0.001
Americium-242m	0.001
Americium-242	10
Americium-243	0.001
Americium-244m	100
Americium-244	10
Americium-245	1,000
Americium-246m	1,000
Americium-246	1,000
Curium-238	100
Curium-240	0.1
Curium-241	1
Curium-242	0.01
Curium-243	0.001
Curium-244	0.001
Curium-245	0.001
Curium-246	0.001
Curium-247	0.001
Curium-248	0.001
Curium-249	1,000
Berkelium-245	100
Berkelium-246	100
Berkelium-247	0.001
Berkelium-249	0.1
Berkelium-250	10
Californium-244	100
Californium-246	1
Californium-248	0.01
Californium-249	0.001
Californium-250	0.001
Californium-251	0.001
Californium-252	0.001
Californium-253	0.1
Californium-254	0.001

Appendix C. Continued

Radionuclide	Quantity (μCi)
Einsteinium-250	100
Einsteinium-251	100
Einsteinium-253	0.1
Einsteinium-254m	1

Einsteinium-254	0.01
Fermium-252	1
Fermium-253	1
Fermium-254	10
Fermium-255	1
Fermium-257	0.01
Mendelevium-257	10
Mendelevium-258	0.01

Radionuclide	Quantity (μCi)	
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition		0.001
Any radionuclide other than alpha- emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition		0.01

* To convert μCi to kBq, multiply the μCi value by 37.

NOTE: Where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1" -- that is, unity.

¹ The quantities listed above were derived by taking 1/10 of the most restrictive ALI listed in Table I, Columns 1 and 2, of Appendix B to Article 4, rounding to the nearest factor of 10, and constraining the values listed between 37 Bq and 37 MBq (0.001 and 1,000 μCi). Values of 3.7 MBq (100 μCi) have been assigned for radionuclides having a radioactive half-life in excess of E+9 years, except rhenium, 37 MBq (1,000 μCi), to take into account their low specific activity.

Historical Note

New Appendix C recodified from 12 A.A.C. 1, Article 4, Appendix C, effective March 22, 2018 (Supp. 18-1). Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

Appendix D. Classification and Characteristics of Low-level Radioactive Waste

I. Classification of Radioactive Waste for Land Disposal

- a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radio nuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.
- b) Classes of waste.
 - 1) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in Section II(a). If Class A waste also meets the stability requirements set forth in Section II(b), it is not necessary to segregate the waste for disposal.
 - 2) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in Section II.
 - 3) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in Section II.
- c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:
 - 1) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.
 - 2) If the concentration exceeds 0.1 times the value in Table I but does not exceed the value in Table I, the waste is Class C.
 - 3) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.
 - 4) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Section I(g).

Appendix D. Table I

**TABLE I
Concentration**

Radionuclide	curie/cubic meter^a	nanocuries/gram^b
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha-emitting transuranic radionuclides with half-life greater than five years	100	
Pu-241		3,500
Cm-242		20,000
Ra-226		100

^aTo convert the Ci/m³ values to gigabecquerel (GBq) per cubic meter, multiply the Ci/m³ value by 37.

^bTo convert the nCi/g values to becquerel (Bq) per gram, multiply the nCi/g value by 37.

- d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Section I(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.
- 1) If the concentration does not exceed the value in Column 1, the waste is Class A.
 - 2) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.
 - 3) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.
 - 4) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.
 - 5) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Section I(g).

Appendix D. Table II

TABLE II

	Radionuclide		Concentration,		Curie/cubic meter*
	Column 1	Column 2	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	*			*
H-3	40	*			*
Co-60	700	*			*
Ni-63	3.5	70			700
Ni-63 in activated metal	35	700			7000
Sr-90	0.04	150			7000
Cs-137	1	44			4600

* DEPARTMENT NOTE: To convert the Ci/m³ value to gigabecquerel (GBq) per cubic meter, multiply the Ci/m³ value by 37. There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

- e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:
- 1) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

- 2) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table II, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.
 - f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.
 - g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m³ (50 Ci/m³) and Cs-137 in a concentration of 814 GBq/m³ (22 Ci/m³). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33, for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.
 - h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.
- II. Radioactive Waste Characteristics
- a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.
 - 1) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Article 4, the site license conditions shall govern.
 - 2) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.
 - 3) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.
 - 4) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1% of the volume.
 - 5) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.
 - 6) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Section II(a)(8).
 - 7) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable *****
 - 8) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20° C. Total activity shall not exceed 3.7 TBq (100 Ci) per container.
 - 9) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.
 - b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.
 - 1) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.
 - 2) Notwithstanding the provisions in Section II(a)(3) and (4), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and noncorrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.
 - 3) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

III. Labeling

Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Section I.

*****See Section R9-7-102 for definition of pyrophoric.

Historical Note

New Appendix D, including Tables 1 and 2 recodified from 12 A.A.C. 1, Article 4, Appendix D, Tables 1 and 2, effective March 22, 2018 (Supp. 18-1).

Appendix E. Quantities for Use with Decommissioning

Material	Microcurie	
Americium-241	0.01	
Antimony-122	100	
Antimony-124	10	
Antimony-125	10	
Arsenic-73	100	
Arsenic-74	10	
Arsenic-76	10	
Arsenic-77	100	
Barium-131	10	
Barium-133	10	
Barium-140	10	
Bismuth-210	1	
Bromine-82	10	
Cadmium-109	10	
Cadmium-115m	10	
Cadmium-115	100	
Calcium-45	10	
Calcium-47	10	
Carbon-14	100	
Cerium-141	100	
Cerium-143	100	
Cerium-144	1	
Cesium-131	1,000	
Cesium-134m	100	
Cesium-134	1	
Cesium-135	10	
Cesium-136	10	
Cesium-137	10	
Chlorine-36	10	
Chlorine-38	10	
Chromium-51	1,000	
Cobalt-58m	10	
Cobalt-58	10	
Cobalt-60	1	
Copper-64	100	
Dysprosium-165	10	
Dysprosium-166	100	
Erbium-169	100	
Erbium-171	100	
Europium-152 (9.2 h)		100
Europium-152 (13 yr)		1
Europium-154	1	
Europium-155	10	
Fluorine-18	1,000	
Gadolinium-153	10	
Gadolinium-159	100	
Gallium-72	10	
Germanium-71	100	
Gold-198	100	
Gold-199	100	
Hafnium-181	10	
Holmium-166	100	
Hydrogen-3	1,000	
Indium-113m	100	
Indium-114m	10	
Indium-115m	100	
Indium-115	10	
Iodine-125	1	
Iodine-126	1	

Iodine-129	0.1
Iodine-131	1
Iodine-132	10
Iodine-133	1
Iodine-134	10
Material	Microcurie
Iodine-135	10
Iridium-192	10
Iridium-194	100
Iron-55	100
Iron-59	10
Krypton-85	100
Krypton-87	10
Lanthanum-140	10
Lutetium-177	100
Manganese-52	10
Manganese-54	10
Manganese-56	10
Mercury-197m	100
Mercury-197	100
Mercury-203	10
Molybdenum-99	100
Neodymium-147	100
Neodymium-149	100
Nickel-59	100
Nickel-63	10
Nickel-65	100
Niobium-93m	10
Niobium-95	10
Niobium-97	10
Osmium-185	10
Osmium-191m	100
Osmium-191	100
Osmium-193	100
Palladium-103	100
Palladium-109	100
Phosphorus-32	10
Platinum-191	100
Platinum-193m	100
Platinum-193	100
Platinum-197m	100
Platinum-197	100
Plutonium-239	0.01
Polonium-210	0.1
Potassium-42	10
Praseodymium-142	100
Praseodymium-143	100
Promethium-147	10
Promethium-149	10
Radium-226	0.01
Rhenium-186	100
Rhenium-188	100
Rhodium-103m	100
Rhodium-105	100
Rubidium-86	10
Rubidium-87	10
Ruthenium-97	100
Ruthenium-103	10
Ruthenium-105	10
Ruthenium-106	1
Samarium-151	10
Samarium-153	100

Scandium-46	10
Scandium-47	100
Scandium-48	10
Selenium-75	10
Silicon-31	100
Silver-105	10
Silver-110m	1
Silver-111	100
Material	Microcurie
Sodium-22	1
Sodium-24	10
Strontium-85	10
Strontium-89	1
Strontium-90	0.1
Strontium-91	10
Strontium-92	10
Sulfur-35	100
Tantalum-182	10
Technetium-96	10
Technetium-97m	100
Technetium-97	100
Technetium-99m	100
Technetium-99	10
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	100
Tellurium-129m	10
Tellurium-129	100
Tellurium-131m	10
Tellurium-132	10
Terbium-160	10
Thallium-200	100
Thallium-201	100
Thallium-202	100
Thallium-204	10
Thorium (natural)**	100
Thulium-170	10
Thulium-171	10
Tin-113	10
Tin-125	10
Tungsten-181	10
Tungsten-185	10
Tungsten-187	100
Uranium (natural)**	100
Uranium-233	0.01
Uranium-234	0.01
Uranium-235	0.01
Vanadium-48	10
Xenon-131m	1,000
Xenon-133	100
Xenon-135	100
Ytterbium-175	100
Yttrium-90	10
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10

Any alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition 0.01

Any radionuclide other than alpha emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition
0.1

* To convert μCi to kBq , multiply the μCi value by 37.

** Based on alpha disintegration rate of Th-232, Th-230 and their daughter products.

*** Based on alpha disintegration rate of U-238, U-234, and U-235.

NOTE: Where there is involved a combination of isotopes in known amounts, the limit for the combination should be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of such ratios for all the isotopes in the combination may not exceed "1" - that is, unity.

Historical Note

New Appendix E recodified from 12 A.A.C. 1, Article 4, Appendix E, effective March 22, 2018 (Supp. 18-1).

Statutory Authority for Rules in 9 A.A.C. 7, Article 4

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
 - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
 - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
 - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
 - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.
 13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.
 14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.
 15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.
 16. Develop and utilize information resources concerning radiation and radioactive sources.
 17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.
 18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.
- C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

30-657. Records

- A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.
- B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.
- C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.
- D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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.

DEPARTMENT OF INSURANCE (F19-0802)

Title 20, Chapter 6, Article 11, Medicare Supplement Insurance and Article 21, Customer Information Security Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: ARIZONA DEPARTMENT OF INSURANCE

Title 20, Commerce, Financial Institutions, and Insurance, Chapter 6, Department of Insurance, Articles 11, Medicare Supplement Insurance, and 21, Customer Information Security Program

This Five-Year-Review Report from the Department of Insurance relates to rules in Title 20, Commerce, Financial Institutions, and Insurance, Chapter 6, Department of Insurance, the rules cover the following:

- **Article 11 - Medicare Supplement Insurance**
- **Article 21 - Customer Security Program**

In the previous Five-Year-Review Report the Department indicated it would amend R20-6-1101 (B) to add a citation to A.R.S § 20-1133 that needed to be in Section 2 of the Model Regulation. The Department also indicated it would request an exception to the rule moratorium to complete the changes by the third quarter of 2015. The Department did not complete the proposed course of action, and no changes have been made to R20-6-1101 since 2009.

Proposed Action

The Department submitted a final rulemaking to GRRC on May 15, 2019, which sought to amend R20-6-1101 to remain compliant with A.R.S. § 41-1028 and the mandate in A.R.S. § 20-1133, by amending its rules to reflect the changes made by the NAIC to the Model

Regulation. The Department also sought to amend this rule to update the addresses for the Department and the NAIC in order to remain compliant with A.R.S. § 41-1028(D). The final rulemaking was approved by the Council on July 2, 2019.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites both general and specific authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has determined that the economic impact of the Article 11 does not differ significantly from what was originally determined by the Economic Impact Statement.

The stakeholders include the Department and the general public.

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

The Department has determined that the rules provide the least intrusive and least costly method of achieving the regulatory objective. The Department states that the benefits of having effective and understandable rules outweigh the costs.

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

No. The Department indicates it did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The rules are clear, concise, understandable, effective and consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates the rule, R20-6-1101, is currently not enforced as written because the rule references an outdated version of the Model Regulation.

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 rules are not more stringent than the corresponding federal law, 42 U.S.C. § 1395ss.

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 do not require a general permit.

9. Conclusion

As stated above, the Department submitted a final rulemaking to GRRC on May 15, 2019 which sought to amend R20-6-1101. The council approved the rulemaking on July 2, 2019. Council staff recommend approval of this report.



**Office of the Director
Arizona Department of Insurance**

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Phone: (602) 364-3100

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**Douglas A. Ducey, Governor
Keith A. Schraad, Director**

May 28, 2019

Nicole Sornsins, Council Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: Arizona Department of Insurance
Five-Year Report on A.A.C. Title 20, Chapter 6, Articles:
11 – Medicare Supplement Insurance
21 – Customer Information Security Program**

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Arizona Department of Insurance ("Department") for A.A.C. Title 20, Chapter 6, Articles 11 and 21 which is due on May 31, 2019.

The Department has reviewed all the rules and does not intend to have any of the rules expire for the articles being reviewed in this Five-Year Report under A.R.S. § 41-1056.

This letter shall also serve as confirmation that the Department is in compliance with A.R.S. § 41-1091. The Department files substantive policy statements with the Secretary of State's Office and publishes the substantive policy statements to its website: <https://insurance.az.gov>. This listing also serves as a directory summarizing the subject matter of all currently applicable substantive policy statements. In addition, the website contains a link to the Arizona Administrative Code, Title 20, Chapter 6, which contains a directory and a copy of Department's currently applicable rules.

If you have any questions or need additional information regarding this Five-Year Report, please feel free to contact Mary Kosinski, Regulatory Legal Affairs Officer, at (602) 364-3476 or mkosinski@azinsurance.gov.

Sincerely,

Keith A. Schraad
Director

Enclosures

Governor’s Regulatory Review Council

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance

Article 11. Medicare Supplement Insurance

1. Authorization of the rule by existing statutes

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

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

2. The objective of each rule:

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

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

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
R20-6-1101	The rule is currently out of date because it references an outdated version of the Model Regulation. The Department is currently undergoing a rulemaking to update the rule.

4. Are the rules consistent with other rules and statutes? Yes X No ___

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes ___ No 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
R20-6-1101	The rule is not enforced as written because it references an outdated version of the Model Regulation.

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

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison:**

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the original rulemaking. The last action on this rule occurred in 2009.

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.

2014 Five Year Review Report Proposed Course of Action:

A letter will be sent to the Office of the Secretary of State to request a minor technical correction to a citation in R20-6-1101(B)(4) from “Section 186(b)(1)(A)(v)” to “Section 1862(b)(1)(A)(v).”

The NAIC adopted revisions to the Model Regulation in 2014. The revisions are what the NAIC considers non-substantive updates to the Medicare cost sharing amounts in the Plan tables in Section 17 that list amounts Medicare pays, the amounts the Plan pays, and the amounts the insured pays. Additional minor technical corrections have also been made to the Model Regulation. The NAIC will make additional revision to the Model in January 2015, which will also encompass the 2014 revisions to the Model Regulation. The Department intends

to amend R20-6-1101 to adopt the 2015 revised Model Regulation for consistency. The Department will also amend R20-6-1101(B) to add in the citation to A.R.S. § 20-1133 that needs to be in Section 2 of the Model Regulation.

The Department will send a letter to the Office of the Governor in August 2014, requesting an exception from the rulemaking moratorium to amend R20-6-1101. The Department plans to implement rulemaking as soon as the January 2015 Model Regulation is issued and expects to file a Notice of Final Rulemaking with GRRC by the third quarter of 2015.

Response to Item 10:

The Department has made no changes to this Article or to R20-6-1101 since 2009.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

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

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

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

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

42 U.S.C. § 1395ss

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

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

Governor's Regulatory Review Council
Five-Year-Review Report
Title 20. Commerce, Financial Institutions, and Insurance
Chapter 6. Department of Insurance
Article 21. Customer Information Security Program

1. Authorization of the rule by existing statutes

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

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

2. The objective of each rule:

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

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

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. Are the rules consistent with other rules and statutes? Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

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

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

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

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for this rulemaking.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

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

Previous Course of Action (2014):

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

Response to Item 10:

No changes have been made to the federal law (Gramm-Leach-Bliley Act; 15 U.S.C. §§ 6801, 6805(b) and 6807) since 2010. The Department has not taken any action on this article since 2004.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

This article is adopted from a National Association of Insurance Commissioners (NAIC) model regulation. When the Congress adopted the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801, 6805(b) and 6807, it mandated that each financial institution (which includes insurers) has an affirmative and continuing obligation to respect the privacy of its customers and protect the security and confidentiality of those customers' nonpublic personal information. In response, the NAIC promulgated the Standards for Safeguarding Customer Information Model Regulation which the Department adopted as Article 21.

Because insurers are potentially subject to regulation by every state and territory, adoption of an NAIC model regulation provides uniformity among the states so that insurers can realize compliance savings. Also, by adopting the model regulation, the Department imposes the least burden on regulated persons because the insurers who are subject to Article 21 can be confident that the regulation adopted by Arizona is consistent with the same regulation in other states and is consistent with the mandate of Gramm-Leach-Bliley.

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

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

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

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

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

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Article 11, consisting of Sections R4-14-1101 through R4-14-1120 and Appendices A through E, adopted again by emergency effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 11, consisting of Sections R4-14-1101 through R4-14-1120 and Appendices A through E, adopted by emergency effective

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December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). R20-6-1101 through R20-6-1120 recodified from R4-14-1101 through R4-14-1120 (Supp. 95-1).

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and described as part of the outline of coverage.]

[Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities and providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

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

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

[(a)State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

[(a)Indicate if medical underwriting is used;

(b)Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Historical Note

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

ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE**R20-6-1101. Incorporation by Reference and Modifications**

A. The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, October 2008 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.

B. The Model Regulation is modified as follows:

1. In addition to the terms defined in the Model Regulation, the following definitions apply:
 - a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
 - b. "Commissioner" means the Director of the Arizona Department of Insurance.
 - c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
 - d. "Regulation" means Article.
2. Section 8A(7)(c) reads:
 - c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section

226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

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

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.
4. Section 8.1(A)(7)(c) is revised to read as follows:

Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended

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(for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 186(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

5. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:
The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.
6. Subsection G of Section 15 is revised as follows:
 - G. An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.
7. Tables for PLAN F or HIGH DEDUCTIBLE PLAN F are revised as follows:
 - a. For the table entitled "PARTS A & B" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,** PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,**] PLAN PAYS."
 - b. For the table entitled "PARTS A & B" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,** YOU PAY" to ["IN ADDITION TO \$[2000] DEDUCTIBLE,**] YOU PAY."
 - c. For the table entitled "OTHER BENEFITS - NOT COVERED BY MEDICARE" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,** PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,**] PLAN PAYS."
 - d. For the table entitled "OTHER BENEFITS - NOT COVERED BY MEDICARE" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,** YOU PAY" to ["IN ADDITION TO \$[2000] DEDUCTIBLE,**] YOU PAY."
8. Section 23 is revised as follows:
 - A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
 - B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions,

waiting periods, elimination periods and probationary periods.

Historical Note

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

R20-6-1102. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1102 recodified from R4-14-1102 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1102.01 Repealed**Historical Note**

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

R20-6-1103. Repealed**Historical Note**

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

R20-6-1104. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1104 recodified from R4-14-

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1104 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1105. Repealed**Historical Note**

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

R20-6-1106. Repealed**Historical Note**

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

R20-6-1107. Repealed**Historical Note**

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

R20-6-1108. Repealed**Historical Note**

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

R20-6-1109. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective

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

R20-6-1110. Repealed**Historical Note**

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

R20-6-1111. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1111 recodified from R4-14-1111 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1112. Repealed**Historical Note**

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

R20-6-1113. Repealed**Historical Note**

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

R20-6-1114. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective

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

R20-6-1115. Repealed**Historical Note**

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

R20-6-1116. Repealed**Historical Note**

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

R20-6-1117. Repealed**Historical Note**

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

R20-6-1118. Repealed**Historical Note**

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

R20-6-1119. Repealed**Historical Note**

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

05-3).

R20-6-1120. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1120 recodified from R4-14-1120 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1121. Repealed**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix A. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and correction made to heading of form on last page of Appendix A effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix A repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix B. Repealed**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and corrections made to Plan C (Medicare (Part B) - Medical Services - Per Calendar Year) and Plan J (Other Benefits) effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Appendix B repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix C. Repealed**Historical Note**

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

Appendix D. Repealed

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Historical Note

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

Appendix E. Repealed**Historical Note**

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

Appendix F. Repealed**Historical Note**

Appendix F adopted effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Appendix F repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

ARTICLE 12. HIV/AIDS: PROHIBITED AND REQUIRED PRACTICES**R20-6-1201. Definitions**

- A. "AIDS" means Acquired Immune Deficiency Syndrome.
- B. "Applicant" means an applicant for a life or disability insurance policy or coverage under a health care plan, as well as any potential certificate holder or dependent covered under such policy or plan.
- C. "Insurer" means life and disability insurers (including but not limited to health insurers), hospital and medical service corporations, and health care services organizations, including all employees, contractors, and agents thereof.
- D. "Person" means any individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or entity.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1201 recodified from R4-14-1201 (Supp. 95-1).

R20-6-1202. Applications for Insurance

- A. Insurers shall not use questions on applications for life or disability policies or health care plans that inquire directly or indirectly about:
 1. The sexual orientation of an applicant;
 2. An applicant's receipt of transfusions of blood or blood products; or
 3. Whether or not the applicant has had any HIV-related test, except as provided in subsection (B) of this rule.
- B. Insurers may include specific questions on applications for life or disability insurance policies or health care plans asking if the applicant has ever been diagnosed or treated for AIDS or AIDS-related conditions or tested positive for the presence of HIV antibodies, antigens, or the virus. No adverse underwriting decision shall be made on the basis of any prior positive HIV-related test or tests unless the insurer has verified that the

prior test(s) consisted of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturer's directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1202 recodified from R4-14-1202 (Supp. 95-1).

R20-6-1203. Testing for HIV; Consent Form

- A. An insurer may test for HIV infection in the same way that the insurer tests for other conditions that affect mortality and morbidity. No adverse underwriting decision shall be made on the basis of a positive result to an HIV-related test unless the result consists of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturers' directions for use, including but not limited to the manufacturers' specified interpretation of positivity.
- B. If an applicant is requested to take an HIV-related test in connection with an application for a life or disability insurance policy or a health care plan, the insurer shall reveal the use of such test to the applicant and shall obtain the written consent of the applicant prior to the administration of such test. The insurer shall allow the applicant up to 10 days within which to decide whether or not to sign the consent form, and no adverse underwriting decision may be made on the basis of the applicant's delay during this time period. Insurers need not provide pretest counseling to applicants but shall advise applicants of the availability of counseling in accordance with subsection (C) of this rule.
- C. The written consent form, which shall be approved by the Director in advance of its use, shall contain the following information:
 1. Purpose of the consent form. The form shall contain a clear disclosure that the test to be performed is a test for the presence of HIV antibodies, antigens, or the virus, and that underwriting decisions will be based on the results of such test. The form shall further provide notice of a period of not less than 10 days during which the applicant may decide whether or not to sign the form, along with a disclosure that the applicant's refusal to be tested may be used as a reason to deny coverage.
 2. Information on HIV. The form shall provide clear, concise, and accurate information on how the disease is spread and what behavior places persons at risk of contracting the virus.
 3. Pretest counseling considerations. The written consent form shall contain information advising the applicant that counseling is recommended by many public health organizations and that the applicant may obtain such counseling at the applicant's own expense. The form shall contain current information as provided by the Department regarding the availability in Arizona of free confidential or anonymous counseling through county health departments and through other governmental or government-funded agencies.
 4. Disclosure of test results. The form shall advise the applicant that all test results shall be treated confidentially and that results shall be released only to the applicant and the named insurer or upon the applicant's written consent or as otherwise required or allowed by law, including but

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ARTICLE 20. CAPTIVE INSURERS**R20-6-2001. Reserved****R20-6-2002. Fees; Examination Costs**

- A.** A corporation applying for a license to do business as a captive insurer, under A.R.S. § 20-1098, shall pay a nonrefundable fee of \$1,000.00 to the Department for issuance of the license. A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098, also shall pay to the Department a nonrefundable fee of \$1,000 for each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(B)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.
- B.** A captive insurer shall pay a nonrefundable annual renewal fee of \$5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of \$2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.
- C.** A captive insurer shall pay a nonrefundable fee of \$200.00 to the Department at the time of filing for issuance of an amended certificate of authority.
- D.** In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination the Director conducts, under A.R.S. § 20-1098.08.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2478, effective July 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 2977, effective September 13, 2005 (Supp. 05-3). Subsection (A) corrected at request of the Department, Office File No. M11-252, filed July 20, 2011 (Supp. 11-3).

ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM

Article 21, consisting of R20-6-2101 through R20-6-2104, made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2101. Definitions

The following definitions apply in this Article:

1. "Consumer" means an individual, or the individual's legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information. Consumer can include a prospective applicant, policyholder, certificateholder, insured, or claimant.
2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means nonpublic personal information and privileged information about a customer whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic, or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).

6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, but does not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a licensee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2102. Customer Information Security Program

A licensee shall implement a comprehensive written customer information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2103. Objectives of Customer Information Security Program

A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2104. Guidelines for Methods of Development and Implementation

A licensee may implement the requirements of R20-6-2102 and R20-6-2103 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
 - a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
 - b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
 - c. Assessing the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.
2. A licensee may manage and control risk by:

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- a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
 - b. Training staff to implement the licensee's information security program; and
 - c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The licensee shall determine the frequency and nature of these tests or other monitoring practices by the licensee's risk assessment.
3. A licensee may oversee service provider arrangements by:
 - a. Exercising appropriate due diligence in selecting its service providers; and
 - b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
 4. A licensee may monitor, evaluate, and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.
- A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:
 1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or A.R.S. § 20-1404(A), except health insurance issued to an association or its individual members as described in R20-6-2301(B)(7)(b);
 2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
 3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).
 - B. In this Article, the following definitions apply:
 1. "Department" means the Arizona Department of Insurance.
 2. "Blanket disability insurance" has the meaning prescribed in A.R.S. § 20-1404(A).
 3. "CMS" means the Centers for Medicare & Medicaid Services.
 4. "Federal medical loss ratio standard" means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
 5. "Health insurance" means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in A.R.S. § 20-1051(5) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
 6. "Health insurer" means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
 7. "Individual health insurance" means health insurance that a health insurer issues to either:
 - a. An individual, to cover:
 - i. The individual, or
 - ii. The individual's dependents, or
 - iii. The individual and the individual's dependents.
 - b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
 8. "PHS Act" means Part A of Title XXVII of the Public Health Service Act, 42 U.S.C. Chapter 6A.
 9. "Product" means a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.
 10. "Preliminary justification" means a justification that consists of the parts described in R20-6-2302(A).
 11. "Rate increase" means an increase of the rates for an individual health insurance product that a health insurer offers in Arizona that:
 - a. Results from a change to the underlying rate structure of the product, and
 - b. May result in premium changes for the product.
 12. "Secretary" means the Secretary of the United States Department of Health and Human Services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

ARTICLE 22. MILITARY PERSONNEL**R20-6-2201. Military Sales Practices**

- A. The Department incorporates by reference the National Association of Insurance Commissioners (NAIC) Military Sales Practices Model Regulation June 2007 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.
- B. The Model Regulation is modified as follows:
 1. In addition to the terms defined in the Model Regulation, the following definitions apply:
 - a. "Commissioner" means the Director of the Arizona Department of Insurance.
 - b. "Regulation" means Article.
 2. Section 3 is modified to insert "A.R.S. § 20-106, 20-142 and 20-143" after "of."
 3. Section 7(E)(5)(b) is modified to insert "A.R.S. § 20-1241 et seq., R20-6-202, and R20-6-209" after "requirements of."
 4. Subsection 7(F)(5) of the Model Regulation is excluded from this Section.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4215, effective January 5, 2008 (Supp. 07-4).

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE**R20-6-2301. Applicability; Definitions**

20-143. Rule-making power

- A. The director may make reasonable rules necessary for effectuating any provision of this title.
- B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.
- C. All rules made pursuant to this section shall be subject to title 41, chapter 6.
- D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

20-1133. Medicare supplement insurance; applicability.

A. The director shall adopt those rules as are necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265; 42 United States Code section 1395ss) and any federal laws or regulations pertaining to that section, so that this state may retain its full authority to regulate minimum standards for medicare supplement insurance.

B. Subject to the other limitations provided in this subsection, no benefit mandated in this title for health insurance policies shall apply to medicare supplement insurance policies unless such mandated policy benefits are set forth in rules adopted pursuant to this section or unless the statute mandating policy benefits expressly states that it is made specifically applicable to medicare supplement insurance policies. No medicare supplement insurance policy shall contain any exclusion for services provided by any type of properly licensed health care provider if the provider's services are eligible for medicare reimbursement and if the specific services in question would be covered by medicare. In no event shall the scope of benefits of a medicare supplement policy be less than the minimum level of benefits established by federal law.

C. Notwithstanding any other provision of this title, rules adopted pursuant to this section apply to insurance furnished under disability insurance policies, under subscription contracts of hospital, medical, dental or optometric service corporations, under certificates of fraternal benefit societies, under evidences of coverage of health care services organizations and under coverages issued by any other insurer, which policies, contracts, certificates, membership coverages, evidences of coverage and coverages are delivered or issued for delivery in this state on or after the effective date of rules adopted pursuant to subsection A. In adopting the rules required by subsection A, the director shall prescribe an effective date of the rules that will allow insurers sufficient time to bring their forms and practices into compliance with the requirements of the rule.

20-2121. Enforcement of privacy provisions of Gramm Leach Bliley act

A. The department may enforce title V, subtitle A of the Gramm Leach Bliley act (15 United States Code sections 6801 through 6809) related to privacy and protection of nonpublic personal information.

B. The director may adopt rules pursuant to title 41, chapter 6 to carry out this section.

BOARD OF PSYCHOLOGIST EXAMINERS (F19-0809)

Title 4, Chapter 26, Articles 1-4, Board of Psychologist Examiners



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: ARIZONA BOARD OF PSYCHOLOGIST EXAMINERS
Title 4, Professions and Occupations, Chapter 26, Arizona Board of Psychologist Examiners, Articles 1 through 4

This Five-Year Review Report (5YRR) from the Board of Psychologist Examiners relates to rules in Title 4, Professions and Occupations, Chapter 26, Arizona Board of Psychologist Examiners, the rules cover the following:

- **Article 1 (General Provisions)**
- **Article 2 (Licensure)**
- **Article 3 (Regulation)**
- **Article 4 (Behavior Analysis)**

In the previous 5YRR the Board proposed to amend all the rules in Articles 1 through 3. The Board submitted a two rulemakings to GRRC in 2016 to amend the rules. The rulemakings went into effect on January 30, 2016 and October 4, 2016.

Proposed Action

The Board proposes to amend the rules to improve their clarity, conciseness, effectiveness, and understandability before the end of 2020.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Board cites both general and specific authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board notes that the rules in Chapter 26 have been amended numerous times in the last five years. The Board states that the economic impact of Chapter 26 does not differ significantly from what was originally determined in the economic, small business, and consumer impact statements (EIS) from the most recent rulemakings.

The stakeholders include the Board, providers of Continuing Education (CE), behavior analysts, and psychologists.

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

The Board states that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. Most of the costs imposed on psychologists and behavior analysts are the result of statutes rather than rules. The rules only provide guidance and clarification regarding statutory requirements.

The Board states that the benefits of protecting public health and safety outweigh the costs imposed on an individual to practice psychology or provide behavior analysis.

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

Yes. The Board indicates it received a letter requesting the Board to delete the requirement in R4-26-207(C)(2). Additionally, the Board mentions the Arizona Auditor General completed a review of the Board and its activities, and identified inconsistencies regarding the time frames in Table 1. The Board is proposing to amend the rules to address the Auditor General's recommendations.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons specified in the report, the Board indicates that the following rules could be amended to improve their clarity, conciseness, and understandability:

- R4-26-203(A) (Application for Initial License)
- R4-26-205(C) (Renewal of License)
- R4-26-403 (Application of Initial License)
- R4-26-408(C) (License Renewal)
- R4-26-204(A)(3) (Examinations)

- R4-26-207 (Continuing Education)
- R4-26-401 (Definitions)
- R4-26-404.1 (Education Requirement)
- R4-26-404.2 (Supervised Experience Requirement)
- R4-26-406 (Ethical Standard)

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board indicates 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 Board indicates the rules are not more stringent than the corresponding federal regulation, 45 CFR 164.

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?**

Yes. The Board complies with A.R.S § 41-1037.

9. **Conclusion**

As mentioned above, the Board proposes to amend its rules to improve their clarity, conciseness, effectiveness and understandability before the end of 2020. Council staff recommends approval of this report.



Governor
Douglas A. Ducey

Arizona Board of Psychologist Examiners

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Ramona N. Mellott, Ph.D.
Tamara Shreeve, MPA

Executive Director
Jenna Jones

June 13, 2019

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Board of Psychologist Examiners
4 A.A.C. 26, Articles 1 through 4
Five-year-review Report

Dear Ms Sornsin:

The Five-year-review Report of the Board of Psychologist Examiners for 4 A.A.C. 26, Articles 1 through 4, which is due at the end of August 2019, is enclosed.

The Board of Psychologist Examiners certifies it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Jenna Jones at 602-542-3018 or jenna.jones@psychboard.az.gov.

Sincerely,

Jenna Jones
Executive Director

ARIZONA BOARD OF PSYCHOLOGIST EXAMINERS

Five-year-review Report: A.A.C. Title 4, Chapter 26

June 2019

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 26. Arizona Board of Psychologist Examiners

INTRODUCTION

The Arizona Board of Psychologist Examiners regulates psychologists and behavior analysts through licensure, providing information about licensees to the public, and investigating and resolving complaints against licensees. These actions are taken to protect the health, safety, and welfare of the public.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2063(A)(9) requires the Board to make rules to carry out A.R.S. Title 32, Chapter 19.1.

1. Specific statute authorizing the rule:

R4-26-101. Definitions: A.R.S. § 32-2063(A)(9)

R4-26-102. Board Officers: A.R.S. § 32-2063(A)(8)

R4-26-104. Committees: A.R.S. § 32-2064

R4-26-105. Board Records: A.R.S. §§ 39-121 and 39-121.03

R4-26-106. Client or Patient Records: A.R.S. §§ 12-2297 and 32-2061(2) and (15)(h)

R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number: A.R.S. § 32-2066(B)

R4-26-108. Fees and Charges: A.R.S. § 32-2067

R4-26-109. General Provisions Regarding Telepractice: A.R.S. § 32-2061(15)

R4-26-110. Providing Psychological Service by Telepractice: A.R.S. § 32-2061(15)

R4-26-111. Providing Supervision through Telepractice: A.R.S. § 32-2071(F)(6) and (G)(5)

R4-26-201. Application Deadline: A.R.S. § 32-2063(A)(3)

R4-26-202. Doctorate: A.R.S. § 32-2071(A) through (C)

R4-26-203. Application of Initial License: A.R.S. §§ 32-2063(A)(3), 32-2071, and 32-2072

R4-26-203.01. Application for Licensure by Credential: A.R.S. §§ 32-2063(A)(3), 32-2071, and 32-2071.01(D)

R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure: A.R.S. § 32-2072(C)

R4-26-203.03. Reapplication for License; Applying Anew: A.R.S. § 32-2067(A)(3)

R4-26-203.04 Temporary License under A.R.S. § 32-2073(B): A.R.S. § 32-2073(B)

R4-26-204. Examinations: A.R.S. §§ 32-2063(A)(11), 32-2072, and 32-2071(2)

R4-26-205. Renewal of License: A.R.S. §§ 32-2063(A)(11) and 32-2074(B)

R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License: A.R.S. §§ 32-2067(A)(8), 32-2073, and 32-2074

R4-26-207. Continuing Education: A.R.S. § 32-2074

R4-26-208. Time Frames for Processing Applications: A.R.S. §§ 32-2063(A)(3) and 41-1073

Table 1. Time Frames (in days) for Processing Applications: A.R.S. §§ 32-2063(A)(3) and 41-1073

R4-26-209. General Supervision: A.R.S. § 32-2071

R4-26-210. Supervised Professional Experience: A.R.S. § 32-2071

R4-26-211. Foreign Graduates: A.R.S. § 32-2071(B)

R4-26-301. Rules of Professional Conduct: A.R.S. § 32-2063(A)(11)

R4-26-302. Informal Interviews: A.R.S. § 32-2081(K)

R4-26-303. Titles: A.R.S. Title 32, Chapter 19.1

R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona: A.R.S. § 32-2082(D)

R4-26-305. Confidentiality of Investigative Materials: A.R.S. § 32-2082(E)

R4-26-308. Rehearing or Review of Decision: A.R.S. § 41-1092.09

R4-26-309. Complaints against Judicially Appointed Psychologists: A.R.S. § 32-2081(B)

R4-26-310. Disciplinary Supervision; Practice Monitor: A.R.S. §§ 2063(A)(2) and 32-2081

R4-26-401. Definitions: A.R.S. § 32-2091

R4-26-402. Fees and Charges: A.R.S. § 32-2091.01

R4-26-403. Application for Initial License: A.R.S. § 32-2091.02

R4-26-404. Examination Requirement: A.R.S. § 32-2091.03

R4-26-404.1. Education Requirement: A.R.S. § 32-2091.03

R4-26-404.2. Supervised Experience Requirement: A.R.S. § 32-2091.03

R4-26-405. Coursework Requirement: A.R.S. § 32-2091.03

R4-26-406. Ethical Standard: A.R.S. § 32-2091

R4-26-407. License by Reciprocity: A.R.S. § 32-2091.04

- R4-26-408. License Renewal: A.R.S. § 32-2091.07
- R4-26-409. Continuing Education Requirement: A.R.S. § 32-2091.07
- R4-26-410. Voluntary Inactive Status: A.R.S. § 32-2091.06
- R4-26-411. License Reinstatement: A.R.S. § 32-2091.06
- R4-26-412. Client Records: A.R.S. § 32-2091(2)
- R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number: A.R.S. § 32-2091.07
- R4-26-414. Complaints and Investigations: A.R.S. § 32-2091.09
- R4-26-415. Informal Interview: A.R.S. § 32-2091.09
- R4-26-416. Rehearing or Review of Decision: A.R.S. § 41-1092.09
- R4-26-417. Licensing Time Frames: A.R.S. § 41-1073
- R4-26-418. Mandatory Reporting Requirement: A.R.S. § 32-3208

2. Objective of the rule including the purpose for the existence of the rule:

The purpose of all the rules is to comply with statute and current industry standards, facilitate the licensing process, and protect public health and safety.

R4-26-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R4-26-102. Board Officers: The objective of the rule is to set forth the process for electing Board officers and their terms under A.R.S. § 32-2063(A)(8).

R4-26-104. Committees: The objective of the rule is to clarify the circumstances under which the Board may establish committees under A.R.S. § 32-2064(B).

R4-26-105. Board Records: The objective of the rule is to establish days and times for viewing and inspecting Board records, with the exception of confidential information in the Board's files under A.R.S. § 32-2082(E).

R4-26-106. Client or Patient Records: The objective of the rule is to clarify client or patient access to records under A.R.S. § 32-2061(16)(s) and (cc) and specify guidelines for licensees regarding the maintenance of adequate records under A.R.S. § 32-2061(16)(h) and the

Board's right to access records required for investigations under A.R.S. § 32-2082. The rule also specifies that licensees on inactive status are not exempt from these requirements.

R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number: The objective of the rule is to inform licensees that because the Board relies on information in its records to communicate with a licensee, keeping that information accurate is in the licensee's interest and required by A.R.S. § 32-2066(B).

R4-26-108. Fees and Charges: The objective of the rule is to specify the fees the Board charges for licensing activities and charges for other services.

R4-26-109. General Provisions Regarding Telepractice: The objective of the rule is to specify minimum expectations regarding providing psychological services or supervision by telepractice.

R4-26-110. Providing Psychological Service by Telepractice: The objective of the rule is to specify minimum standards for providing psychological services by telepractice.

R4-26-111. Providing Supervision through Telepractice: The objective of the rule is to specify minimum standards for providing supervision by telepractice.

R4-26-201. Application Deadline: The objective of the rule is to specify the standards the Board uses to decide whether to consider an application at a particular meeting.

R4-26-202. Doctorate: The objective of the rule is to provide specific criteria the Board uses to determine whether an applicant's doctoral program meets requirements for licensure under A.R.S. § 32-2071.

R4-26-203. Application of Initial License: The objective of the rule is to specify the content of an application and supporting documentation required to enable the Board to determine whether an applicant is qualified for licensure under A.R.S. § 32-2071.

R4-26-203.01. Application for Licensure by Credential: The objective of the rule is to specify application requirements for obtaining a license by credential.

R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure: The objective of the rule is to specify requirements for application to take the national examination before completing the experience requirements for licensure.

R4-26-203.03. Reapplication for License; Applying Anew: The objective of the rule is to clarify the difference between reapplication for a license and applying anew.

R4-26-203.04 Temporary License under A.R.S. § 32-2073(B): The objective of the rule is to specify application requirements for obtaining a temporary license.

R4-26-204. Examinations: The objective of the rule is to identify the examinations an applicant is required to pass, the examination deadline, and examination behavior that may lead to license denial.

R4-26-205. Renewal of License: The objective of the rule is to specify the procedure for applying to renew a license and the consequences of failing to apply timely or failing to complete required continuing education requirements.

R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License: The objective of the rule is to specify the requirements for reinstating an inactive license to active status. The rule also specifies how to cancel a license voluntarily and the consequences of doing so.

R4-26-207. Continuing Education: The objective of the rule is to specify continuing education requirements for licensees, standards for acceptable continuing education, documentation of continuing education, and compliance assessment.

R4-26-208. Time Frames for Processing Applications: The objective of the rule is to specify the time frames within which the Board will act on an application or other request of the Board.

Table 1. Time Frames (in days) for Processing Applications: The objective of the rule is to specify in table form the time frames within which the Board will act on an application or other request of the Board.

R4-26-209. General Supervision: The objective of the rule is to define minimum standards regarding the relationship between a supervisor and supervisee.

R4-26-210. Supervised Professional Experience: The objective of the rule is to specify the criteria the Board will use to determine whether an applicant's supervised professional experience meets statutory requirements.

R4-26-211. Foreign Graduates: The objective of the rule is to specify the criteria the Board will use to determine whether an educational program provided by a foreign institution meets the statutory requirements.

R4-26-301. Rules of Professional Conduct: The objective of the rule is to establish the ethical principles and code of conduct with which a licensee must comply.

R4-26-302. Informal Interviews: The objective of the rule is to specify the notice requirements for and procedure used in an informal interview.

R4-26-303. Titles: The objective of the rule is to clarify that use of a title that claims a potential or future degree is a violation of statute.

R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona: The objective of the rule is to clarify that an attorney who is not a member of the State Bar of Arizona but who represents an individual before the Board must be admitted to practice *pro hac vice*.

R4-26-305. Confidentiality of Investigative Materials: The objective of the rule is to clarify the manner in which confidential records that are investigative materials are handled.

R4-26-308. Rehearing or Review of Decision: The objective of the rule is to specify the procedures and standards for a rehearing or review of a Board decision.

R4-26-309. Complaints against Judicially Appointed Psychologists: The objective of the rule is to clarify the manner in which the Board handles a complaint against a judicially appointed psychologist.

R4-26-310. Disciplinary Supervision; Practice Monitor: The objective of the rule is to clarify the relationship between a licensee who is required to practice psychology under supervision or monitoring and the licensee who provides the supervision or monitoring.

R4-26-401. Definitions: The objective of the rule is to define terms used in the rules regarding behavior analysis in a manner that is not explained adequately by a dictionary definition.

R4-26-402. Fees and Charges: The objective of the rule is to specify the fees the Board charges for licensing activities and charges for other services.

R4-26-403. Application for Initial License: The objective of the rule is to specify the content of an application and supporting documentation required to enable the Board to determine whether an applicant is qualified for licensure under A.R.S. § 32-2091.02.

R4-26-404. Examination Requirement: The objective of the rule is to specify the national examination an applicant for licensure is required to pass.

R4-26-404.1. Education Requirement: The objective of the rule is to specify the education an applicant for licensure is required to attain.

R4-26-404.2. Supervised Experience Requirement: The objective of the rule is to specify the criteria the Board uses to assess whether to accept hours of supervised experience for the purpose of licensure.

R4-26-405. Coursework Requirement: The objective of the rule is to specify the content of hours of graduate-level instruction an applicant for licensure is required to complete.

R4-26-406. Ethical Standard: The objective of the rule is to establish the ethical code with which a licensee must comply.

R4-26-407. License by Reciprocity: The objective of the rule is to specify application requirements for obtaining a license by reciprocity.

R4-26-408. License Renewal: The objective of the rule is to specify the procedure for applying to renew a license and the consequences of failing to apply timely or failing to complete required continuing education requirements.

R4-26-409. Continuing Education Requirement: The objective of the rule is to specify continuing education requirements for licensees, standards for acceptable continuing education, documentation of continuing education, and compliance assessment.

R4-26-410. Voluntary Inactive Status: The objective of the rule is to specify who may place a license on inactive status and the requirement that an inactive license be renewed timely.

R4-26-411. License Reinstatement: The objective of the rule is to specify the procedure for having an inactive license reinstated to active status.

R4-26-412. Client Records: The objective of the rule is to establish standards for maintaining, retaining, and releasing client records.

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number: The objective of the rule is to inform licensees that because the Board relies on information in its records to communicate with a licensee, keeping that information accurate is in the licensee's interest.

R4-26-414. Complaints and Investigations: The objective of the rule is to specify against whom a complaint may be made and the requirements for submitting a complaint to the Board.

R4-26-415. Informal Interview: The objective of the rule is to specify the notice requirements for and procedure used in an informal interview.

R4-26-416. Rehearing or Review of Decision: The objective of the rule is to specify the procedures and standards for a rehearing or review of a Board decision.

R4-26-417. Licensing Time Frames: The objective of the rule is to specify the time frames within which the Board will act on an application.

R4-26-418. Mandatory Reporting Requirement: The objective of the rule is to provide notice to licensees of the statutory requirement to report certain misdemeanors and felonies to the Board.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board determined the rules are effective in achieving their objectives because the Board is able to fulfill its statutory responsibilities to issue licenses, adjudicate complaints, and take disciplinary action when needed.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

The Board determined the rules are consistent with state statutes and other rules. Although there are federal statutes that regulate medical professionals, including psychologists and behavior analysts, there is no federal law directly applicable to the subject matter of the rules.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces the rules without difficulty.

6. Clarity, conciseness, and understandability of the rule:

The Board determined the rules are generally clear, concise, and understandable. However, it identified the following minor issues affecting understandability.

- To simplify the rules and avoid the possibility of having the rules be inconsistent with application forms, the Board intends to remove much of the detail contained in R4-26-203(A), R4-26-205(C), R4-26-403(A), and R4-26-408(C) and inform applicants of the need to submit an application form available on the Board's web site.
- Under R4-26-204(A)(3), an applicant has one year from the date the Board provides notice an application is incomplete because it lacks a score on the national examination. This means the 240 days listed in Table 1 in which to respond to the Board's request for additional information regarding an application to take the national examination needs to be increased to one year.
- The following internal cross references are incorrect:

In R4-26-207(F)(1), which addresses continuing education, A.R.S. § 32-2061(9) should be A.R.S. § 32-2061 (10); and

In R4-26-415(A), which addresses the informal interview, A.R.S. § 32-2091.09(H) should be A.R.S. § 32-2091.09(G).

- In R4-26-401(B), insert the trademark regarding the acronym for the Behavior Analyst Certification Board.
 - There is an inconsistency between R4-26-403(C)(2) and R4-26-404.2(C)(7) regarding the manner in which an applicant has verification of supervised experience submitted to the Board.
 - In R4-26-404.1(B)(2), delete the phrase “course sequence.”
 - In R4-26-404.2(C)(5)(a)(ii), change the word “videotape” to “video record.”
 - In R4-26-406, update the incorporated ethical code.
 - The heading to R4-26-414 is misleading because the Section does not address investigations.
7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Board received a letter from Dr. Patricia Johnson requesting the Board delete the requirement at R4-26-207(C)(2) (sic--the correct subsection is (B)(2)). Dr. Johnson argued the requirement is unduly burdensome for licensees who never deal with the issues of domestic violence, intimate partner abuse, or abuse of vulnerable adults. After reviewing the history of the provision and the statute addressing the issue, the Board concluded there is no statutory requirement that all licensees obtain training regarding the specified issues. A.R.S. § 25-406(C) imposes a duty on courts to appoint trained individuals but imposes no duty on the Board to ensure all licensees are trained and ready for court appointment.

During 2019, the Arizona Auditor General completed a sunset review of the Board and its activities. The Auditor General identified the inconsistency regarding time frames noted about regarding Table 1. Other recommendations by the Auditor General may need to be addressed in rule after the Board decides how to address the recommendations.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule: All of the Board's rules have been initially made or amended since the Board last conducted a five-year review.

September 11, 2012 rulemaking (18 A.A.R. 2490):

In this rulemaking, in response to a statutory change, the Board made new rules regulating behavior analysts. The Board believes it correctly determined most of the economic impact on behavior analysts resulted from statute rather than rule. The economic impact of the rules is minimal. The Board currently licenses 367 behavior analysts who are actively practicing. An additional eight behavior analysts have inactive licenses. During FY2018, 108 individuals applied for licensure as a behavior analyst. None of these applications was for licensure by reciprocity.

January 30, 2016 rulemaking (21 A.A.R. 3444):

In this rulemaking the Board made changes identified as needed in a five-year-review report approved by the Council on November 4, 2014. The Board believes it correctly determined the economic impact of the rulemaking would be minimal. The Board currently licenses 1,867 psychologists who are actively practicing. An additional 280 psychologists have inactive licenses. During FY2018, the Board received 205 applications for licensure as a psychologist, 21 applications from psychologists to take the national examination before completing the required supervised professional experience, and 25 reapplications. The Board does not track the number of individuals who apply anew.

During FY2019, the Board received 25 complaints of misconduct by a licensee. Eleven of the complaints were dismissed and one resulted in a non-disciplinary Letter of Concern being issued. The Board is still evaluating the remaining 13 complaints. The Board also received 13 claims, which are matters regarding a court-ordered psychological evaluation. Ten of the claims were dismissed and three were opened as complaints. Of the three claims opened as complaints, two were dismissed and one resulted in disciplinary action.

The Board functions with four FTEs. During FY2018, it collected \$613,600 in fees. Its appropriation for FY2019 is \$495,000.

October 4, 2016 rulemaking (22 A.A.R. 3083):

In this rulemaking the Board made or amended rules consistent with statutory changes. This included adding rules regarding providing psychological services and supervision by telepractice, establishing

a temporary license, and implementing biennial license renewal based on a licensee's birth month. The Board also clarified disciplinary supervision and practice monitoring. During FY2018, the Board received 10 applications for a temporary license under A.R.S. § 32-2073(B). The Board does not gather data regarding whether a licensee engages in telepractice.

March 5, 2017 rulemaking (23 A.A.R. 215):

In this rulemaking the Board made the rules consistent with statutory changes by amending the educational and training standards required for licensure as a behavior analyst and implementing biennial license renewal based on a licensee's birth month. As required by statute, the education and training standards are consistent with those of the BACB. The Board believes it correctly determined the economic impact of the rulemaking would be minimal although the statutory change requiring an increase in the number of required coursework classroom hours had economic impact for applicants.

December 11, 2018 rulemaking (24 A.A.R. 3100):

In this rulemaking the Board added R4-26-404.2, dealing with the Supervised Experience Requirement for behavior analysts. To minimize regulatory burdens on applicants, the Board made the rule consistent with both the supervised experience requirements of the BACB and A.R.S. § 32-2091.03. The Board believes it correctly determined the economic impact of the rulemaking would be minimal because it simply clarifies the standards for the supervised experience requirement.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

The Board completed the course of action indicated in the Board's previous 5YRR, which was approved by the Council on November 4, 2014. In that report, the Board indicated it would amend all of the rules in Articles 1 through 3. The Board rulemakings that went into effect on January 30, 2016, and October 4, 2016, amended all of the rules in Articles 1 through 3.

Additionally, the Board amended and made new rules in Article 4 dealing with regulation of behavior analysis. These rules, which went into effect on March 5, 2017, and December 11, 2018, have not been previously reviewed.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

Most of the costs imposed on those who practice psychology or provide behavior analysis result from statute rather than the reviewed rules. It is statute that requires an individual be licensed to practice in Arizona and specifies education, examination, and supervised professional experience requirements for licensure; a fee for licensure; biennial license renewal; and continuing education requirements. Statute also establishes grounds for disciplinary action and provides due process procedures. It is assumed the legislature determined the cost of these requirements was outweighed by the legislature's obligation to protect public health and safety.

The rules simply provide guidance and clarification regarding the statutory requirements. Some costs result from the rules. For example, costs are associated with standards for maintaining client or patient records, providing psychological services or supervision by telepractice, obtaining and documenting the specified number of continuing education hours, and completing and submitting an application for licensure or license renewal. The Board determined the minor costs resulting from the rules are the least possible and greatly outweighed by an individual's ability to practice psychology or provide behavior analysis while protecting public health and safety.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

45 CFR 164 regarding the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 applies to these rules. R4-26-106 and R4-26-412 are consistent with and no more stringent than this federal law.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The licenses and approvals listed in Table 1 and R4-26-417(A) comply with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board will amend the rules to address the information in items 6 and 7 before the end of 2020.

Title 4, Ch. 26

Board of Psychologist Examiners

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

(Authority: A.R.S. § 32-2061 et seq.)

Editor's Note: This Chapter contains amendments that were filed with the Secretary of State on March 3, 1995. At the time of filing, the original copy of the rulemaking package differed from the copy of the package filed at the same time. The Secretary of State uses the copy to prepare the Code supplement. The agency notified the Secretary of State that the wrong version was used. That led to the Secretary of State's discovery of the two versions filed in March 1995. The Secretary of State then used the original package to publish a corrected edition with Supp. 95-2. The Secretary of State has since been advised by the Attorney General that the original version as published with Supp. 95-1 was correct with the exception of one phrase in R4-26-207 that was inadvertently omitted. With this publication, this Chapter reflects the correct amendments, and the omitted phrase in R4-26-207 has now been added.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-26-01 through R4-26-10; Article 2, consisting of Sections R4-26-20 through R4-26-28; and Article 3, consisting of Sections R4-26-50 through R4-26-57, renumbered, refer to Historical Notes (Supp. 81-3).

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ARTICLE 1. GENERAL PROVISIONS

R4-26-101. Definitions

- A. The definitions in A.R.S. § 32-2061 apply to this Chapter.
- B. Additionally, in this Chapter:
1. "Additional examination" means an examination administered by the Board to determine the competency of an applicant and may include questions about the applicant's knowledge and application of Arizona law, the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
 2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all of the information and documents required by the Board to determine whether to grant a license to the applicant.
 3. "Advertising" means any media used to disseminate information regarding the qualifications of a psychologist or to solicit clients or patients for psychological services, regardless of whether the psychologist pays for the advertising. Methods of advertising include a published statement or announcement, directory listing, business card, personal resume, brochure, or any electronic communication conveying the psychologist's professional qualifications or promoting use of the psychologist's professional services.
 4. "Applicant" means an individual requesting licensure, renewal, or approval from the Board.
 5. "Application packet" means the forms and documents the Board requires an applicant to submit to the Board.
 6. "Applied psychology," as used in A.R.S. § 32-2071(A), means the practice of psychology in the area of health service delivery. The Board shall consider education and training in applied psychology as qualification for licensure only if the education and training meet the standards specified in A.R.S. § 32-2071.
 7. "Case," in the context of R4-26-106 (G), means a legal cause of action instituted before an administrative tribunal or in a judicial forum that relates to a psychologist's practice of psychology.
 8. "Case conference" means a meeting that includes the discussion of a particular client or patient or case that is related to the practice of psychology.
 9. "Client or patient record" means "adequate records" as defined in A.R.S. § 32-2061(2), "medical records" as defined in A.R.S. § 12-2291 (6), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.
 10. "Complaint Screening Committee" means the committee of the Board established under A.R.S. § 32-2081 (H) to conduct an initial review of all complaints.
 11. "Confidential record" means:
 - a. Minutes of an executive session of the Board;
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. All materials relating to an investigation by the Board, including a complaint, response, client or patient record, witness statement, investigative report, and any other information relating to a client's or patient's diagnosis, treatment, or personal or family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts;
 - ii. Home address, home telephone number, and e-mail address;
 - iii. Examination scores;
 - iv. Date of birth v. Place of birth;
 - vi. Social Security number; and
 - vii. Candidate identification number for the national examination required under A.R.S. § 32-2072(A).
 12. "Credentialing agency" means the Association of State and Provincial Psychology Boards, the National Register of Health Service Providers in Psychology, or the American Board of Professional Psychology.
 13. "Day" means a calendar day except in A.R.S. § 32-2075(A)(4), "day" means a total of eight hours in providing psychological services regardless of the number of calendar days over which the hours are accumulated.
 14. "Diplomate or specialist" means a status bestowed on a person by the American Board of Professional Psychology after successful completion of the work and examinations required.
 15. "Directly available," as used in A.R.S. § 32-2071 (F)(2), means immediately available in person or by telephone or electronic transmission.
 16. "Disaster," as used in A.R.S. § 32-2075(A)(4), means a contingency or situation for which the governor declares a state of emergency under the authority provided at A.R.S. § 35-192. The Board acknowledges any state of emergency declared by the governor or determined by the Board.
 17. "Dissertation" means a document prepared as part of a graduate doctoral program that includes, at a minimum, separate sections that:
 - a. Review the literature on the psychology topic being investigated and state each research question and hypothesis under investigation;
 - b. Describe the method or procedure used to investigate each research question or hypothesis;
 - c. Describe and summarize the findings and results of the investigation;
 - d. Discuss the findings and compare them to the relevant literature presented in the literature review section; and
 - e. List the references used in the various sections of the dissertation, a majority of which are either journals of the American Psychological Association, Psychological Abstracts, or classified as a psychology subject by the Library of Congress.
 18. "Fellow" means a status bestowed on a person by a psychology association or society.
 19. "Gross negligence" means an extreme departure from the ordinary standard of care.
 20. "Internship training program" means the supervised professional experience required in A.R.S. § 32-2071 (F).
 21. "Last client or patient activity," as used in R4-26-106, means the last date a particular client or patient received direct clinical contact from the psychologist retaining the client's or patient's record.
 22. "License period" means:
 - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
 - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
 23. "National examination" means the Examination for Professional Practice in Psychology provided by the Association of State and Provincial Psychology Boards.
 24. "Party" means the Board, an applicant, a licensee, or the state.
 25. "Practice monitor," as used in R4-26-310, means a Board-approved licensed psychologist who monitors or oversees the remediation of the practice of another psychologist as part of a disciplinary process.
 26. "Primarily psychological," in the context of A.R.S. § 32-2071(A)(6), means subject matter that covers the practice of

- psychology as defined in A.R.S. § 32-2061 (9).
27. "Psychologist on staff," as used in A.R.S. § 32-2071(F)(2), means a psychologist who is designated by the staff psychologist specified in A.R.S. § 32-2071(F)(1) to fulfill the responsibilities of a supervising psychologist in the training program.
 28. "Psychometric testing" means measuring cognitive and emotional processes and learning through the administration of psychological tests.
 29. "Raw test data" means test scores, client or patient responses to test questions or stimuli, and notes and recordings concerning client or patient statements and behavior during a psychologist's assessment and evaluation.
 30. "Regulatory jurisdiction" means a state or territory of the U.S., the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
 31. "Renewal year" means:
 - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
 - b. Each even-numbered year for a licensee who holds an even-numbered license.
 32. "Retired," as used in A.R.S. § 32-2073 (G), means a psychologist has stopped practicing psychology, as defined in A.R.S. § 32-2061 (9).
 33. "Stipend" means a fee paid to a supervisee that is not based on productivity or revenue generated.
 34. "Substantive review" means the Board's process for determining whether an applicant meets the requirements of A.R.S. § 32-2071 through § 32-2076 and this Chapter.
 35. "Successfully completing," as used in A.R.S. § 32-2071(A)(4), means receiving a passing grade in a course from an institution of higher education.
 36. "Supervision," as used in R4-26-310, means review and oversight of the professional work of a psychologist by a Board-approved licensed psychologist as part of a disciplinary process.
 37. "Supervise" means to control, oversee, and review the activities of an employee, intern, trainee, or resident who provides psychological services.
 38. "Supervisor," as referenced in A.R.S. § 32-2071(F)(2), means an individual who is:
 - a. Licensed or registered as a psychologist at the independent level in the regulatory jurisdiction in which the supervision occurs,
 - b. On staff as a supervisor with the training program for which supervision is provided, and
 - c. Directly available to the supervisee in case of an emergency or ensures another supervisor is directly available to the supervisee.
 39. "Year," as used in A.R.S. § 32-2075(A)(4) means a calendar year.

Historical Note

Former Rule 1; Former Section R4-26-01 repealed, new Section R4-26-01 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Former Section R4-26-101 renumbered to R4-26-102; new Section R4-26-101 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-102. Board Officers

- A. Under A.R.S. § 32-2063(A)(8), the Board shall annually elect a chairperson, vice chairperson, and secretary.
- B. Officers elected under subsection (A) shall take office on January 1 following election and serve until December 31.
- C. If a vacancy occurs in the office of chairperson, vice chairperson, or secretary, the Board shall elect a replacement officer at the next scheduled Board meeting.

Historical Note

Former Rule 2; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-02 adopted effective July 27, 1979 (Supp. 79-4). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-102 renumbered to R4-26-103; new Section R4-26-102 renumbered from R4-26-101 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-103. Repealed

Historical Note

Former Rule 3; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-03 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-103 renumbered to R4-26-104; new Section R4-26-103 renumbered from R4-26-102 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Repealed by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-104. Committees

- A. As permitted under A.R.S. § 32-2064(B), the Board chairperson may appoint Board committees to assist the Board to fulfill the Board's responsibilities.
- B. The Board may appoint consulting committees to conduct investigations and make recommendations to the Board concerning official actions.

Historical Note

Former Rule 4; Former Section R4-26-04 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-04 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-04 repealed, new Section R4-26-04 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Correction, paragraph (2), subparagraph (f) as amended effective June 17, 1981 (Supp. 84-1). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-104 renumbered to R4-26-105; new Section R4-26-104 renumbered from R4-26-103 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-105. Board Records

- A. A person may view public records in the Board office only during business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding holidays.
- B. All Board records are open to public inspection and copying except confidential records as defined in R4-26-101 or as otherwise provided by law.

Historical Note

Former Rule 5; Former Section R4-26-05 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-05 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed, new Section R4-26-05 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-105 renumbered to R4-26-107; new Section R4-26-105 renumbered from R4-26-104 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3).

Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-106. Client or Patient Records

- A. A psychologist shall not condition release of a client or patient record on payment for services by the client, patient, or a third party.
- B. Except as provided in subsection (C), a psychologist shall, with a client's or patient's written consent, provide access to or a copy of the client's or patient's record, including raw test data and other information as provided by law to the client or patient or the client's or patient's health care decision maker unless the release violates copyright or other laws or violates one of the standards incorporated by reference at R4-26-301.
- C. A psychologist may deny a request to provide access to or a copy of a client's or patient's record if the psychologist determines:
1. Access by the client or patient is reasonably likely to endanger the life or physical safety of the client or patient or another person;
 2. The record makes reference to a person other than a health professional and access by the client or patient or the client's or patient's health care decision maker is reasonably likely to cause substantial harm to that other person;
 3. Access by the client's or patient's health care decision maker is reasonably likely to cause substantial harm to the client or patient or another person;
 4. Access by the client or patient or the client's or patient's health care decision maker will reveal information obtained under a promise of confidentiality with someone other than a health professional and access is reasonably likely to reveal the source of the information; or
 5. Access by the client or patient or the client's or patient's health care decision maker may result in misuse or misrepresentation of the information and potentially harm the client or patient.
- D. Without a client's or patient's consent, a psychologist shall release the client's or patient's raw test data only to the extent required by law or under court order compelling production.
- E. A psychologist shall retain all client or patient records under the psychologist's control, including records of a client or patient who died, for at least six years from the date of the last client or patient activity. If a client or patient is a minor, the psychologist shall retain all client or patient records for at least three years past the client's or patient's 18th birthday or six years from the date of the last client or patient activity, whichever is longer.
- F. Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (E).
- G. A psychologist who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to that investigation or case until the psychologist receives written notice that the investigation is completed, the case is closed, or the matter has been fully adjudicated.
- H. The provisions of this Section apply to all psychologists including a psychologist who is on inactive status under A.R.S. § 32-2073 (G).
- I. A psychologist may retain client or patient records in electronic form. The psychologist shall ensure that client or patient records in electronic form are legible, stored securely, and an electronic backup copy is maintained.

Historical Note

Former Rule 6; Repealed effective November 22, 1977 (Supp. 77-6). New Section adopted effective March 3, 1995 (Supp. 95-1).

Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number

- A. The Board shall communicate with a psychologist using the contact information provided to the Board. To ensure timely communication from the Board, a psychologist shall notify the Board, in writing, within 30 days of any change of name, mailing, residential, or e-mail address (giving both the old and new addresses), or residential, business, or mobile telephone number.
- B. A psychologist who reports a name change shall submit to the Board legal documentation that substantiates the name change.
- C. A psychologist's failure to receive a renewal notice or other mail that the Board sends to the most recent address on file with the Board office does not excuse an untimely license renewal or the omission of any other action required by the psychologist.

Historical Note

Former Rule 7; Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-107 renumbered from R4-26-105 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-108. Fees and Charges

- A. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following fees:
1. Application for an active license to practice psychology: \$350;
 2. Application for a temporary license under A.R.S. § 32-2073(B): \$200
 3. Reapplication for an active license: \$200;
 4. Issuance of an initial active or temporary license (prorated, as applicable): \$500;
 5. Duplicate license: \$25;
 6. Biennial renewal of an active license: \$500;
 7. Biennial renewal of an inactive license: \$85;

8. Reinstatement of an active or inactive license: \$200; and
 9. Delinquent compliance with continuing education requirements: \$200.
- B.** As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following charges for the services provided:
1. Duplicate renewal receipt: \$5;
 2. Copy of statutes and rules: \$5;
 3. Verification of a license: \$2;
 4. Audio recording of a Board or Committee meeting: \$10;
 5. Electronic medium containing the name and address of each licensee: \$.05 per name;
 6. Customized electronic medium containing the name and address of each current licensee: \$.25 per name;
 7. Customized electronic medium containing additional, non-confidential, licensee information: \$.35 per name; and
 8. Copies of Board records, documents, letters, minutes, applications, files, and policy statements: \$.25 per page.
- C.** Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

Historical Note

Former Rule 8; Amended as an emergency effective June 15, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-3).

Amended effective September 15, 1978 (Supp. 78-5). Repealed effective July 27, 1979 (Supp. 79-4). New Section R4-26-108 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Former Section R4-26-108 renumbered to R4-26-201 by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). New Section adopted by final rulemaking at 7 A.A.R. 1258, effective February 20, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-109. General Provisions Regarding Telepractice

- A.** Except as otherwise provided by law, a licensee who provides psychological service or supervision by telepractice to a client or patient or supervisee located outside Arizona shall comply with not only A.R.S. Title 32, Chapter 19.1, and this Chapter but also the laws and rules of the jurisdiction in which the client or patient or supervisee is located.
- B.** Before providing psychological service or supervision by telepractice, a licensee shall establish competence in use of telepractice that conforms to prevailing standards of scientific and professional knowledge.
- C.** A licensee who provides psychological service or supervision by telepractice shall maintain competence in use of telepractice through continuing education, consultation, or other procedures designed to address changing technology used in telepractice.
- D.** A licensee who provides psychological service or supervision by telepractice shall take all reasonable steps to ensure confidential communications stored electronically cannot be recovered or accessed by an unauthorized person when the licensee disposes of electronic equipment or data.

Historical Note

Former Rule 9; Repealed effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-110. Providing Psychological Service by Telepractice

- A.** Before providing psychological service by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document in the client or patient's record required under R4-26-106 whether use of telepractice:
1. Is consistent with the client or patient's knowledge and skill regarding use of the technology involved in providing psychological service by telepractice or with ready access to assistance with use of the technology, and
 2. Is in the best interest of the client or patient.
- B.** A licensee shall not provide psychological service by telepractice unless both conditions of the risk analysis conducted under subsection (A) are met.
- C.** Before providing psychological service by telepractice, a licensee shall:
1. Obtain the written informed consent of the client or patient, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written informed consent addresses the following and a copy is placed in the client or patient's record required under R4-26-106:
 - a. The manner in which the licensee will verify the identity of the client or patient before each psychological service if the telepractice does not involve video;
 - b. The manner in which the licensee will ensure the client or patient's electronic communications are received only by the licensee or supervisee;
 - c. Limitations and innovative nature of using technology to provide psychological service;
 - d. Inherent confidentiality risk resulting from use of technology;
 - e. Potential risk of technology failure that disrupts provision of psychological service and how to re-establish communication if disruption occurs;
 - f. When and how the licensee will respond to routine electronic communications;
 - g. The circumstances under which the licensee and client or patient will use an alternative means of communication;
 - h. Who is authorized to access the electronic communication between the licensee and client or patient;
 - i. The manner in which the licensee stores the electronic communication between the licensee and the client or patient; and
 - j. The type of secure electronic technology the licensee will use to communicate with the client or patient;
 2. Establish a written agreement with the client or patient that specifies contact information for sources of face-to-face emergency services in the client or patient's geographical area and requires the client or patient to contact a source of face-to-face emergency services when the client or patient experiences a suicidal or homicidal crisis or other emergency. If the licensee has knowledge the client or patient is experiencing a suicidal or homicidal crisis or other emergency, the licensee shall assist the client or patient to contact a source of face-to-face emergency services. The licensee shall place a copy of the written agreement required under this subsection in the client or patient's record required under R4-26-106.
 3. Obtain the name and contact information for an emergency contact;
 4. Obtain information about an alternative means of contacting the client or patient; and
 5. Provide the client or patient with information about an alternative means of contacting the licensee.
- D.** A licensee who provides psychological service by telepractice shall repeat the risk analysis required under subsection (A) as clinically indicated.
- E.** If a licensee does not provide psychological service by telepractice to a client or patient, the provisions of this Section do not apply to electronic communications with the client or patient regarding:
1. Scheduling an appointment, billing, establishing benefits, or determining eligibility for services; and
 2. Checking the welfare of the client or patient in accord with reasonable professional judgment.

Historical Note

Adopted effective November 22, 1977 (Supp. 77-6). Repealed and readopted as Section R4-26-57 effective July 27, 1979 (Supp. 79-4).
New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-111. Providing Supervision through Telepractice

- A.** As specified under A.R.S. § 32-2071(F) and (G), a licensee who provides in-person individual supervision shall ensure that:
1. No more than 50 percent of the supervision is provided through telepractice; and
 2. Supervision provided through telepractice is conducted using secure, confidential, real-time visual telecommunication technology.
- B.** Before providing supervision by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document whether providing supervision by telepractice:
1. Is appropriate for the issue presented by the supervisee's client or patient involved in the supervisory process,
 2. Is consistent with the supervisee's knowledge and skill regarding use of the technology involved in providing supervision by telepractice, and
 3. Is in the best interest of both the supervisee and the supervisee's client or patient involved in the supervisory process.
- C.** A licensee shall not provide supervision by telepractice unless all conditions of the risk analysis conducted under subsection (B) are met.
- D.** Before providing supervision by telepractice, a licensee shall:
1. Enter a written agreement with the supervisee, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written agreement addresses the following and a copy is provided to the supervisee:
 - a. The manner in which the licensee will identify the supervisee before each supervisory session that does not involve video;
 - b. Limitations and innovative nature of using technology to provide supervision;
 - c. Potential risk of technology failure that disrupts provision of supervision and how to re-establish communication if disruption occurs;
 - d. When and how the licensee will respond to routine electronic communications from the supervisee;
 - e. The circumstances under which the licensee and supervisee will use an alternative means of communication; and
 - f. The type of secure electronic technology the licensee will use to communicate with the supervisee;
 2. Obtain information about an alternative means of contacting the supervisee; and
 3. Provide the supervisee with information about an alternative means of contacting the licensee.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-112. Reserved
through

R4-26-119. Reserved

R4-26-120. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

R4-26-121. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-202 effective July 27, 1979 (Supp. 79-4).

R4-26-122. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-203 effective July 27, 1979 (Supp. 79-4).

R4-26-123. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-204 effective July 27, 1979 (Supp. 79-4).

R4-26-124. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-205 effective July 27, 1979 (Supp. 79-4).

R4-26-125. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-206 effective July 27, 1979 (Supp. 79-4).

R4-26-126. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-207 effective July 27, 1979 (Supp. 79-4).

R4-26-127. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-208 effective July 27, 1979 (Supp. 79-4).

R4-26-128. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-209 effective July 27, 1979 (Supp. 79-4).

R4-26-129. Reserved

through
R4-26-149. Reserved

R4-26-150. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-301 effective July 27, 1979 (Supp. 79-4).

R4-26-151. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-302 effective July 27, 1979 (Supp. 79-4).

R4-26-152. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-303 effective July 27, 1979 (Supp. 79-4).

R4-26-153. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-304 effective July 27, 1979 (Supp. 79-4).

R4-26-154. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-305 effective July 27, 1979 (Supp. 79-4).

R4-26-155. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-306 effective July 27, 1979 (Supp. 79-4).

R4-26-156. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-307 effective July 27, 1979 (Supp. 79-4).

R4-26-157. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

ARTICLE 2. LICENSURE

R4-26-201. Application Deadline

- A.** The Board shall consider a license application at the Board's next scheduled meeting if an administratively complete application packet, including reference forms mailed or e-mailed from the Board office, is received by the Board office at least 18 days before the date of the meeting.
- B.** The Board shall consider a license application that is received fewer than 18 days before a scheduled meeting at a subsequent meeting.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsection (A) statute reference, effective June 30, 1981 (Supp. 81-3).

Renumbered from R4-26-120 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1).

Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section R4-26-201 renumbered from R4-26-108 and amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-202. Doctorate

- A.** The Board shall apply the following criteria to determine whether a doctoral program provided by an institution of higher education met the standards in A.R.S. § 32-2071(A)(2) at the time an applicant began the degree program:
1. The program is identified and labeled as a psychology program if there were institutional catalogues and brochures that specified the intent of the institution of higher education to educate and train psychologists;
 2. The program stands as a recognized, coherent organizational entity if there was an organized sequence of courses comprising a psychology curriculum; and
 3. The program has clearly identified entry and exit criteria within its psychology curriculum if there were specific prerequisites for entrance into the program and delineated requirements for graduation.
- B.** The Board shall verify that an applicant completed the hours in the subject areas described in A.R.S. § 32-2071(A)(4). For this purpose, the applicant shall have the institution of higher education that the applicant attended provide directly to the Board an official transcript of all courses taken and verification of the dissertation or similar project.
1. The Board may require additional documentation from the applicant or from the institution to determine whether the applicant satisfied the requirements of A.R.S. § 32-2071(A)(4).
 2. The Board shall count five quarter hours or six trimester hours as the equivalent of three semester hours, as required under A.R.S. § 32-2071(A)(4). When an academic term is other than a semester, quarter, or trimester, 15 classroom contact hours equals one semester hour.
- C.** To determine whether a comprehensive examination taken by an applicant as part of a doctoral program in psychology satisfies the requirements of A.R.S. § 32-2071(A)(4), the Board shall review documentation provided directly to the Board by the institution of higher education that granted the doctoral degree, that demonstrates how the applicant's comprehensive examination was constructed, lists criteria for passing, and provides the information used to determine that the applicant passed.
- D.** The Board shall not accept as core program hours required under A.R.S. § 32-2071(A)(4) credit:
1. For workshops, practica, undergraduate courses, life experiences, continuing education courses, or experiential or correspondence courses;
 2. Transferred from institutions that are not accredited under A.R.S. § 32-2071(A)(1); or
 3. For seminars, readings courses, or independent study unless the applicant proves that the course was an in-depth study devoted to a particular core program content area by submitting one or more of the following:
 - a. Course description in the official catalogue of the institution of higher education,
 - b. Course syllabus, or
 - c. Signed statement from a dean or psychology department head affirming that the course was an in-depth study devoted to

- a particular core program content area.
- E. The Board shall count a course or comprehensive examination only once to satisfy a requirement of A.R.S. § 32-2071(A)(4).
- F. An honorary doctorate degree does not qualify an applicant for licensure as a psychologist.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-121 and amended effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203. Application for Initial License

- A. An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant, and provide the following:
 - 1. Personal information about the applicant:
 - a. Full name;
 - b. Other names by which the applicant is or ever has been known;
 - c. Residential address and telephone number;
 - d. Business name and address;
 - e. Work telephone and fax numbers;
 - f. E-mail address;
 - g. Gender;
 - h. Date of birth;
 - i. Place of birth; and
 - j. Social Security number;
 - 2. An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;
 - 3. An indication whether the applicant is active military;
 - 4. A statement of whether the applicant:
 - a. Holds a Certificate of Professional Qualification in Psychology, a National Register of Health Service Providers in Psychology credential, or is a diplomate or specialist of the American Board of Professional Psychology;
 - b. Is or ever has been licensed as a psychologist in another regulatory jurisdiction and if so, the name of the regulatory jurisdiction and license number;
 - c. Has applied for and been rejected or denied licensure as a psychologist in a regulatory jurisdiction and if so, the name of each regulatory jurisdiction, date of each application, and reason given for the rejection or denial;
 - d. Is or ever has been licensed or certified in a profession or occupation other than psychology and if so, the names of the professions or occupations, regulatory jurisdictions, and license numbers;
 - e. Has ever taken the national examination and if so, the name of each regulatory jurisdiction in which the examination was taken and each date of examination;
 - f. Has ever had an application for a professional license, certification, or registration other than psychology denied or rejected by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, type of license, certification, or registration denied or rejected, and date of denial or rejection;
 - g. Has ever withdrawn an application for a professional license, certification, or registration in lieu of administrative proceedings and if so, the reason for the withdrawal;
 - h. Has ever had disciplinary action initiated against the applicant's professional license, certification, or registration, or had a professional license, certification, or registration suspended or revoked by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, date of the disciplinary action, and license number;
 - i. Has ever entered into a consent agreement or stipulation arising from a complaint against any professional license, certification, or registration and if so, the name of the regulatory jurisdiction, date, and license number;
 - j. Is a member of any professional association in the field of psychology and if so, name of the association;
 - k. Has ever had membership in a professional association in the field of psychology denied or revoked and if so, the name of the professional association and date of denial or revocation;
 - l. Is currently under investigation for or has been found guilty of violating a code of professional ethics of any professional organization and if so, the name of the professional organization and date of investigation;
 - m. Is currently under investigation for or has been found to have violated a professional code of conduct by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of investigation;
 - n. Has ever been sanctioned or placed on probation by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of action;
 - o. Is currently awaiting trial, has been convicted of, or pled no contest or guilty to any felony or a misdemeanor other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any convictions that have been expunged, deleted, or set aside and if so, the name of the jurisdiction, offense involved, date of offense, status of resolution, expected resolution date, and a narrative explanation;
 - p. Has been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a certificate or license in another profession, or the applicant's work as a member of a profession in which the applicant was not certified or licensed and if so, the name of the jurisdiction, allegation involved, and date;
 - q. Has ever been involuntarily terminated or resigned instead of termination from any psychological or behavioral health position or related employment and if so, the name of the employer involved and date;
 - r. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently; and
 - s. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently;
 - 5. Information about the applicant's education and training:
 - a. Name and address of each university or college from which the applicant graduated, dates attended, date of graduation, degree received, name of department, and major subject area of study;
 - b. Name and department of the applicant's major advisor;
 - c. Title of the applicant's dissertation or Psy.D. project for the doctoral degree;
 - d. Official title of the applicant's doctoral degree program or predoctoral specialty area;

- e. Whether the doctoral degree program that the applicant attended was accredited by the American Psychological Association at the time of graduation;
 - f. Whether the applicant's internship training program was an American Psychological Association- accredited program or a member of the Association of Psychology and Postdoctoral Internship Centers;
 - g. Location of each internship training program in which the applicant participated and each supervisor's name and contact information; and
 - h. Documentation demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;
6. Areas of professional competence;
 7. Intended area of professional practice in psychology;
 8. Name, position, and address of at least two individuals to serve as references who:
 - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
 - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
 - c. Recommend the applicant for licensure;
 9. History of employment for the past 10 years in the field of psychology including, for each position held, the:
 - a. Beginning and ending dates of employment,
 - b. Number of hours worked per week,
 - c. Name and address of employer,
 - d. Name and address of supervisor, and
 - e. Type of employment; and
 10. Information demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;
 11. An attestation by the applicant, that the information on the application is about the applicant, is true and correct, and is not being submitted fraudulently;
- B.** Additionally, an applicant shall submit:
1. An original, un-retouched, passport-quality photograph of the applicant that is no larger than 1.5 X 2 inches and taken no more than 60 days before the date of application;
 2. The results of a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank;
 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
 4. The Board's Mandatory Confidential Information form;
 5. The fee required under R4-26-108; and
 6. Any other information authorized by statute.
- C.** In addition to the requirements in subsections (A) and (B), an applicant shall arrange to have the following directly submitted to the Board:
1. An official transcript from each university or college from which the applicant attended a graduate program or received a graduate degree that contains the date the degree was conferred;
 2. An official document from the degree-granting institution indicating that the applicant completed a residency that satisfies the requirements of A.R.S. § 32-2071 (K);
 3. For an applicant applying supervised preinternship hours toward licensure, an attestation submitted by the doctoral program training director, faculty supervisor, or other official of the doctoral-granting institution who is knowledgeable of the applicant's preinternship experience verifying that the applicant's preinternship experience meets the requirements of A.R.S. § 32-2071(D).
 4. An attestation from the applicant's supervisor, if available, or a psychologist knowledgeable of the applicant's internship training program, verifying that the applicant's internship training program meets the requirements in A.R.S. § 32-2071 (F). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
 5. For an applicant applying supervised postdoctoral experience toward licensure, an attestation from the applicant's postdoctoral supervisor, if available, or a psychologist knowledgeable of the applicant's postdoctoral experience verifying that the applicant's postdoctoral experience meets the requirements in A.R.S. § 32-2071 (G). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
 6. Verification of all other psychology licenses or certificates ever held in any regulatory jurisdiction; and
 7. An official notification of the applicant's score on the national examination. An applicant who passed the national examination in accordance with the standard established at A.R.S. § 32-2072(A), shall have the examination score sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective April 25, 1980 (Supp. 80-2). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-122 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-203 repealed, new Section R4-26-203 renumbered from R4-26-204 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203.01. Application for Licensure by Credential

- A.** An applicant for a psychologist license by credential under A.R.S. § 32-2071.01 (D) shall submit an application packet to the Board that includes:
1. An application form, which is available from the Board office and on its website, signed and dated by the applicant, that

contains the information required by R4-26-203(A)(1) through (4), (A)(5)(a) through (f), (A)(6), (A)(7), (A)(10), and R4-26-203(B)(2) through (6);

2. Verification sent directly to the Board by the credentialing agency that the applicant:
 - a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
 - b. Holds a current National Register of Health Service Providers in Psychology (NRHSPP) credential and has practiced psychology independently at the doctoral level for at least five years; or
 - c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and
 3. Verification of all other psychology licenses or certificates ever held in any jurisdiction.
- B.** An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant obtain a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.
- C.** If the Board determines that an application for licensure by credential requires clarification, the Board may require that an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information that is deemed necessary by the Board.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure

- A.** As provided under A.R.S. § 32-2072(C), an individual who has completed the education requirements specified in A.R.S. § 32-2071(A) but has not completed the supervised professional experience requirements specified in A.R.S. § 32-2071(D) may apply to the Board for approval to take the national examination.
- B.** To apply for approval under subsection (A), an individual shall submit to the Board the application form and applicable documents required under R4-26-203(A) through (C).
- C.** When the Board approves an individual who makes application under subsections (A) and (B), the Board shall administratively close the applicant's application packet.
- D.** An individual who is granted approval under subsection (C) to take the national examination may apply for an initial license under R4-26-203 after completing the supervised professional experience requirements specified in A.R.S. § 32-2071(D) as follows:
1. Within 36 months after the application was administratively closed under subsection (C), request that the Board re-open the application packet; and
 2. Submit the portions of the application packet required under R4-26-203 that were not submitted under subsection (B).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203.03. Reapplication for License; Applying Anew

- A.** The following may reapply for a license:
1. An individual who failed the national examination required under A.R.S. § 32-2072 and R4-26-204 no more than three times, and
 2. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) less than one year before reapplication.
- B.** An individual identified in subsection (A) may ask the Board to base a licensing decision, in part, on applicable forms and documents previously submitted.
- C.** An individual eligible under subsection (B) to reapply for licensure shall:
1. Submit a reapplication form, which is available from the Board office, to the Board;
 2. If previously submitted references were submitted more than 12 months before the date of reapplication, provide the names, positions, and addresses of at least two individuals to serve as references who:
 - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and are not members of the Arizona Board of Psychologist Examiners;
 - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of reapplication. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
 - c. Recommend the applicant for licensure;
 3. List all professional employment since the date of the most recent application or reapplication including:
 - a. Beginning and ending dates of employment,
 - b. Number of hours worked per week,
 - c. Name and address of employer,
 - d. Position title,
 - e. Nature of work, and
 - f. Nature of supervision;
 4. Submit the results of a self-query from the National Practitioner Data Bank—Healthcare Integrity and Protection Data Bank; and
 5. Pay the fee required under R4-26-108(A)(2).
- D.** The following shall apply anew for a license rather than reapplying:
1. An individual whose application submitted under R4-26-203 or R4-26-203.01 was denied by the Board,
 2. An individual who was permitted by the Board to withdraw an application submitted under R4-26-203 or R4-26-203.01 before the Board acted on the application,
 3. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) more than one year before another application is submitted,
 4. An individual whose license was revoked under A.R.S. § 32-2081(N)(1),
 5. An individual whose license expired under A.R.S. § 32-2074,

6. An individual whose license was canceled under A.R.S. 32-2074, and
7. An individual who retired under A.R.S. § 32-2073(G).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-204. Examinations

A. General rules.

1. Under A.R.S. § 32-2072(C), an applicant who fails the national examination three times in any regulatory jurisdiction shall, before taking the national examination again, review the applicant's areas of deficiency and implement a program of study or practical experience designed to remedy the deficiencies. This remedial program may consist of any combination of course work, self-study, internship experience, and supervision.
2. An applicant required under subsection (A)(1) to implement a program of study or practical experience may apply anew for licensure. The applicant shall submit a new application packet, as described in R4-26-203, and include information about any actions proposed under subsection (A)(1).
3. Examination deadline. Unless the Board grants an extension, the Board shall administratively close the file of an applicant authorized by the Board to take an examination specified in subsection (B) or (C) who fails to take the examination within one year from the date of the Board's authorization. Upon written request to the Board's Executive Director received by the Board on or before the applicant's examination deadline, the Board shall grant the applicant one extension of up to six months to take the examination. The applicant may request additional extensions for good cause, which includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period. The Board shall ensure that an extension is for no more than six months. This Section does not apply to an applicant approved to take the national examination under R4-26-203.02.
4. The Board shall deny a license if an applicant commits any of the following acts with respect to the examination:
 - a. Violates the confidentiality of examination materials;
 - b. Removes any examination materials from the examination room;
 - c. Reproduces any portion of a licensing examination;
 - d. Aids in the reproduction or reconstruction of any portion of a licensing examination;
 - e. Pays or uses another person to take a licensing examination for the applicant or to reconstruct any portion of the licensing examination;
 - f. Obtains examination material, either before, during, or after an examination, for the purpose of instructing or preparing applicants for examinations;
 - g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;
 - h. Communicates with any other examiner during the administration of a licensing examination;
 - i. Copies answers from another examinee or permits the copying of answers by another examinee;
 - j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than material distributed during the examination; or
 - k. Impersonates another examinee.

B. National examination. Under A.R.S. § 32-2072, the Board shall require that an applicant take and pass the national examination. An applicant authorized by the Board to take the national examination passes the examination if the applicant's score equals or exceeds the passing score specified in A.R.S. § 32-2072(A). After the Board receives the examination results, the Board shall notify the applicant in writing of the results.

C. Additional examination.

1. The Board shall require an applicant to pass the national examination before allowing the applicant to take an additional examination.
2. Under A.R.S. § 32-2072(B), the Board may administer an additional examination to an applicant to determine the adequacy of the applicant's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
 - a. The Board shall review and approve the additional examination before administration.
 - b. The additional examination may be developed and administered by the Board, a committee of the Board, consultants to the Board, or independent contractors.
 - c. Applicants, examiners, and consultants to the Board shall execute a security acknowledgment form and agree to maintain examination security.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-123 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-204 renumbered to R4-26-203, new Section R4-26-204 renumbered from R4-26-205 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)

A. To be eligible to be issued a temporary license under A.R.S. § 32-2073(B), an individual shall:

1. Have completed the educational requirements specified in A.R.S. § 32-2071(A) through (C);
2. Have completed 1,500 hours of supervised professional experience as described in A.R.S. § 32-2071(F); and
3. Be participating in a supervised postdoctoral professional experience as described in A.R.S. § 32-2071(G).

B. An applicant seeking a temporary license under A.R.S. § 32-2073(B), shall submit an application packet to the Board that includes:

1. The application form required under R4-26-203 and provide all required information except that specified in R4-26-203(C) (3), (5), and (7); and

2. The written training plan required under A.R.S. § 32-2071(G)(7) from the entity at which the supervised postdoctoral professional experience is occurring that includes at least the following:
 - a. Goal and content of each training experience,
 - b. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience,
 - c. Methods of evaluating the supervisee and the supervised postdoctoral professional experience,
 - d. Total number of hours to be accrued during the supervised postdoctoral professional experience,
 - e. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience,
 - f. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience,
 - g. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G), and
 - h. Acknowledgment that ethics training is included in the training experience.
- C. An individual issued a temporary license under A.R.S. § 32-2073(B) shall practice psychology only under supervision. It is unprofessional conduct for the holder of a temporary license issued under A.R.S. § 32-2073(B) to practice psychology without supervision.
- D. A temporary license issued under A.R.S. § 32-2073(B) is valid for 36 months and is not renewable. If the Board denies an active license under R4-26-203 to the holder of a temporary license issued under A.R.S. § 32-2073(B), the temporary license terminates at the time of license denial.
- E. The holder of a temporary license issued under A.R.S. § 32-2073(B) shall:
 1. Comply fully with all provisions of A.R.S. Title 32, Chapter 19.1, and this Chapter;
 2. Not practice psychology outside the postdoctoral experience specified in the written training plan required under subsection (B)(2) and
 3. Submit to the Board any modification to the written training plan required under subsection (B)(2) within 10 days after the effective date of the modification.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

Appendix A. Repealed

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Renumbered from R4-26-205, Appendix A (Supp. 95-1). Appendix A repealed by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1).

R4-26-205. Renewal of License

- A. Beginning May 1, 2017, a license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B. The Board considers a license renewal application packet timely submitted if delivered or mailed to the Board's office and date stamped or postmarked on or before the last day of a licensee's birth month during the licensee's renewal year.
- C. To renew a license, a licensee shall submit to the Board a renewal application form, which is available from the Board office and on its website, signed and dated by the licensee, and provide the following:
 1. Personal information about the applicant:
 - a. Full name;
 - b. Other names by which the applicant is or ever has been known;
 - c. License number;
 - d. Home address and telephone number;
 - e. Business name and address;
 - f. Work telephone and fax numbers;
 - g. E-mail address;
 - h. Gender;
 - i. Date of birth;
 - j. Place of birth; and
 - k. Social Security number;
 2. An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;
 3. An indication whether the applicant is active military;
 4. A statement of whether the applicant:
 - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access to client or patient records and if not, explain;
 - b. Is currently licensed or certified as a psychologist in a regulatory jurisdiction other than Arizona and if so, the name of the regulatory jurisdiction and license number;
 - c. Is a licensed or certified member of another profession and if so, the name of the profession, regulatory jurisdiction, and license number;
 - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or panel;
 - e. Has completed the required 40 hours of continuing education and if not, an explanation of why the required hours have not been completed;
 - f. Has, during the last license period, been denied a license or certificate to practice any profession by any regulatory jurisdiction and if so, the name of the profession and regulatory jurisdiction and the reason for denial or a copy of the notice of denial;
 - g. Has, during the last license period, relinquished responsibilities, resigned a position, or been terminated while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;
 - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, the military, or provider panel or surrendered a license while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;
 - i. Has, during the last license period, been disciplined by an agency in any regulatory jurisdiction including the Arizona Board of Psychologist Examiners, the military, or a health care institution, provider panel, or ethics panel for acts pertaining to

the applicant's conduct as a psychologist or as a professional in any other field and if so, the name and address of the agency, nature and date of the disciplinary action, and statement of the charges and findings;

- j. Is currently awaiting trial, has, during the last license period, been convicted of or pled no contest or guilty to any felony or a misdemeanor, other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any conviction that was expunged, deleted, or set aside in any state or country and if so, the convicting jurisdiction, offense, date of offense, status of resolution, expected resolution, a narrative explanation, and copies of relevant documents;
 - k. Is currently under investigation by any professional organization, the military, health care institution, or provider panel of which the applicant is a member or on staff, or regulatory agency concerning the ethical propriety or legality of the applicant's conduct and if so, name of the entity involved and conduct at issue;
 - l. Has, during the last license period, been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a license or certificate in another profession, or the applicant's work as a member of a profession in which the applicant was not licensed or certified and if so, the name of the jurisdiction, allegation involved, date, and copies of relevant documents;
 - m. Is delinquent in payment of a judgment for child support and if so, the court that issued and date of the support order;
 - n. Has, during the last license period, had an application for membership in any professional organization rejected, or has had any professional organization suspend or revoke the applicant's membership, place the applicant on probation, or otherwise censure the applicant for unethical or unprofessional conduct or other violation of eligibility or membership requirements and if so, name of the professional organization and date of the action;
 - o. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently;
 - p. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently; and
 - q. Is submitting the renewal application timely and if not, whether the applicant has practiced psychology in Arizona since the license expired and if so, a complete explanation;
5. The license status for which application is made;
- a. Active,
 - b. Inactive due to mental or physical disability,
 - c. Voluntary inactive,
 - d. Medical or inactive continuation, or
 - e. Retired. If retired status is requested, the applicant shall designate whether retired status is to be achieved by allowing the license to expire or requesting voluntary inactive status;
6. The following information about the continuing education completed during the previous license period:
- a. Title of the continuing education;
 - b. Date completed;
 - c. Sponsoring organization, publication, or educational institution;
 - d. Number of hours in the continuing education; and
 - e. Brief description of the continuing education;
7. A signed attestation of the veracity of the information provided; and
8. Any other information authorized by statute.
- D.** Additionally, to renew a license, a licensee shall submit to the Board:
1. The license renewal fee required under R4-26-108;
 2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
 3. The Board's Mandatory Confidential Information form.
- E.** If a completed application, including the information about continuing education completed, is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2074 (C), the license of a licensee who fails to submit a renewal application, including the information about continuing education completed, on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing psychology.
- G.** A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C), including the information about continuing education completed, and the documents required under subsections (D)(2) and (3); and
 2. The license renewal and reinstatement fees required under R4-26-108.
- H.** A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
 2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108(A)(7).
- I.** A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-203.
- J.** If the Board audits the continuing education records of a licensee and determines that some of the hours do not conform to the standards listed in R4-26-207, the Board shall disallow the non-conforming hours. If the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements and provide notice of the disallowance to the licensee. The licensee has 90 days from the mailing date of the Board's notification of disallowance to complete the continuing education requirements for the past reporting period and shall provide the Board with an affidavit documenting completion. If the Board does not receive an affidavit within 90 days of the mailing date of notification of disallowance or the Board deems the affidavit insufficient, the Board may take disciplinary action under A.R.S. § 32-2081.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-205 renumbered to R4-26-204; new Section R4-26-205 renumbered from R4-26-206 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final

rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License

- A.** Except as provided in subsection (C), when considering reinstatement of a psychologist from inactive to active status, the Board shall presume that the psychologist has maintained and updated the psychologist's professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).
- B.** A psychologist who is on inactive status for at least two years may reinstate the license to active status by presenting to the Board documentation of completion of at least 40 hours of continuing education that meets the standards in R4-26-207. A psychologist who is on inactive status for less than two years may reinstate the license to active status by presenting to the Board documentation of completion of a prorated amount of continuing education. To calculate the prorated amount of continuing education hours required, the Board shall multiply 1.67 by the number of months from the date of inactive status until the date the application for reinstatement is received by the Board. For every six months of inactive status, the Board shall require one hour of continuing education in:
1. Ethics, as specified under R4-26-207(B)(1); and
 2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under R4-26-207(B)(2).
- C.** A psychologist may request that the Board cancel the psychologist's license if the psychologist is not under investigation by any regulatory jurisdiction. Fees paid to obtain a license are not refundable when the license is canceled. If an individual whose request for license cancellation is approved by the Board subsequently decides to practice psychology, the individual shall submit a new application under R4-26-203 and meet the requirements in A.R.S. § 32-2071.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-125 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-206 renumbered to R4-26-205; new Section R4-26-206 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2007, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-207. Continuing Education

- A.** A licensee shall complete at least 40 hours of continuing education during each license period. Unless specified otherwise, one clock hour of instruction, training, or making a presentation equals one hour of continuing education.
- B.** A licensee shall ensure the continuing education hours obtained include at least four hours in each of the following:
1. Professional ethics; and
 2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults. The topic of bullying satisfies the requirement for child abuse.
- C.** During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, domestic violence, intimate partner abuse, abuse of vulnerable adults, child abuse, and bullying that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in:
1. Ethics, as specified under subsection (B)(1); and
 2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under subsection (B)(2).
- D.** If the standards in subsection (F) are met, the Board shall accept the following for continuing education hours.
1. Post-doctoral study sponsored by a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1) and provides a graduate-level degree program;
 2. A course, seminar, workshop, or home study for which a certificate of attendance or completion is provided;
 3. A continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider;
 4. Teaching a graduate-level course in applied psychology at a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1). A licensee who teaches a graduate-level course in applied psychology receives the same number of continuing education hours as number of classroom hours for those who take the graduate-level course;
 5. Organizing and presenting a continuing education activity. A licensee who organizes and presents a continuing education activity receives the same number of continuing education hours as those who attend the continuing education activity;
 6. Serving as a complaint consultant. During a license period, a licensee who serves as a Board complaint consultant to review Board complaints and provides written reports to the Board or provides expert testimony on behalf of the Board may receive continuing education hours equal to the actual number of hours served as a complaint consultant to a maximum of 20 hours. A licensee who is paid by the Board for services rendered shall not receive continuing education credit for the time or services for which payment was made;
 7. The Board shall allow a maximum of 10 continuing education hours for each of the following during a license period:
 - a. Attending a Board meeting or serving as a member of the Board. A licensee receives up to six continuing education hours in professional ethics for attending both morning and afternoon sessions of a Board meeting and three continuing education hours for attending either the morning or afternoon session or at least four hours of a Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting;
 - b. Having an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published. A licensee who has an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published receives 10 continuing education hours in the year of publication;
 - c. Participating in a study group for professional growth and development as a psychologist. A licensee receives one hour of continuing education for each hour of participation to a maximum of 10 continuing education hours for participating in a study group. The Board shall allow continuing education hours for participating in a study group only if the licensee maintains the documentation required under subsection (G)(5);
 - d. Presenting a symposium or paper at a state, regional, national, or international psychology meeting. A licensee who presents a symposium or paper receives the same number of continuing education hours as hours of the session, as published in the agenda of the meeting, at which the symposium or paper is presented to a maximum of 10 continuing education hours;

- e. Presenting a poster during a poster session at a state, regional, national, or international psychology meeting. A licensee who presents a poster receives an hour of continuing education for each hour the licensee is physically present with the poster during the poster session, as published in the agenda of the meeting, to a maximum of 10 continuing education hours; and
 - f. Serving as an elected officer of an international, national, regional, or state psychological association or society. A licensee who serves as an elected officer may receive continuing education hours equal to the actual number of hours served to a maximum of 10 continuing education hours.
- E.** The Board shall not allow continuing education credit more than once in a license period for:
- 1. Teaching the same graduate-level course,
 - 2. Organizing and presenting a continuing education activity on the same topic or content area, or
 - 3. Presenting the same symposium or paper at a state, regional, national, or international psychology meeting.
- F.** Standards for continuing education. To be acceptable for continuing education credit, an activity identified in subsections (D)(1) through (4) shall:
- 1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061(9), for at least 75 percent of the program hours; and
 - 2. Be taught by an instructor who is readily identifiable as competent in the subject of the continuing education by having an advanced degree, teaching experience, work history, published professional articles, or previously presented continuing education on the same subject.
- G.** The Board shall accept the following documents as evidence of completion of continuing education hours:
- 1. A certificate of attendance or completion;
 - 2. Statement signed by the provider verifying participation in the activity;
 - 3. Copy of transcript of course completed under subsection (D)(1);
 - 4. Documents indicating a licensee's participation as an elected officer or appointed member as specified in subsection (D)(7)(f); or
 - 5. An attestation signed by all participants of a study group under subsection (D)(7)(c) that includes a description of the activity, subject covered, dates, and number of hours.
- H.** A licensee shall maintain the documents listed in subsection (G) through the license period following the license period in which the documents were obtained.
- I.** The Board may audit a licensee's compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.
- J.** A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-205.
- 1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
 - 2. The Board shall not grant an extension longer than one year.
 - 3. A licensee who cannot complete the continuing education requirement within the extension may apply to the Board for inactive license status under A.R.S. § 32-2073 (G).
- K.** No continuing education hours may be carried over to the next licensing period.
- L.** The Board shall not accept for continuing education hours a course, workshop, seminar, or symposium designed to increase income or office efficiency.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-126 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-207 repealed; new Section R4-26-207 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995. Text corrected. (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-208. Time Frames for Processing Applications

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the time frames listed in Table 1. An applicant or a person requesting an approval from the Board and the Board's Executive Director may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.
- B.** The administrative completeness review time frame begins when the Board receives an application packet or request for approval. During the administrative completeness review time frame, the Board shall notify the applicant or person requesting approval that the application packet or request for approval is either complete or incomplete. If the application packet or request for approval is incomplete, the Board shall specify in the notice what information is missing.
- C.** If an applicant or person requesting approval receives a notice of incompleteness under subsection (B), the applicant or person requesting approval shall submit the missing information to the Board within the time to complete listed in Table 1. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (B) until the Board receives all of the missing information.
- D.** Upon receipt of all missing information, the Board shall send a written notice of administrative completeness to the applicant or person requesting approval. The Board shall not send a separate notice of completeness if the Board grants or denies a license or approval within the administrative completeness time frame listed in Table 1.
- E.** The substantive review time frame listed in Table 1 begins on the date of the Board's notice of administrative completeness sent under subsection (D).
- F.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant or person requesting approval a comprehensive written request for additional information.
- G.** An applicant or person requesting approval who receives a request under subsection (F) shall submit the additional information to the Board within the time for response listed in Table 1. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- H.** An applicant or person requesting approval may receive a 30-day extension of the time provided under subsection (C) or (G) by providing written notice to the Board before the time expires. If an applicant or person requesting approval fails to submit to the Board the missing or additional information within the time provided under Table 1 or the time as extended, the Board shall administratively close the applicant's or person's file.

- I. At any time before the overall time frame provided in Table 1 expires, an applicant or person requesting approval may, with approval by the Board, withdraw the application or request.
- J. Within the overall time frame listed in Table 1, the Board shall:
1. Grant a license or approval if the Board determines that the applicant or person requesting approval meets all criteria required by statute and this Chapter; or
 2. Deny a license or approval if the Board determines that the applicant or person requesting approval does not meet all criteria required by statute and this Chapter.
- K. If the Board denies a license or approval, the Board shall send the applicant or person requesting approval a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
 3. The time for appealing the denial; and
 4. The right to request an informal settlement conference.
- L. If the last day of a time frame falls on a Saturday, Sunday, or an official state holiday, the time frame ends on the next business day.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Amended effective July 3, 1984 (Supp. 84-4). Amended effective February 24, 1988 (Supp. 88-1). Renumbered from R4-26-127 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-208 repealed; new Section R4-26-208 amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

Table 1. Time Frames (in days) for Processing Applications

Type of Application or Request	Statutory or Rule Authority	Administrative Completeness Time Frame	Time to Respond to Notice of Deficiency	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Application for initial license	A.R.S. §§ 32-2071, 32-2071.01, 32-2072, and R4-26-203	30	240	90	240	120
Application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and A.A.C. R4-26-203.01	30	240	90	240	120
Application to Take National Examination before Completing Experience Required for Licensure	A.R.S. §§ 32-2072(C) and A.A.C. R4-26-203.02	30	240	90	240	120
Reapplication for Licensure	A.R.S. §§ 32-2067 and A.A.C. R4-26-203.03	30	240	90	240	120
Application for license renewal	A.R.S. § 32-2074; A.A.C. R4-26-205	60	N/A	90	N/A	150
Application for reinstatement of expired license	A.R.S. § 32-2074; A.A.C. R4-26-206	60	N/A	90	N/A	150
Request for extension of time to complete continuing education	A.R.S. § 32-2074 A.A.C. R4-26-207	60	N/A	90	N/A	150

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking

R4-26-209. General Supervision

- A.** Under A.R.S. § 32-2071(D), an applicant is required to obtain 3,000 hours of supervised professional experience.
- B.** A supervising psychologist shall not supervise a member of the psychologist's immediate family or the psychologist's employer or business partner.
- C.** Payment between a supervisor and supervisee.
1. A supervising psychologist may pay a monetary stipend or fee to a supervisee if the amount paid by the supervisor is not based on the supervisee's productivity or revenue generated by the supervisee;
 2. A supervising psychologist who accepts a fee for providing the supervisory service in Arizona may be subject to disciplinary action by the Board; and
 3. The Board shall look to the law of the jurisdiction in which the supervision occurred to determine whether to include as part of the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D) hours for which an applicant paid the supervisor.
- D.** A psychologist who supervises the professional experience of an unlicensed individual is professionally responsible for all work done by the individual during the supervised experience.
- E.** The Board shall include in the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D), hours obtained through a training program only if the training program provides the supervision required under A.R.S. § 32-2071(F)(2).

Historical Note

Adopted effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-128 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-209 renumbered to R4-26-208; new Section R4-26-209 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-210. Supervised Professional Experience

- A.** The Board shall use the following criteria to determine whether an applicant's supervised preinternship professional experience complies with A.R.S. § 32-2071 (E):
1. The supervised preinternship professional experience was part of the applicant's doctoral program from an institution of higher education that meets the standards in A.R.S. § 32-2071(A);
 2. The applicant completed appropriate academic preparation before beginning the supervised preinternship professional experience. The Board shall not include any assessment or treatment conducted as part of the required academic preparation in the hours of supervised preinternship professional experience; and
 3. For each supervised preinternship professional experience training site, the applicant has a written training plan with both the training site and the institution of higher education at which the applicant is pursuing a doctoral degree that includes at least the following:
 - a. Training activities included and the amount of time allotted to each activity,
 - b. Goals and objectives of each training activity,
 - c. Methods of evaluating the supervisee and the supervised preinternship professional experiences provided,
 - d. Approval of all individuals providing supervision at sites external to the training site,
 - e. Total number of hours to be accrued during the supervised preinternship professional experience,
 - f. Total number of hours of face-to-face contact hours with clients or patients during the supervised preinternship professional experience,
 - g. Total number of hours of supervision during the supervised preinternship professional experience,
 - h. Qualifications of all individuals who provide supervision during the supervised preinternship professional experience, and
 - i. Acknowledgment that ethics training will be included in all activities.
- B.** The Board shall use the following criteria to determine whether an applicant's internship or training program qualifies as supervised professional experience under A.R.S. § 32-2071 (F):
1. The written statement required under A.R.S. § 32-2071 (F)(9):
 - a. Was established no later than the time the applicant entered the internship or training program; and
 - b. Corresponds to the internship or training program the applicant completed;
 2. A supervisor was directly available to the applicant when decisions were made regarding emergency psychological services provided to a client or patient as required under A.R.S. § 32-2071 (F)(2);
 3. Course work used to satisfy the requirements of A.R.S. § 32-2071(A) or dissertation time is not credited toward the face-to-face, individual supervision time required by A.R.S. § 32-2071 (F)(6);
 4. The two hours a week of other learning activities required under A.R.S. § 32-2071 (F)(6) include one or more of the following:
 - a. Case conferences involving a case in which the applicant was actively involved,
 - b. Seminars involving clinical issues,
 - c. Co-therapy with a professional staff person including discussion,
 - d. Group supervision, or
 - e. Additional individual supervision;
 5. The training program had the applicant work with other doctoral level psychology trainees and included in the written statement required under A.R.S. § 32-2071 (F)(9) a description of the program policy specifying the opportunities and resources provided to the applicant for working or interacting with other doctoral level psychology trainees in the same or other sites; and
 6. Time spent fulfilling academic degree requirements, such as course work applied to the doctoral degree, practicum, field laboratory, dissertation, or thesis credit, is not credited toward the 1,500 hours of supervised professional experience hours required by A.R.S. § 32-2071 (F). This subsection does not restrict a student from participating in activities designed to fulfill other doctoral degree requirements. However, the Board shall not credit time spent participating in activities to fulfill academic degree requirements toward the hours required under A.R.S. § 32-2071 (F).
- C.** Under A.R.S. § 32-2071(G)(5), at least 40 percent of an applicant's supervised postdoctoral experience shall involve direct client or patient contact. If an applicant's supervised postdoctoral hours applied toward licensure include less than 40 percent direct contact hours, the applicant shall work additional time to achieve the required percentage of direct contact hours. While additional direct contact hours may be obtained to meet this requirement, the Board shall count no more than 1,500 hours of total postdoctoral experience for the purpose of licensure.

Historical Note

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the

text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-211. Foreign Graduates

- A.** Under A.R.S. § 32-2071(B), an applicant for licensure whose application is based on graduation from an institution of higher education located outside the U.S. and its territories shall demonstrate that the applicant's formal education is equivalent to a doctoral degree in psychology from a regionally accredited educational institution as described in A.R.S. § 32-2071(A).
- B.** The Board shall find that the institution of higher education from which an applicant under subsection (A) graduated is equivalent to a regionally accredited education institution only if the institution of higher education is included in one of the following:
1. International Handbook of Universities, published for the International Association of Universities by Stockton Press, 345 Park Avenue South, 10th floor, New York, NY 10010-1708;
 2. Commonwealth Universities Yearbook, published for the Association of Commonwealth Universities by John Foster House, 36 Gordon Square, London, England, WC1H 0PF; or
 3. Another source the Board determines provides reliable information.
- C.** The academic transcript of an applicant under subsection (A) who graduated from an institution included under subsection (B) shall be translated into English and evaluated by a member organization of the National Association of Credential Evaluation Services (NACES). The applicant is responsible for paying all expenses incurred to obtain a translation and review of the academic transcript. An applicant can find information about obtaining a professional credential review at www.naces.org.
- D.** When the credential review required under subsection (C) is completed, the NACES member organization shall submit the review report to the Board. The Board shall review the report and determine whether the applicant's education meets the standard in subsection (A).
- E.** Upon written request, the Board may waive the credential review required under subsection (C) for an applicant who graduated from a doctoral program that is accredited by the accreditation panel of the Canadian Psychological Association.
- F.** After the Board determines that the formal education of an applicant under subsection (A) is equivalent to a doctoral degree in psychology from a regionally accredited educational institution, the applicant shall provide evidence to the Board that the applicant has met all other requirements for licensure.

Historical Note

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

ARTICLE 3. REGULATION

R4-26-301. Rules of Professional Conduct

- A.** The Board incorporates by reference standards 1.01 through 10.10 of the "Ethical Principles of Psychologists and Code of Conduct" adopted by the American Psychological Association, effective June 1, 2003. The incorporated materials do not include any later amendments or editions. A copy of the standards is available from the American Psychological Association Order Department, 750 First Street, NE, Washington, DC 20002-4242, www.apa.org/ethics/code, or the Board office.
- B.** A licensee shall practice psychology in accordance with the standards incorporated under subsection (A).

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981. Amended effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-150 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-302. Informal Interviews

- A.** When a complaint is scheduled for informal interview, the Board shall send written notice of an informal interview to the licensee who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 20 days before an informal interview.
- B.** The Board shall include the following in the written notice of an informal interview:
1. The time, date, and place of the interview;
 2. An explanation of the informal nature of the proceedings;
 3. The licensee's right to appear at the informal interview with legal counsel licensed in Arizona or without legal counsel;
 4. A statement of the allegations and issues involved;
 5. The licensee's right to a formal hearing instead of the informal interview; and
 6. Notice that the Board may take disciplinary action at the conclusion of the informal interview;
- C.** The procedure used during an informal interview may include the following:
1. Swearing in and taking testimony from the licensee, complainant, and witnesses, if any;
 2. Optional opening and closing remarks by the licensee;
 3. An opportunity for the complainant to address the Board, if requested;
 4. Board questions to the licensee, complainant, and witnesses, if any; and
 5. Deliberation and discussion by the Board.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-303. Titles

A person shall not use a title that claims a potential or future degree or qualification such as "Ph.D. (Cand)," "Ph.D. (ABD)," "License Eligible," "Candidate for Licensure," or "Board Eligible." The use of a title that claims a potential or future degree or qualification is a violation of A.R.S. § 32-2061 et seq.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona

An attorney who is not a member of the State Bar of Arizona shall not represent a party before the Board unless the attorney is admitted to practice *pro hac vice* before the Board under Rule 38(a) of the Rules of the Supreme Court of Arizona.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-305. Confidentiality of Investigative Materials

- A.** A psychologist shall not disclose a confidential record, as defined by R4-26-101, that relates to a Board investigation to any person or entity other than the psychologist's attorney, except:
1. A redacted summary that ensures the anonymity of the client or patient;
 2. Information regarding the nature of a complaint, the processes utilized by the Board, and the outcomes of a case;
 3. As required by law;
 4. As required by a court order compelling production; or
 5. If disclosure is protected under the United States or Arizona Constitutions.
- B.** A psychologist who violates this Section commits an act of unprofessional conduct.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-306. Renumbered

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3).

R4-26-307. Renumbered

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3).

R4-26-308. Rehearing or Review of Decision

- A.** Except as provided in subsection (G), any party in a contested case or appealable agency action before the Board who is aggrieved by a Board order or decision may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for rehearing or review. For purposes of this subsection, service is complete on personal service or five days after the date that a Board order or decision is mailed to the party's last known address.
- B.** A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A party may file a response within 15 days after service of the motion or amended motion by any other party. The Board may require written briefs regarding the issues raised in the motion and may provide for oral argument.
- C.** The Board may grant rehearing or review of a Board order or decision for any of the following causes materially affecting the moving party's rights:
1. An irregularity in the administrative proceedings of the agency, its hearing officer, or the prevailing party, or any order or abuse of discretion that caused the moving party to be deprived of a fair hearing;
 2. Misconduct of the Board, its hearing officer, or the prevailing party;
 3. An accident or surprise that could not be prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
 7. The order or decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties, on all or part of the issues, for any of the reasons specified in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only the matters specified.
- E.** Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.
- F.** When a motion for rehearing or review is based on affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board for good cause or by written agreement of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.
- G.** If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.
- H.** For purposes of this Section, "contested case" is defined in A.R.S. § 41-1001 and "appealable agency action" is defined in A.R.S. § 41-1092.
- I.** A person who files a complaint with the Board against a licensee:
1. Is not a party to:
 - a. A Board administrative action, decision, or proceeding; or
 - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
 2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Historical Note

Former Section R4-26-10 renumbered and adopted as R4-26-57 effective July 27, 1979 (Supp. 79-4). Amended subsection (c)(4)

effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-157 effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-309. Complaints against Judicially Appointed Psychologists

- A. A.R.S. § 32-2081(B) applies when a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order even if the psychologist is not specifically named in the court order.
- B. If a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order, the Board shall return the complaint to the complainant with instructions that the court issuing the order must find there is a substantial basis to refer the complaint for consideration by the Board.

Historical Note

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-310. Disciplinary Supervision

; Practice Monitor

- A. If the Board determines, after a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10, after an informal interview under A.R.S. § 32-2081(K), or through an agreement with the Board, that to protect public health and safety and ensure a licensee's ability to engage safely in the practice of psychology, it is necessary to require that the licensee practice psychology for a specified term under another licensee who provides supervision or service as a practice monitor, the Board shall enter into an agreement with the licensee or issue an order regarding the disciplinary supervision or practice monitoring.
- B. Payment between a licensee and supervisor or practice monitor.
1. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under the supervision of another licensee may pay the supervising licensee for the supervisory service;
 2. A licensed psychologist who provides supervisory service to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under supervision may accept payment for the supervisory service;
 3. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under a practice monitor may pay the practice monitor for the service provided; and
 4. A licensed psychologist who provides practice monitoring to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under a practice monitor may accept payment for the service provided.
- C. A licensed psychologist who supervises or serves as a practice monitor for a licensed psychologist who has entered an agreement with the Board or been ordered by the Board to practice psychology under supervision or with a practice monitor is professionally responsible only for work specified in the agreement or order.

Historical Note

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

ARTICLE 4. BEHAVIOR ANALYSIS

R4-26-401. Definitions

- A. The definitions in A.R.S. § 32-2091 apply in this Article.
- B. Additionally, in this Article:
1. "Accredited" means an institution of higher education:
 - a. In the U.S. is listed with the Council for Higher Education Accreditation,
 - b. In Canada is a member of the Universities Canada, and
 - c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.
 2. "Advertising" means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
 3. "Applicant" means an individual who applies to the Board for an initial or renewal license.
 4. "BACB" means the Behavior Analyst Certification Board.
 5. "Confidential information" means:
 - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client's diagnosis, treatment, or personal family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
 - ii. Home address, telephone number, and e-mail address;
 - iii. Test scores;
 - iv. Date of birth;
 - v. Place of birth; and
 - vi. Social Security number.
 6. "Gross negligence" means an extreme departure from the ordinary standard of care.
 7. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
 8. "License period" means:
 - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
 - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
 9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
 - a. Nature of the alleged conduct,

- b. Severity of the alleged conduct,
 - c. Recentness of the alleged conduct,
 - d. Actions taken by the applicant to remedy potential violations, and
 - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
10. "Party" means the Board, an applicant, a licensee, or the state.
11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
14. "Renewal year" means:
- a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
 - b. Each even-numbered year for a licensee who holds an even-numbered license.
15. "Supervised experience" means supervised independent fieldwork, practicum, or intensive practicum.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-402. Fees and Charges

- A.** As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
- 1. Application for an active license: \$350;
 - 2. Renewal of an active license: \$500;
 - 3. Renewal of an inactive license: \$85;
 - 4. Issuance of an initial license: \$500; and
 - 5. Reinstatement of expired license: \$200.
- B.** As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
- 1. Duplicate license: \$25;
 - 2. Duplicate renewal receipt: \$5;
 - 3. Copy of the Board's statutes and rules: \$5;
 - 4. Verification of a license: \$2;
 - 5. Audio recording of a Board meeting: \$10 per meeting;
 - 6. Electronic medium containing the name and address of all licensees: \$.05 per name;
 - 7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
 - 8. Customized electronic medium: \$.35 per name; and
 - 9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
- C.** Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-403. Application for Initial License

- A.** An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall submit an application form, which is available from the Board office and on its website, and provide the following information:
- 1. Full name;
 - 2. Other names by which the applicant is or ever has been known;
 - 3. Home address and telephone number;
 - 4. Business name and address;
 - 5. Work telephone and fax numbers;
 - 6. E-mail address;
 - 7. Gender;
 - 8. Date of birth;
 - 9. Social Security number;
 - 10. An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;
 - 11. Place of birth;
 - 12. A statement of whether the applicant:
 - a. Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;
 - b. Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;
 - c. Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;
 - e. Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;
 - f. Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;
 - i. Is or ever has been under investigation by any professional organization, health care institution, provider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the

investigation;

- j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently; and
13. The applicant's signature attesting that all statements in the application are true in every respect.
- B.** Additionally, an applicant shall submit:
- 1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
 - 2. The application fee required under R4-26-402;
 - 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 - 4. The Board's Mandatory Confidential Information form.
- C.** Additionally, an applicant shall ensure that the following is submitted directly to the Board:
- 1. Verification the applicant passed the examination referenced in R4-26-404 submitted by the BACB;
 - 2. Verification of supervised experience submitted by an individual with direct knowledge of the supervised experience;
 - 3. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree;
 - 4. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; and
 - 5. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-404. Examination Requirement

To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB for Board Certified Behavior Analysts as part of its certification process.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-404.1. Education Requirement

- A.** This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B.** To be licensed as a behavior analyst in Arizona, an individual shall have a master's degree or higher from an accredited institution of higher education in:
 - 1. Behavior analysis, education, psychology, or another subject area related to behavior analysis acceptable to the Board; or
 - 2. A degree program in which the applicant completed a BACB-approved course sequence.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-405. Coursework Requirement

- A.** This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B.** To be licensed as a behavior analyst in Arizona, an individual shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under R4-26-404.1, 270 classroom hours of graduate-level instruction. The individual shall ensure that the classroom hours include the following content areas:
 - 1. Ethical and professional conduct in behavior analysis: 45 hours;
 - 2. Concepts and principles of behavior analysis: 45 hours;
 - 3. Research methods in behavior analysis: 45 hours:
 - a. Measurement and data analysis: 25 hours; and
 - b. Experimental design: 20 hours;
 - 4. Applied behavior analysis: 105 hours:
 - a. Fundamental elements of behavior change and specific behavior change procedures: 45 hours;
 - b. Identification of the problem and assessment: 30 hours;
 - c. Intervention and behavior change considerations: 10 hours;
 - d. Behavior change systems: 10 hours; and
 - e. Implementation, management, and supervision: 10 hours; and
 - 5. Discretionary content related to behavior analysis: 30 hours.
- C.** The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program approved by the BACB.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-406. Ethical Standard

The Board incorporates by reference BACB Professional and Ethical Compliance Code for Behavior Analysts, January 1, 2016, published by the BACB and available for review at the Board office and online at www.BACB.com. The incorporated material includes no later editions

or amendments.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-407. License by Reciprocity

An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-403 and submitting evidence that the individual is licensed or certified as a behavior analyst in good standing and:

1. Obtained a graduate degree from an accredited institution of higher education in a subject area specified in R4-26-404.1;
2. Completed a minimum of 1,500 hours of supervised experience;
3. Completed a minimum of 270 classroom hours of graduate-level instruction in the content areas listed in R4-26-405 or was certified as a behavior analyst by the BACB before January 1, 2015; and
4. Passed the examination referenced in R4-26-404.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-408. License Renewal

- A.** Beginning May 1, 2017, a license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B.** The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C.** To renew a license, a licensee shall, on or before the last day of the licensee's birth month during the licensee's renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website, and provide the following information:
1. License number;
 2. Name;
 3. Other names by which the licensee is or ever has been known;
 4. Home address and telephone number;
 5. Business name and address;
 6. Work telephone and fax number;
 7. E-mail address;
 8. Date of birth;
 9. Social Security number;
 10. BACB certificate number, if applicable;
 11. A statement of whether the licensee:
 - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;
 - b. Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;
 - c. Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;
 - e. Is currently a member of a professional association and if so, the name of the professional association;
 - f. Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;
 - i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;
 - j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Currently uses alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis safely and competently;
 12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;
 13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and
 14. The licensee's signature attesting that the information provided is true in every respect.
- D.** Additionally, to renew a license, a licensee shall submit:
1. The license renewal fee required under R4-26-402;
 2. If the documentation previously submitted under R4-26-403(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
 3. The Board's Mandatory Confidential Information form.

- E. If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F. Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G. A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:
 1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
 2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
 3. The license renewal and license reinstatement fees.
- H. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
 1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
 2. Providing proof of competency and qualifications to the Board.
- I. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-409. Continuing Education Requirement

- A. A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.
- B. During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.
- C. A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:
 1. College or university graduate coursework that directly relates to behavior analysis and is provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed; a course syllabus and transcript are required for documentation;
 2. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation; a certificate or letter from the BACB-approved provider is required for documentation;
 3. Self-study, online, or correspondence course that is directly related to behavior analysis and offered by BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
 4. Teaching a continuing education program offered by a BACB-approved provider or teaching a graduate university or college course offered by an accredited educational institution: One hour of continuing education for each hour taught; for graduate courses taught, 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;
 5. Credentialing activities or events pre-approved for continuing education and initiated by the BACB: One hour of continuing education for each hour of participation; documentation from the BACB is required;
 6. Publication of a peer-reviewed article or text book on the practice of behavior analysis or serving as a reviewer or action editor of an article pertaining to behavior analysis: eight hours of continuing education for one publication and one hour of continuing education for one review; and
 7. Attending a Board meeting: Three hours for attending a morning or afternoon session of a Board meeting and six hours for attending a full-day Board meeting.
- D. The number of hours of continuing education is limited as follows:
 1. No more than 50 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(4). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than once during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
 2. No more than 25 percent of the required hours may be obtained from continuing education under each of subsections (C)(3), (5), and (6).
 3. No more than six of the required hours may be obtained under subsection (C)(7). Hours obtained under subsection (C)(7) may be used to complete the ethics requirement under subsection (A).
 4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E. A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
 1. Name of the licensee;
 2. Title of the continuing education;
 3. Name of the continuing education provider;
 4. Date, time, and location of the continuing education; and
 5. Number of hours of continuing education obtained.
- F. A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.
- G. The Board may audit a licensee's compliance with the continuing education requirement. The Board may deny license renewal or take other disciplinary action against a licensee who fails to obtain or document the required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding the continuing education hours.
- H. A licensee who cannot comply with the continuing education requirement for good cause may seek an extension of time in which to comply by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-408.

1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
2. The Board shall not grant an extension longer than one year.
3. A licensee who obtains hours of continuing education during an extension of time provided by the Board shall ensure the hours are reported only for the license period extended.
4. A licensee who cannot comply with the continuing education requirement within an extension may apply to the Board for inactive license status under A.R.S. § 32-2091.06(E).

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-410. Voluntary Inactive Status

- A.** A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:
1. The behavior analyst no longer provides behavior analysis services in Arizona,
 2. The behavior analyst is retired, or
 3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B.** To place a license on inactive status, a licensee shall comply with R4-26-408.
- C.** To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before the last day of the licensee's birth month during the licensee's renewal year.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-411. License Reinstatement

- A licensee seeking reinstatement from an inactive to an active license shall:
1. Comply with the provisions of R4-26-408(C) and (D);
 2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
 3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-412. Client Records

- A.** A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B.** A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C.** A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.
- D.** Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E.** A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F.** A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G.** The provisions of this Section apply to all licensees including those on inactive status.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number

- A.** The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.
- B.** A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-414. Complaints and Investigations

- A.** Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:
1. An individual licensed under this Article; or
 2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B.** Complaint requirements. A complainant shall:
1. Submit the complaint to the Board in writing; and
 2. Provide the following information:
 - a. Name and business address of licensee or other individual who is the subject of complaint;
 - b. Name and address of complainant;
 - c. Allegations constituting unprofessional conduct;
 - d. Details of the complaint with pertinent dates and activities;
 - e. Whether the complainant has contacted any other organization regarding the complaint; and
 - f. Whether the complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking

R4-26-415. Informal Interview

- A.** As authorized by A.R.S. § 32-2091.09(H), the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.
- B.** The Board shall ensure that the written notice of informal interview contains the following information:
1. The time, date, and place of the informal interview;
 2. An explanation of the informal nature of the proceedings;
 3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
 4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
 5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
 6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
 7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C.** The Board shall ensure that an informal interview proceeds as follows:
1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
 2. Introduction of the Board members, staff, and Assistant Attorney General present;
 3. Swearing in of the respondent, complainant, and witnesses;
 4. Brief summary of the allegations and purpose of the informal interview;
 5. Optional opening comment by the respondent and complainant;
 6. Questioning of the respondent and witnesses by the Board;
 7. Questioning of the complainant by the respondent through the Chair;
 8. Optional additional comments by the respondent and complainant; and
 9. Deliberation by the Board.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-416. Rehearing or Review of Decision

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or an administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 7. The findings of fact or a decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
- I.** An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-417. Licensing Time Frames

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time frames:
1. Initial license.
 - a. Overall time frame: 120 days,
 - b. Administrative completeness review time frame: 30 days, and
 - c. Substantive review time frame: 90 days; and
 2. Renewal license.
 - a. Overall time frame: 150 days,
 - b. Administrative completeness review time frame: 60 days, and
 - c. Substantive review time frame: 90 days.
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time frames by no more than 25% of the overall time frame.
- C.** The administrative completeness review time frame begins when the Board receives the application materials required under R4-26-403 or R4-26-408(C) and (D). During the administrative completeness review time frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.

- D.** An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E.** Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time frame listed in subsection (A)(1)(b) or (A)(2)(b).
- F.** The substantive review time frame begins on the date of the Board's notice of administrative completeness.
- G.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H.** An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- I.** An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.
- J.** Within the overall time frame listed in subsection (A), the Board shall:
1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
 2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- K.** If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).
- L.** If the Board denies a license, the Board shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
 3. The time for appealing the denial; and
 4. The applicant's right to request an informal settlement conference.
- M.** If a time frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-418. Mandatory Reporting Requirement

- A.** As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.
- B.** A list of reportable misdemeanors is available on the Board's website.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

As of February 4, 2019

32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.
2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.
3. "Board" means the state board of psychologist examiners.
4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
5. "Committee on behavior analysts" means the committee established by section 32-2091.15.
6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.
7. "Health care institution" means a facility as defined in section 36-401.
8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.
9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.

11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.

12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

- (l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client or patient, a student or a supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any

psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

32-2062. Board; qualifications; appointments; terms; compensation; immunity

A. The state board of psychologist examiners is established consisting of ten members appointed by the governor pursuant to section 38-211.

B. Each member of the board shall be a citizen of the United States and a resident of this state at the time of appointment. Seven members shall be licensed pursuant to this chapter, and three shall be public members who are not eligible for licensure. The board shall have at all times, except for the period when a vacancy exists, at least two members who are licensed as psychologists and who are full-time faculty members from universities in this state with a doctoral program in psychology that meets the requirements of section 32-2071, at least three members who are psychologists in professional practice and at least two members who are behavior analysts in professional practice and who are members of the committee on behavior analysts. The public members shall not have a substantial financial interest in the health care industry and shall not have a household member who is eligible for licensure under this chapter.

C. Each member shall serve for a term of five years beginning and ending on the third Monday in January.

D. A vacancy on the board occurring other than by the expiration of term shall be filled by appointment by the governor for the unexpired term as provided in subsection C of this section. The governor, after a hearing, may remove any member of the board for misconduct, incompetency or neglect of duty.

E. Board members shall receive compensation in the amount of one hundred dollars for each cumulative eight hours of actual service in the business of the board and reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

F. Members of the board and its employees, consultants and test examiners are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.
 2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.
 3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.
 4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursal of monies.
 5. Adopt an official seal for attestation of licenses and other official papers and documents.
 6. Investigate charges of violations of this chapter and board rules and orders.
 7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.
 8. Annually elect from among its membership a chairman, a vice-chairman and a secretary, who serve at the pleasure of the board.
 9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.
 10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.
 11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.
 12. Adopt rules regarding the use of telepractice on or before June 30, 2016.
 13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to the licensing and regulation of behavior analysts, as well as regulatory changes pertaining to the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.
- B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

32-2064. Meetings; committees; quorum

A. The board shall hold regular quarterly meetings at a time and place determined by the chairman. The board shall hold special meetings the chairman determines necessary to carry out the functions of the board.

B. The chairman may establish committees from the board membership necessary to carry out the functions of the board. The board may establish committees of licensed psychologists to act as consultants to the board. Members of consultant committees are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

C. A majority of board members constitutes a quorum and a majority vote of a quorum present is necessary for the board to take any action.

32-2065. Board of psychologist examiners fund; separate behavior analyst account

A. The board of psychologist examiners fund is established.

B. Except as provided in section 32-2081 and section 32-2091.09, subsection I, pursuant to sections 35-146 and 35-147, the board shall deposit ten percent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety percent in the board of psychologist examiners fund.

C. All monies deposited in the board of psychologist examiners fund are subject to section 35-143.01.

D. All monies deposited in the board of psychologist examiners fund pursuant to section 32-2067 and any monies received pursuant to section 32-2063, subsection C for psychologist licensing and regulation must be used only for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter and may not be used for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter.

E. All monies deposited in the board of psychologist examiners fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation must be used only for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter and may not be used for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter.

F. The board shall establish a separate account in the fund for monies transferred to the fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation.

32-2066. Directory; change of address; costs; civil penalty

A. The board shall compile and publish on its web site a directory containing:

1. The names and addresses of the officers and members of the board.
2. The names and addresses of all licensees.
3. The current board rules.
4. A copy of this chapter.
5. Additional information the board deems of interest and importance to licensees.

B. A licensee shall inform the board in writing of the licensee's current residence address, office address and telephone number within thirty days of each change in this information. The board may assess the costs incurred by the board in locating a licensee and may assess a civil penalty of not more than one hundred dollars against a licensee who fails to notify the board within thirty days from the date of any change of information required to be reported under this subsection.

32-2067. Fees; alternative payment methods

A. The board, by a formal vote at its annual fall meeting, may establish fees and penalties that do not exceed:

1. Four hundred dollars for an application for an active license to practice psychology.
2. Two hundred dollars for an application for a temporary license to practice psychology.
3. Two hundred fifty dollars for an active license.
4. Five hundred dollars for issuing an initial license. The board shall prorate this fee pursuant to subsection D of this section.
5. Fifty dollars for a duplicate license.
6. Five hundred dollars for biennial renewal of an active license.
7. Eighty-five dollars for biennial renewal of an inactive license.
8. Three hundred dollars for the reinstatement of an active or inactive license.
9. Three hundred fifty dollars for any additional examination.
10. Two hundred fifty dollars for delinquent compliance with continuing education requirements.
11. Five dollars for the sale of a duplicate renewal receipt.
12. Five dollars for the sale of a copy of the board's statutes and rules.

13. Two dollars for verification of a license.
 14. Ten dollars for the sale of each audiotape of board meetings.
 15. Five cents per name for the sale of computerized discs that contain the name of each licensee.
 16. Twenty-five cents per name for the sale of computerized discs that contain the name and address of each licensee.
 17. Thirty-five cents per name for the sale of customized computerized discs that contain additional licensee information that is not required by law to remain confidential.
 18. Twenty-five cents per page for copying records, documents, letters, minutes, applications, files and policy statements. This fee includes postage.
- B. The board may charge additional fees for services the board deems necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the service.
- C. The board shall not refund fees except as provided in section 32-2073, subsection G. On special request and for good cause the board may return the license renewal fee.
- D. The board shall prorate the fee for issuing an initial license by dividing the biennial renewal fee by twenty-four and multiplying that amount by the number of months that remain until the next biennial renewal date.
- E. Subject to the requirements of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

32-2071. Qualifications of applicant; education; training

A. An applicant for licensure shall have a doctoral degree from an institution of higher education in clinical or counseling psychology, school or educational psychology or any other subject area in applied psychology acceptable to the board and shall have completed a doctoral program in psychology from an educational institution that has:

1. Been accredited by one of the following regional accrediting agencies at the time of the applicant's graduation:
 - (a) The New England association of schools and colleges.
 - (b) The middle states association of colleges and schools.
 - (c) The north central association of colleges and schools.
 - (d) The northwest association of schools and colleges.
 - (e) The southern association of colleges and schools.

(f) The western association of schools and colleges.

2. A program that is identified and labeled as a psychology program and that stands as a recognized, coherent organizational entity within the institution with clearly identified entry and exit criteria for graduate students in the program.

3. An identifiable psychology faculty in the area of health service delivery and a psychologist responsible for the program.

4. A core program that requires each student to demonstrate competence by passing suitable comprehensive examinations or by successfully completing at least three or more graduate semester hours, five or more quarter hours or six or more trimester hours or by other suitable means in the following content areas:

(a) Scientific and professional ethics and standards in psychology.

(b) Research, which may include design, methodology, statistics and psychometrics.

(c) The biological basis of behavior, which may include physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.

(d) The cognitive-affective basis of behavior, which may include learning, thinking, motivation and emotion.

(e) The social basis of behavior, which may include social psychology, group processes, cultural diversity and organizational and systems theory.

(f) Individual differences, which may include personality theory, human development and abnormal psychology.

(g) Assessment, which includes instruction in interviewing and the administration, scoring and interpretation of psychological test batteries for the diagnosis of cognitive abilities and personality functioning.

(h) Treatment modalities, which include instruction in the theory and application of a diverse range of psychological interventions for the treatment of mental, emotional, psychological and behavioral disorders.

5. A psychology program that leads to a doctoral degree requiring at least the equivalent of three full-time academic years of graduate study, two years of which are at the institution from which the doctoral degree is granted.

6. A requirement that the student must successfully defend a dissertation, the content of which is primarily psychological, or an equivalent project acceptable to the board.

7. Official transcripts that have been prepared solely by the institution and not by the student and, except for manifest clerical errors or grade changes, have not been altered by the institution after the student's graduation.

8. Given the student credit only for coursework listed on its official transcripts and that is obtained only at regionally accredited educational institutions as listed in paragraph 1 of this subsection and does not give credit for continuing education experiences or courses.

B. If the institution is located outside the United States, the applicant shall demonstrate that the program meets the requirements of subsection A, paragraphs 2 through 7 and subsections C through M of this section.

C. The applicant shall complete relevant didactic courses of the program required under subsection A, paragraph 4 of this section before starting the supervised professional experiences as described pursuant to subsection F of this section.

D. Each applicant for licensure shall obtain three thousand hours of supervised professional work experiences. The applicant shall demonstrate clearly how the applicant met this requirement. The applicant shall obtain a minimum of one thousand five hundred hours through an internship as described in subsection F of this section. The applicant shall obtain the remaining one thousand five hundred hours through any combination of the following:

1. Supervised preinternship professional experiences as described in subsection E of this section.

2. Additional internship hours as described in subsection F of this section.

3. Supervised postdoctoral experiences as described in subsection G of this section.

E. If the applicant chooses to include up to one thousand five hundred hours of supervised preinternship professional experience to satisfy a portion of the three thousand hours of supervised professional experience, the following requirements must be met:

1. The applicant's supervised preinternship professional experiences shall reflect a faculty directed, organized, sequential series of supervised experiences of increasing complexity that follows appropriate academic coursework and that prepares the applicant for an internship.

2. The applicant's supervised preinternship professional experiences shall follow appropriate academic preparation. There must be a written training plan between the student and the graduate training program. The training plan for each supervised preinternship professional experience training site must designate an allotment of time for each training activity and must assure the quality, breadth and depth of training experience through the specification of goals and objectives of the supervised preinternship professional experience, the methods of evaluation of the student and supervisory experiences. If supervision is to be completed by qualified site supervisors at external sites, their approval must be included in the plan.

3. More than one part-time supervised preinternship professional experience placement of appropriate scope and complexity over the course of the graduate training may be combined to satisfy the one thousand five hundred hours of supervised preinternship professional experiences.

4. Every twenty hours of supervised preinternship professional experience must include the following:

- (a) At least fifty per cent of the supervised preinternship professional experiences must be in psychological service-related activities. Psychological service-related activities may include treatment,

assessment, interviews, report writing, case presentations, seminars on applied issues providing cotherapy, group supervision and consultations.

(b) At least twenty-five per cent of the supervised preinternship professional experiences must be devoted to face-to-face patient-client contact.

(c) At least one hour per week of regularly scheduled contemporaneous in-person individual supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student.

(d) After September 1, 2013, at least two hours of regularly scheduled contemporaneous supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student. At least fifty per cent of the supervision during the total supervised preinternship professional experience shall be provided through contemporaneous in-person individual supervision. Not more than fifty per cent shall be through in-person group supervision. At least seventy-five per cent of the supervision shall be by a psychologist who is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada and who is designated by the academic program. Not more than twenty-five per cent of the supervision shall be by a licensed mental health professional who is licensed or certified by a licensing jurisdiction of the United States or Canada, a psychology intern currently under the supervision of a licensed psychologist or an individual completing a postdoctoral supervised experience currently under the supervision of a licensed psychologist.

5. The applicant must provide to the board the written training plan developed by the applicant's program and documentation of the total hours accrued by the applicant during the supervised preinternship professional experience, including the number of face-to-face patient-client contact hours and the amount of supervision and qualifications of the supervisors for the entire supervised preinternship professional experiences. Documentation must include an acknowledgement that ethics training was included throughout the supervised preinternship professional experience.

6. Supervised professional preinternship experiences must be completed within seventy-two months.

F. The applicant shall have one thousand five hundred hours of supervised professional experience, which shall be either an internship that is approved by the American psychological association committee on accreditation, an internship that is a member of the association of psychology postdoctoral and internship centers or an organized training program that is designed to provide the trainee with a planned, programmed sequence of training experience, the focus and purpose of which are to assure breadth and quality of training, and that meets the following requirements:

1. The training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training and who is licensed or certified to practice psychology at the independent level by any licensing jurisdiction of the United States or Canada in which the program exists.

2. The training program provides at least two psychologists on staff as supervisors, at least one of whom is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada in which the program exists and at least one of whom is directly available to the trainee in case of emergency.

3. Supervision is provided by the person who carries clinical responsibility for the cases being supervised. At least half of the training supervision shall be provided by one or more psychologists.

4. Training includes a range of assessment, consultation and treatment activities conducted directly with clients or patients.

5. A minimum of twenty-five per cent of a trainee's supervised professional experience hours is in direct client or patient contact.

6. Training includes regular in-person, individual supervision conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of experience and with the specific intent of dealing with psychological services rendered directly by the trainee and at least two additional hours per week in other learning activities. Beginning July 1, 2016, not more than fifty per cent of the in-person supervision may be completed using telepractice supervision as specified by the board by rule. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication.

7. The training program includes interaction with other psychology trainees.

8. Trainees have a title that designates their trainee status.

9. The applicant provides from the training organization a written statement that describes the goals and content of the training program and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

10. The supervised professional experience is completed within twenty-four consecutive months.

G. Not more than one thousand five hundred hours of supervised professional experience shall be postdoctoral and may start on written certification by the applicant's education program that the applicant has satisfied all requirements for the doctoral degree and on written certification that the applicant has completed an appropriate supervised professional experience as required in subsection F of this section. The applicant may complete more than one thousand five hundred hours of a supervised postdoctoral experience, but not more than one thousand five hundred hours may count towards the requirements of this subsection. The one thousand five hundred hours of supervised professional experience shall meet the following requirements:

1. Supervision is conducted by a psychologist who is licensed or certified to practice psychology at the independent level in any licensing jurisdiction of the United States or Canada in which the supervision occurs or by a psychologist who is on full-time active duty in the United States armed services and who is licensed or certified by a board of psychologist examiners in a United States jurisdiction, who has been licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience.

2. The supervisor takes full legal responsibility for the welfare of the client or patient as well as the diagnosis, intervention and outcome of the intervention and takes reasonable steps to ensure that clients or patients are informed of the supervisee's training and status and that clients or patients may meet with the supervisor at the client's or patient's request.

3. The supervisor or the appropriate custodian of records is responsible for ensuring that adequate records of client or patient contacts are maintained and that the client or patient is informed that the source of access to this information in the future is the supervisor.

4. The supervisor is fully available for consultation in the event of an emergency and provides emergency consultation coverage for the supervisee.

5. Regular in-person, individual supervision is conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of supervised professional experience. At least forty per cent of the supervisee's time shall be in direct contact with clients or patients. Beginning July 1, 2016, not more than fifty per cent of the in-person supervision may be completed using telepractice supervision as specified by the board by rule. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication technology.

6. The supervised professional experience as described in this subsection is completed within thirty-six consecutive months.

7. The applicant provides from the training organization a written training plan that describes the goals and content of the training experience and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

H. In meeting the supervised preinternship professional experience as described in subsection E of this section and the supervised professional experience as described in subsections F and G of this section, an applicant shall not receive credit for more than forty hours of experience per week.

I. An applicant who does not satisfy the supervised professional experience requirements of subsection F of this section may qualify on demonstration of twenty years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

J. An applicant who does not satisfy the supervised preinternship professional experience requirements of subsection E of this section or the supervised professional experience requirements of subsection G of this section, or a combination of subsections E and G of this section, may qualify on demonstration of ten years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

K. The applicant shall complete a residency at the institution that awarded the applicant's doctoral degree. The residency shall require the following:

1. The student's active participation and involvement in learning.

2. Direct regular contact with faculty and other matriculated doctoral students.

3. Eighteen semester hours or thirty quarter hours or thirty-six trimester hours completed within a twelve month consecutive period at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings shall include interaction between the student and faculty and the student and other students and shall relate to the program content areas specified in subsection A, paragraph 4 of this section. These meetings shall be in addition to the supervised preinternship professional experience, clerkship or externship supervision hours or dissertation hours. On request by the board, the applicant shall obtain documentation from the institution showing how the applicant's performance was assessed and documented.

L. To determine if an applicant satisfies the requirements of subsection A relating to subject areas in applied psychology, the board may require the applicant to complete a respecialization program in a

program or professional school of psychology that has either an established American psychological association accredited doctoral program in clinical or counseling psychology or school or educational psychology or an established doctoral program that meets board rules. The applicant must also:

1. Meet all of the requirements of the new respecialization area. The board shall give the applicant credit for coursework that the applicant has previously successfully completed and that meets the requirements of subsection A, paragraph 4 of this section.
2. Complete one thousand five hundred hours of supervised professional experience as prescribed in subsection F of this section.
3. Present a certificate or letter from the department head, training director or dean that verifies that the applicant completed the program and that identifies the specialty area of applied psychology the applicant completed.

M. For the purposes of subsection A, paragraph 4 of this section, "other suitable means" means that an applicant demonstrates competence by being a diplomate of the American board of professional psychology or, if an applicant fails to demonstrate completion of coursework in two content areas prescribed in subsection A, paragraph 4 of this section, the applicant has fulfilled the two deficient requirements by successfully passing a graduate course in each deficient content area as a nonmatriculated student in a doctoral level psychology program at a university that is accredited pursuant to subsection A, paragraph 1 of this section.

32-2071.01. Requirements for licensure; remediation; credentials

A. An applicant for licensure shall demonstrate to the board's satisfaction that the applicant:

1. Has met the education and training qualifications for licensure prescribed in section 32-2071 or subsection D of this section.
2. Has passed any examination or examinations required by section 32-2072.
3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter.
4. Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.
5. Has not voluntarily surrendered a license in another regulatory jurisdiction in the United States or Canada while under investigation for conduct that relates to unprofessional conduct.
6. Does not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or Canada that relates to unprofessional conduct.

B. If the board finds that an applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, or if the board or any jurisdiction has taken disciplinary action against an applicant, the board may issue a license if the board first determines to its satisfaction that the act or conduct has been corrected, monitored or resolved. If the act or conduct has not been resolved

before issuing a license, the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

C. An applicant for licensure meets the requirements of section 32-2071, subsection A, paragraphs 1, 2, 3, 4, 5, 6 and 8 if the applicant earned a doctoral degree from a program that was accredited by the American psychological association, office of program consultation and accreditation at the time of graduation.

D. An applicant for licensure who is licensed to practice psychology at the independent level in another licensing jurisdiction of the United States or Canada meets the requirements of subsection A, paragraph 1 of this section if the applicant meets any of the following requirements:

1. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.
2. Is currently credentialed by the national register of health service providers in psychology or its successor and submits evidence of having practiced psychology independently at the doctoral level for a minimum of five years.
3. Is a diplomate of the American board of professional psychology.

32-2072. Examinations; exemptions

A. An applicant for licensure must pass the examination for professional practice in psychology, which is the national examination established by the association of state and provincial psychology boards. An applicant is considered to have passed the national examination if the applicant's score equals or exceeds either:

1. Seventy per cent on the written examination.
2. A scaled score of five hundred on the computer-based examination.

B. The board may implement an additional examination for all applicants to cover areas of professional ethics and practice consistent with the applicant's education and experience, state law relating to the practice of psychology or other areas the board determines are suitable.

C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article. The board may approve an applicant who has obtained a doctoral degree in psychology as required under section 32-2071 to take the national examination before completing the experience requirements of this article. Except as provided in subsection D of this section, an applicant may not take an additional board examination until the applicant passes the national examination. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

D. An applicant is exempt from taking the national examination administered pursuant to this section if the applicant either:

1. Is a diplomate of the American board of professional psychology.

2. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

32-2073. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination it may issue a temporary license to a psychologist licensed or certified under the laws of another jurisdiction, if the psychologist applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. Beginning January 1, 2015, the board may issue a temporary license to an individual who submits an application for temporary licensure and who is working under supervision for postdoctoral experience and who meets the requirements of section 32-2071, subsections A, B, C and D, as applicable. The individual's postdoctoral experience must meet the requirements of section 32-2071, subsection G. The applicant shall submit the written training plan for the supervised professional experience required in section 32-2071, subsection G, paragraph 7 as part of the application for the temporary license.

C. A temporary license issued pursuant to subsection A of this section is effective from the date that the application is approved until the last day of the month in which the applicant receives the results of the additional examination as provided in section 32-2072.

D. A temporary license issued pursuant to subsection A of this section shall not be extended, renewed, reissued or allowed to continue in effect beyond the period authorized by this section.

E. A temporary license issued pursuant to subsection B of this section is effective for thirty-six months from the date the application is approved and is subject to an initial license fee pursuant to section 32-2067, subsection A, paragraph 4. A temporary license is not subject to renewal.

F. Denial of an application for licensure terminates a temporary license.

G. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a psychologist due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A psychologist who is retired is exempt from paying the renewal fee. A psychologist may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the psychologist shall not practice as a psychologist in this state for the duration of the voluntary inactive status and paying the required fee.

H. A psychologist who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A psychologist on inactive status due to physical or mental incapacity or disability or retirement shall use the term inactive to describe the person's status and shall not practice as a psychologist.

I. A psychologist on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this chapter and whether the person has maintained and updated the person's professional knowledge and capability to practice as a psychologist. The board may require the person to take or retake the licensure

examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2074. Active license; issuance; renewal; expiration; continuing education; cancellation of active license

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this chapter, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Except as provided in section 32-4301, beginning May 1, 2017, a person holding an active or an inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.

2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee within two months after the last day of the licensee's birth month in that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this chapter. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national psychology ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice psychology in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of psychology in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. On request of an active licensee, the board may cancel the license if the licensee is not presently under investigation by the board and the board has not initiated any disciplinary proceeding against the licensee.

32-2075. Exemptions from licensure

A. This chapter does not limit the activities, services and use of a title by the following:

1. A school psychologist employed in a common school, high school or charter school setting and certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.
 2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and is supervised by a doctorate position employee who is licensed as a psychologist, including a temporary licensee.
 3. A student of psychology pursuing an official course of graduate study at an educational institution accredited as provided in section 32-2071, if after the title the word "trainee", "intern" or "extern" appears and the student uses the title only in conjunction with activities and services that are a part of the supervised program.
 4. A person who resides outside of this state and who is currently licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada if the activities and services conducted in this state are within the psychologist's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this chapter and the client or patient, public or consumer is informed of the limited nature of these activities and services and that the psychologist is not licensed in this state. A person may exceed the twenty-day limitation requirement of this paragraph to assist in public service that is related to a disaster as acknowledged by the board.
 5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state or other institutional services if the services are a part of the faculty duties of that person's salaried position, with the exception of faculty providing direct services or faculty providing supervision of students providing direct services, and the person has received a doctoral degree as provided in section 32-2071.
 6. A supervisee who is pursuing a supervised professional experience pursuant to section 32-2071, subsection G if the services or activities are provided under the direct supervision of a licensed psychologist who is licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience, clients or patients are informed of the training nature of the services provided and the supervisee has a title that designates that person's training status.
- B. This chapter does not prevent a member of other recognized professions that are licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a psychologist.

32-2076. Unauthorized practice of medicine

This chapter does not authorize a person to engage in any manner in the practice of medicine pursuant to chapter 13, 17 or 29 of this title, except that a person licensed as provided in this chapter may diagnose, treat and correct human conditions ordinarily within the scope of the practice of a psychologist.

32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to

the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology.

B. The board shall not consider a complaint against a psychologist arising out of a judicially ordered evaluation, treatment or psychoeducation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.

C. A claim of unprofessional conduct brought on or after July 3, 2015 against a psychologist arising out of court-ordered services shall be independently reviewed by three members of the board, including a public member. Each of the three board members who are reviewing the claim shall independently provide the board's executive director a recommendation indicating whether the member believes there is merit to open an investigation. If one or more of the board members who are reviewing the claim determine that there is merit to open an investigation as a complaint, an investigation shall be opened and shall follow the complaint process pursuant to this article.

D. The board may not consider a complaint for administrative action if the complaint is filed against a person who is a licensed psychologist and who is a member of the board or a staff member of the board or who is acting as an agent of or consultant to the board if the complaint relates to the person's performance of board duties.

E. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days of receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

F. A health care institution shall inform the board if the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

G. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

H. The chairperson of the board shall appoint a complaint screening committee of not less than three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. The complaint screening committee shall review all complaints, and based on the information provided pursuant to subsection A or F of this section may take either of the following actions:

1. Dismiss the complaint if the committee determines that there is no evidence of a violation of law or community standards of practice. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.

2. Refer the complaint to the full board for further review and action.

I. If the board finds, based on the information it receives under subsection A or F of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

J. If the board finds that the information provided pursuant to subsection A or F of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

K. If the board believes the information provided pursuant to subsection A or F of this section is or may be true, it may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

32-2082. Right to examine and copy evidence; subpoenas; right to counsel; appeal

A. In connection with an investigation conducted pursuant to this chapter, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice psychology.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A of this section. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. No documents may be released without a court order compelling their production.

F. Nothing in this section or any other provision of law making communications between a psychologist and client or patient privileged applies to an investigation conducted pursuant to this chapter. The board, its employees and its agents shall keep in confidence the names of clients or patients whose records are reviewed during an investigation.

32-2083. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person not licensed pursuant to this chapter from practicing psychology.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of psychology, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of psychology without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this chapter.

32-2084. Violations; classification

A. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to engage in the practice of psychology.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice psychology pursuant to this chapter by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice psychology.

C. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to:

1. Use the designation "psychology", "psychological" or "psychologist".
2. Use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice psychology in this state.

D. It is a class 2 misdemeanor for a person not licensed or not exempt from licensure pursuant to this chapter to use the designation "psychotherapist" or other derivation of the root word "psycho".

32-2085. Confidential communications

A. The confidential relations and communication between a client or patient and a psychologist licensed pursuant to this chapter, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client or patient waives the psychologist-client privilege in writing or in court testimony, a psychologist shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the psychologist's practice. The psychologist shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The psychologist-client privilege does not extend to cases in which the psychologist has a duty to report information as required by law.

B. The psychologist shall ensure that client or patient records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the psychologist.

32-2086. Treatment and rehabilitation program

A. The board may establish a confidential program for the treatment and rehabilitation of psychologists who are impaired. The treatment and rehabilitation may include education, intervention, therapeutic treatment and posttreatment monitoring and support. The licensee is responsible for the costs associated with the treatment and rehabilitation, including monitoring.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each psychologist's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired psychologist whom the treating organization believes to be a danger to the public or to the psychologist.
5. Reports to the board, as soon as possible, of the name of a psychologist who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-2067 for the operation of the program established by this section.

D. A psychologist who is impaired and who does not agree to enter into a stipulated order with the board shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a psychologist who has been placed on a probation order or who has entered into a stipulation order pursuant to this section is not impaired by alcohol or illegal substances after that order is no longer in effect, the board or its designee may require the psychologist to submit to bodily

fluid examinations and other examinations known to detect the presence of alcohol or illegal substances at any time within the five consecutive years following termination of the probationary or stipulated order.

F. A psychologist who is impaired by alcohol or illegal substances and who was under a board stipulation or probationary order that is no longer in effect must ask the board to place the psychologist's license on inactive status with cause. If the psychologist fails to do this, the board shall summarily suspend the license pursuant to section 32-2081. In order to reactivate the license the psychologist must successfully complete a board approved long-term care residential treatment program, an inpatient hospital treatment program or an intensive outpatient treatment program and shall meet the requirements of section 32-2074. After the psychologist completes treatment the board shall determine if it should reactivate the license without restrictions or refer the matter to a formal hearing for the purpose of suspending or revoking the license or to place the psychologist on probation with restrictions necessary to ensure the public's safety.

G. The board may revoke the license of a psychologist if that psychologist is impaired by alcohol or illegal substances and was previously placed on probation pursuant to subsection F of this section. If the licensee is no longer on probation, the board may accept the surrender of the license if the psychologist admits in writing to being impaired by alcohol or illegal substances.

H. An evaluator, treatment provider, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a psychologist who is attending the program pursuant to board action.

32-2087. Psychology interjurisdictional compact

32-2087.01. Participation in compact as condition of employment; prohibition

An employer may not require a psychologist to seek licensure through the psychology interjurisdictional compact enacted by section 32-2087 as a condition of initial or continued employment as a psychologist in this state. An employer may require that a psychologist obtain and maintain a license to practice psychology in multiple states, if the psychologist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

32-2087.02. Open meeting requirements

If a meeting, or a portion of a meeting, of the psychology interjurisdictional compact commission is closed pursuant to section 32-2087, article X, subsection B, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

32-2087.03. State board of psychologist examiners; notice of commission actions

The state board of psychologist examiners, within thirty days after a psychology interjurisdictional compact commission action, shall post on the board's public website notice of any commission action that may affect a psychologist's license.

32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.
5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.
6. "Client" means:
 - (a) A person or entity that receives behavior analysis services.
 - (b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.
 - (c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.
7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.
8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.
9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.
10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.
11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.
12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:

- (a) Obtaining a fee by fraud or misrepresentation.
- (b) Betraying professional confidences.
- (c) Making or using statements of a character tending to deceive or mislead.
- (d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.
- (e) Gross negligence in the practice of a behavior analyst.
- (f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.
- (g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.
- (h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.
- (i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.
- (k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.
- (l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.

- (q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client, student or supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.
- (cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.
- (dd) Violating an ethical standard adopted by the board.

(ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

32-2091.01. Fees

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

32-2091.02. Qualifications of applicant

Beginning January 1, 2011, a person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.
7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

32-2091.03. Educational and training standards for licensure

An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt standards consistent with the standards set by a nationally recognized behavior analyst certification board, except that the number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience or independent fieldwork, university practicum or intensive university practicum. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.
4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.
5. Meets any other requirements prescribed by the board by rule.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction, if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

A. Beginning May 1, 2017, if the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Beginning May 1, 2017, a person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.

2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known e-mail address of record in the board's file. Notice is complete at the time of deposit in the mail or when the e-mail is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

32-2091.08. Exemptions from licensure

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. The committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or C of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or C of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or C of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, it may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.
6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or C of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant

to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.

F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

32-2091.11. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person who is not licensed pursuant to this article from practicing behavior analysis.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

32-2091.12. Violations; classification

A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice pursuant to this article by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.

C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

32-2091.13. Confidential communications

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the Arizona health care cost containment system administration shall recognize a behavior analyst who is licensed pursuant to this article as a behavioral health professional who is eligible for reimbursement of services.

32-2091.15. Committee on behavior analysts; membership; duties; board responsibilities

A. The committee on behavior analysts is established within the state board of psychologist examiners consisting of five members who are appointed by the governor and who serve at the pleasure of the governor. Each member shall serve for a term of five years beginning and ending on the third Monday in January. A committee member may not serve more than two full consecutive terms.

B. All members of the committee shall be licensed behavior analysts in professional practice, two of whom shall be members of the board. The committee shall annually elect a chairperson from among its membership.

C. Within one year after their initial appointment to the committee, members shall receive at least five hours of training prescribed by the board that includes instruction in ethics and open meeting requirements.

D. committee members shall receive reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

E. The committee shall make recommendations to the board on all matters relating to the licensing and regulation of behavior analysts. The committee may recommend regulatory changes to the board that are not specific to an individual licensee, but the committee shall obtain public input from behavior analyst licensees or their designated representatives before making any final recommendation to the board.

DEPARTMENT OF ECONOMIC SECURITY (F19-0807)

Title 6, Chapter 5, Article 52, Certification and Supervision of Family Child Care Home Providers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F19-0807)
Title 6, Chapter 5, Article 52, Certification and Supervision of Family Child Care Home Providers

This Five Year Review Report (5YRR) from the Department of Economic Security (Department) relates to rules in Title 6, Chapter 5, Article 52 regarding the certification and supervision of family child care home providers.

The Department notes that it completed the proposed course of action in the previous 5YRR for these rules, which the Council approved on September 9, 2014. The Department stated in the previous 5YRR that it would complete a draft of amendments to Article 52, in response to anticipated federal changes and to make changes identified in the previous 5YRR, by February 2015. It also stated that after gathering input from stakeholders, it planned to submit a Notice of Final Rulemaking to the Council by March 2016 that would at a minimum, amend R6-5-5202 (Initial Application for Certification), R6-5-5207 (Maintenance of Certification; General Requirements; Training), R6-5-5217 (Meals and Nutrition), and R6-5-5219 (Recordkeeping; Unusual Incidents; Immunizations).

On May 16, 2016, the Health and Safety Institute submitted a rulemaking petition to the Department which identified further concerns with the rules. Specifically, it wanted the Department to amend the rules to permit training and certifications using hybrid (blended) learning approaches in addition to the traditional classroom approach for CPR/FA training.

The Department addressed the concerns in the petition, as well as made technical and clarifying amendments to R6-5-5201 and the rules listed above, in a Notice of Final Rulemaking dated November 11, 2016.

Proposed Action

The Department notes that it previously requested an exception to the rulemaking moratorium to make amendments to Article 52 to comply with Child Care Development Fund (CCDF) regulations in 45 CFR 98 on October 26, 2016, and resubmitted the request on July 7, 2017. The proposed amendments would ensure compliance in the rules with certain requirements identified in the Department's 5YRR. However, the request for an exception was denied on August 30, 2018.

The Department indicates that it is not seeking to amend these rules at this time.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department believes that stakeholders received the "intangible benefits that rise from having clearly defined rules" and that other changes to the rules have resulted in greater flexibility and cost-savings to DES-child care providers without adversely affecting public health and safety.

Stakeholders include the Department, consumers, regulated Family Child Care Homes, DES-certified child care providers, and organizations that deliver a cardiopulmonary resuscitation/first aid (CPR/FA) combined course that conform to the guidelines of the American Red Cross or American Heart Association.

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

The Department states that based on an analysis by its program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective. The Department states that amendments to align the rules with federal statutes and regulations could improve the clarity, conciseness, and understandability of the rules, as well as reduce the burden and costs related with staff assistance and rework.

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

Yes. On December 21, 2018, the Department received a letter from the Federal Office of Child Care. This letter stated that the Department did not fully implement provisions of 45 CFR 98.16(aa) relating to a disaster preparedness and response plan and 45 CFR 98.43, relating to criminal background checks.

In response, the Department developed a Corrective Action Plan (CAP) for the areas of deficiency and replied to the Federal Office of Child Care on March 15, 2019. The Federal Office of Child Care accepted the CAP and the Department is currently taking the necessary steps to meet applicable requirements.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department identifies rules that have issues with clarity, conciseness, understandability, and effectiveness and states the reason(s) why. The Department also identifies certain other rules that are not consistent with applicable federal laws and regulations and a state statute (A.R.S. § 8-451, transferring authority over Child Protective Services to the Department of Child Safety).

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department identifies certain in Article 52 that are not enforced as written. For each rule listed, the Department provides an explanation for why it is not 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 Department notes that the Child Care and Development Block Grant (CCDBG) of 2014 and Child Care and Development Funds (CCDF) regulations at 45 CFR 98 and 99 are applicable to the subject of these rules. The Department states that the rules in Article 52 are not more stringent than this federal statute and regulations.

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?**

A certification for DES-child care providers meets the criteria of a general permit as it is defined in A.R.S. § 41-1001(11) and thus complies with A.R.S. § 41-1037.

9. **Conclusion**

The Department indicates that there are issues with these rules that it wants to address. The Department previously made two requests for an exemption to the rulemaking

moratorium in 2016 and 2017 to make these amendments. The request was denied on August 30, 2018. The Department indicates that it proposes to take no action on these rules at this time. Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

JUN 07 2019

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 5, Article 52. Included with the report are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report. If you have any questions, please contact Nicole Tolton, Policy Chief, Policy and Planning Administration, at (602) 542-6555.

Sincerely,

Michael Traylor
Director

Enclosure

Department of Economic Security
Title 6, Chapter 5, Article 52
Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1003, 41-1954(A)(3), and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 46-802, 46-807, 46-809, and 41-1072 through 41-1077

2. The objective of each rule:

Rule	Objective
R6-5-5201	This rule defines terms used in this Article so that any person reading the rules will understand the meaning of special terms and any terms that are not used according to their ordinary meaning.
R6-5-5202	This rule describes the initial application requirements for an individual who applies to become a DES-certified child care provider, including basic eligibility for applicants, required information to be submitted with an application, health and safety requirements, and the requirement to comply with all other regulations specified in this Article and federal, state or local laws that are applicable to providing child care services.
R6-5-5203	This rule establishes health and safety standards for a home facility in which child care services are provided. The standards include safeguarding potentially dangerous objects throughout the home and outdoor play area, having adequate space to provide child care services, having emergency exits with an evacuation plan, and specific requirements surrounding a body of water.
R6-5-5204	This rule describes the responsibilities of the Department and guidelines the Department shall use to determine the suitability of a DES-certified child care provider.
R6-5-5205	This rule establishes overall timeframes of the application process prescribed by A.R.S. § 41-1073 and includes separate time frames for determining administrative completeness and completing substantive-review of applications.
R6-5-5206	This rule establishes the requirements regarding a DES-certificate issued to a DES-certified child care provider and describes the non-transferability of the certificate from the DES-certified child care provider and location identified on the certificate.

R6-5-5207 R6-5-5207 (cont'd)	This rule establishes general requirements for a DES-certified child care provider to maintain a DES certificate, including ongoing training in child care related topics, pediatric cardiopulmonary resuscitation (CPR), and first aid. This rule also describes the requirement to maintain a valid fingerprint clearance card for child care personnel, as well as the Department's requirement to conduct announced and unannounced onsite monitoring visits to a DES-certified child care provider.
R6-5-5208	This rule establishes the conditions under which the Department may renew a DES certificate issued to a DES-certified child care provider every three years.
R6-5-5209	This rule describes the program and equipment requirements regarding children in care, including infant/toddler, preschool, and school-age children, to ensure that care is provided in a developmentally appropriate manner that enables all children to develop the emotional, social, cognitive, and physical capacities and skills they need to achieve a safe and healthy well-being.
R6-5-5210	This rule clarifies general safety and supervisory requirements for a DES-certified child care provider and addresses initiating backup care arrangements, supervision of children in care, and mandatory reporting requirements for suspected child abuse and neglect. This rule also identifies the individuals who are authorized to pick up children and the individuals who are prohibited in a DES-certified child care home.
R6-5-5211	This rule establishes adequate sanitation requirements a DES-certified child care provider shall meet to ensure the health and safety of children in care and to prevent the spread of communicable disease in a DES-certified home.
R6-5-5212	This rule describes guidelines and limitations regarding the methods a DES-certified child care provider may use when providing guidance or disciplining children in care, including the requirement to set clear time limits and providing positive guidance, redirection, and time-out.
R6-5-5213	This rule establishes supplemental guidelines for a DES-certified child care provider who chooses to provide evening and nighttime child care, including the requirement for safe equipment and bedding.
R6-5-5214	This rule establishes supplemental guidelines for a DES-certified child care provider who cares for children under the age of two years, including requirements for feeding and physical contact.

R6-5-5215	This rule establishes supplemental guidelines for a DES-certified child care provider who cares for children with special needs, including the responsibility to ensure reasonable accommodations, communication with parents, inclusion practice, and the accommodation for a private diaper changing area for children older than the age of three years.
R6-5-5216	This rule establishes supplemental safety guidelines and requirements for a DES-certified child care provider who uses a motorized vehicle to transport a child in care.
R6-5-5217	This rule provides guidelines for a DES-certified child care provider to offer healthy meals and snacks and procedures to meet special dietary needs to children in care.
R6-5-5218	This rule establishes guidelines for a DES-certified child care provider to control infectious disease, store and administer medications, and keep a written log of medication administered to children in care. This rule also provides procedures to take when a child becomes ill and describes the DES-certified child care provider's responsibility to obtain only emergency medical treatment for a child in care, when needed.
R6-5-5219	This rule establishes a system a DES-certified child care provider shall use to maintain and retain a child's medical records to ensure compliance with the immunization requirements set by Department of Health Services, including unusual incidents and immunization records or exemption affidavits. This rule also requires a DES-certified child care provider to collect and keep certain documents according to the requirements of this Article and the child care registration agreement.
R6-5-5220	This rule establishes the standards for the maximum ratio of adults to children for all DES-certified child care providers, as well as procedures the Department follows to further limit the ratio under certain circumstances, such as provision of care to children with special needs or a home facility with inadequate space.
R6-5-5221	This rule describes the requirement of a DES-certified child care provider to notify the Department of significant changes that may affect the safety and stability of child care services and the timeframe in which changes shall be reported.
R6-5-5222	This rule describes a DES-certified child care provider's responsibility to maintain a DES-approved backup provider to ensure care is provided even when the DES-certified child care provider is unable to care for the children. This rule also

	addresses the proper use of the DES-approved backup provider and clarifies the procedures for mandatory reporting to the Department and to the parents when backup care is used.
R6-5-5223	This rule describes the basis for payment to a DES-certified child care provider for the provision of child care, as well as the responsibility of a DES-certified child care provider to make financial arrangements with a DES-approved backup provider when a backup provider is used to provide child care.
R6-5-5224	This rule describes the procedures the Department uses to document and investigate a complaint received against a DES-certified child care provider.
R6-5-5225	This rule describes the procedures the Department uses when placing a DES-certified child care provider on probation, including timeframes and progressive adverse action that may result from continued noncompliance.
R6-5-5226	This rule establishes the criteria the Department uses to deny, suspend, revoke, or refuse to renew a child care certification.
R6-5-5227	This rule describes the actions the Department takes to notify a DES-certified child care provider when an adverse action is taken against the DES-certified child care provider.
R6-5-5228	This rule establishes a DES-certified provider's right to appeal an adverse action taken by the Department, clarifies appealable and non-appealable actions, and references the rules and regulations that describe hearing procedures.

3. Are the rules effective in achieving their objectives?

Yes

No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R6-5-5201	This rule is not effective because the definition for Child Protective Services (CPS) is outdated and does not reflect the shift in statutory and regulatory authority of CPS to the Department of Child Safety (DCS).
R6-5-5202	This rule is not effective because it contains outdated, vague, and incorrect information.

<p>R6-5-5202 (cont'd)</p>	<p>R6-5-5202(D)(4): A DES-certified provider cannot be a choice for backup child care services because a DES-certified provider is only certified to care for up to four children and there is no room to legally care for additional children who are cared for by another DES-certified child care provider.</p> <p>R6-5-5202(L): The language regarding immunization requirements is vague and outdated.</p> <p>R6-5-5202(M)(1): Language regarding medical recommendations are outdated and creates barriers for the applicant because the rule requires that the applicant and all household members of the applicant submit evidence of freedom from pulmonary tuberculosis (TB) within three months of the date of initial certification and annually thereafter. However, if the application approval timeframe is suspended and the applicant is not certified within three months of application, this creates a barrier for the applicant. Additionally, the rule states that evidence submitted under this section can only be provided by a physician and does not allow for evidence to be provided by other health care providers, such as a physician's assistant, registered nurse, or registered nurse practitioner.</p>
<p>R6-5-5203</p>	<p>This rule is not effective because it does not address health and safety standards regarding animals kept within the home facility that may present a danger to children in care or the protection of children from vehicular traffic surrounding the home facility. Additionally, the rule does not require the DES-certified child care provider to have an outdoor activity area even though R6-5-5209 requires outdoor activities be incorporated and balanced in the program.</p>
<p>R6-5-5207</p>	<p>This rule is not effective because the language allows child care personnel and all individual backup providers who may be ineligible to receive a valid fingerprint card to be in contact with children in care until the individual's application for a fingerprint card is denied. Additionally, language regarding "tobacco products or smoke" is no longer effective as the tobacco products are not clearly defined. The training hour requirement for a DES-certified in-home provider is not an adequate amount of time to cover all the federally required topics listed in 45 CFR 98.41(a)(1).</p>
<p>R6-5-5208</p>	<p>This rule is not effective because it does not align with current Department practice.</p>

	<p>R6-5-5208(A): The option to conduct an interview with a DES-certified in-home provider at the in-home provider's residence is impractical and has never been performed.</p> <p>R6-5-5208(E): The requirement of the Department to deny recertification or take other enforcement action when the provider does not accept Department-referred children on three separate occasions is incorrect because the Department does not refer children to any provider.</p>
R6-5-5209	This rule is not effective because the list of developmentally appropriate play equipment and supplies in the rule are meant to be examples and are not a requirement for a DES-certified care provider to make available to children in care.
R6-5-5210	This rule is not effective because Child Protective Services (CPS) no longer exists and the rule lacks safety and supervisory requirements in the event of an emergency, including a natural or man-caused disaster, pursuant to 45 CFR 98.41(a)(1)(vii).
R6-5-5211	This rule is not effective because language in R6-5-5211(C) that requires a DES-certified child care provider to have "a garbage can with a close-fitting lid" does not clearly state that all garbage cans within the home facility must have close-fitting lids.
R6-5-5212	This rule is not effective because some of the discipline methods addressed are outdated and need to be evaluated to align with current acceptable practices that focus on preventing behavior issues by supporting children in learning appropriate social skills and emotional responses. Additionally, the use of time-out must be accompanied with specific guidelines to avoid inappropriate use.
R6-5-5213	This rule is not effective because language regarding the minimum standards for cribs is outdated and needs to be evaluated to align with 16 CFR 1219 and 1220.
R6-5-5214	This rule is not effective because it does not include federally required standards, including prevention and recognition of shaken baby syndrome, preparation for a natural or man-caused emergency, and response plan to include lock-down or evacuation with small children.
R6-5-5215	This rule is not effective because it does not include federally required standards for emergency preparedness and a response plan to include lock-down or evacuation with children with special needs, pursuant to 45 CFR 98.41(a)(1)(vii).

R6-5-5216	This rule is not effective because the definition of “mechanically safe” is vague and needs clarification to provide a clearer understanding to DES-certified child care providers and Department staff.
R6-5-5217	This rule is not effective because it contains outdated, vague, and incorrect information. R6-5-5217(A): The rule references an outdated federal regulation, 7 CFR 226.20 (January 1, 1998), incorporated by reference, and the Department's Authority Library, which no longer exists. R6-5-5217(F): The refrigerator temperature requirement does not align with A.A.C. R9-8-107 and does not address the federal requirement of a DES-certified child care provider to prevent and respond to emergencies due to food and allergic reactions.
R6-5-5218	This rule is not effective because it lacks the federal health and safety requirements for appropriate disposal of bio-contaminants, pursuant to 45 CFR 98.41(a)(1)(viii).
R6-5-5219	This rule is not effective because it requires children who are exempt from immunizations for religious or medical reasons to be excluded from the home facility if there is an outbreak of a vaccine-preventable disease at the home facility. The Department cannot mandate a child be excluded from the home when the child who is exempt from immunizations for religious or medical reasons is the child of the DES-certified child care provider.
R6-5-5221	This rule is not effective because the definition of "significant change" is vague and needs clarification to provide a clearer understanding to DES-certified child care providers. This vague term results in DES-certified child care providers not reporting when a home facility is closed for the day.
R6-5-5222	This rule is not effective because backup providers have minimal requirements compared to DES-certified child care providers even though they are required to provide the same level of services.
R6-5-5226	This rule is not effective because Child Protective Services (CPS) no longer exists and the fingerprint card requirement does not require DES-certified child care providers to submit information necessary for the Department to conduct additional criminal background checks, pursuant to 45 CFR 98.43.

4. Are the rules consistent with other rules and statutes?

Yes

No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R6-5-5201	The rule is not consistent with state statute because the definitions include CPS and does not reflect the shift in statutory and regulatory authority of CPS to the DCS, pursuant to A.R.S. § 8-451.
R6-5-5202	The rule is not consistent with federal regulations because the statement of services does not address a DES-certified child care provider's policies related to prevention of suspension, expulsion and denial of services, pursuant to 45 CFR 98.17.
R6-5-5203 R6-5-5203 (cont'd)	This rule is not consistent with federal regulations regarding health and safety requirements that includes protection of children in care from vehicular traffic, pursuant to 45 CFR 98.41(a)(1)(v); emergency preparedness and response plan for an emergency resulting from a natural or man-caused disaster, pursuant to 45 CFR 98.42(a)(1)(vii); and a home facility's requirement to meet fire standards, pursuant to 45 CFR 98.42(b)(2)(ii).
R6-5-5204	This rule is not consistent with federal regulations at 45 CFR 98, Subpart D, which addresses program operations for child care services, including the Department's requirements.
R6-5-5207	This rule is not consistent with federal regulations regarding the minimum health and safety training on topics for pre-service and ongoing training, pursuant to 45 CFR 98.41(a)(1) and the requirement for a criminal background check to be completed prior to the start date of providing child care services, pursuant to 45 CFR 98.43.
R6-5-5210	The rule is not consistent with state statute because it refers to CPS and does not reflect the shift in statutory and regulatory authority of CPS to the DCS, pursuant to A.R.S. § 8-451 and does not address safety and supervisory requirements in case of an emergency situation, including a natural or man-caused disaster, pursuant to 45 CFR 98.41(a)(1)(vii).
R6-5-5213	This rule is not consistent with federal regulations regarding safety standards for baby cribs, pursuant to 16 CFR 1219 and 1220 and the prevention of sudden infant

	death syndrome and the use of safe sleeping practices, pursuant to 45 CFR 98.41(a)(1)(ii).
R6-5-5214	This rule is not consistent with federal regulations regarding the prevention of sudden infant death syndrome and the use of safe sleeping practices, pursuant to 45 CFR 98.41(a)(1)(ii) and the prevention of shaken baby syndrome, abusive head trauma, and child maltreatment, pursuant to 45 CFR 98.41(a)(1)(vi).
R6-5-5215	This rule is not consistent with federal regulations regarding the standards for an emergency preparedness and response plan for children with disabilities and children with chronic medical conditions, pursuant to 45 CFR 98.41(a)(1)(vii).
R6-5-5217	This rule is not consistent with federal regulations regarding the standards for prevention and response to an emergency due to food and allergic reactions, pursuant to 45 CFR 98.41(a)(1)(iv).
R6-5-5218	The rule is not consistent with federal regulations regarding appropriate disposal of bio-contaminants, pursuant to 45 CFR 98.41(a)(1)(viii).
R6-5-5226 R6-5-5226 (cont'd)	The rule is not consistent with state statute because it refers to CPS and does not reflect the shift in statutory and regulatory authority of CPS to the DCS, pursuant to A.R.S. § 8-451 and does not require adequate information to be submitted to the Department in order to conduct a criminal background check, pursuant to 45 CFR 98.43.

5. Are the rules enforced as written?

Yes

No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.

Rule	Explanation
R6-5-5201	This rule is not enforced as written because there are additional terms used in this Article that are not defined. The Department plans to revise this rule to include all terms the Department uses and to revise existing definitions that need clarification.
R6-5-5202	This rule is not enforced as written because: R6-5-5202(L): Generally, medical doctors are not administering a polio vaccine to adults because the vaccine is not required for an individual who is 18 years of age or older, pursuant to 9 A.A.C. 6, Table 7.1(B)(6).

	hours. A "certification year" begins the month a DES-certified child care provider is certified. The Department plans to amend the rules to align with 45 CFR 98.
R6-5-5210	The rule is not enforced as written because a DES-certified child care provider reports suspected child abuse to DCS, pursuant to A.R.S. § 8-451 and the safety and supervisory requirements in case of an emergency situation, including a natural or man-caused disaster are not addressed, pursuant to 45 CFR 98.41(a)(1)(vii). The Department's current practices are enforced through the contract between the Department and a DES-certified child care provider. The Department plans to amend the rules to align with 45 CFR 98.
R6-5-5213	This rule is not enforced as written because the Department has been inspecting DES-certified child care provider's cribs using federal regulation requirements at 16 CFR 1219 and 16 CFR 1220 since 2012. The Department's current practices are enforced through the contract between the Department and a DES-certified child care provider. The Department plans to amend the rules to align with 45 CFR 98.
R6-5-5226 R6-5-5226 (cont'd)	This rule is not enforced as written because reports of alleged maltreatment are reported to DCS, pursuant to A.R.S. § 8-451 and the Department requires additional information from a DES-certified child care provider to conduct additional criminal background checks required for providers and adult household members, pursuant to 45 CFR 98.43. The Department's current practices are enforced through the contract between the Department and a DES-certified child care provider. The Department plans to amend the rules to align with 45 CFR 98.

6. Are the rules clear, concise, and understandable?

Yes

No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R6-5-5201	This rule is not clear, concise, and understandable because the definition for "home facility" requires further clarification to potentially include the premises in addition to the residence. Additionally, terms such as "mechanically safe" and "significant

	<p>change" are undefined and cause confusion to applicants, DES-certified child care providers, and Department staff.</p> <p>The Department plans to review and amend this rule by revising and adding definitions to improve clarity.</p>
R6-5-5202	<p>This rule is not clear, concise, and understandable because:</p> <p>R6-5-5202(L): The language requiring immunizations is vague and does not identify specific immunizations.</p> <p>R6-5-5202(M)(1)(a): The language indicating that a TB test must be performed within three months of the date or anniversary of initial certification is unclear whether this time is counted when an application approval process is suspended.</p> <p>The Department plans to amend this rule to align with 45 CFR 98 to improve clarity.</p>
R6-5-5207	<p>This rule is not clear, concise, and understandable because:</p> <p>R6-5-5207(K): It is unclear whether the language that prohibits a DES-certified child care provider from exposing a child in care to tobacco products or smoke includes electronic cigarettes and the vapor emitted from electronic cigarettes.</p> <p>The Department plans to amend this rule to align with 45 CFR 98 to improve clarity.</p>
R6-5-5209 R6-5-5209 (cont'd)	<p>This rule is not clear, concise, and understandable because the list of developmentally appropriate play equipment and supplies in the rule are meant to be examples and are not a requirement for a DES-certified care provider to make available to children in care.</p> <p>The Department plans to amend this rule to align with 45 CFR 98 to improve clarity.</p>
R6-5-5211	<p>This rule is not clear, concise, and understandable because DES-certified child care providers have misinterpreted the language in R6-5-5211(C) to mean that that provider may have multiple garbage cans without a lid in the home as long as there is one garbage can with a close-fitting lid.</p> <p>The Department plans to amend this rule to clarify that all garbage cans in the home must have a close-fitting lid to improve compliance.</p>
R6-5-5216	<p>This rule is not clear, concise, and understandable because language in R6-5-5216(C) regarding "mechanically safe" is unclear and confusing to DES-certified child care providers and Department staff.</p> <p>The Department plans to amend the rule by revising the language to improve clarity.</p>

R6-5-5219	<p>This rule is not clear, concise, and understandable because language in R6-5-5219(G) is unclear whether the intention of the rule is to remove a DES-certified child care provider's own child from the residence when an outbreak occurs.</p> <p>The Department plans to evaluate this rule in order to come to a reasonable solution and amend the language to improve clarity.</p>
R6-5-5221	<p>This rule is not clear, concise, and understandable because language in R6-5-5221(A) regarding "significant change" is unclear and confusing to DES-certified child care providers and sometimes results in a DES-certified child care provider not reporting a change to the Department.</p> <p>The Department plans to amend the rule by revising the language to improve clarity.</p>

7. Has the agency received written criticisms of the rules within the last five years?

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
Shannon Christian, Director, Federal Office of Child Care	<p>A letter from the Federal Office of Child Care to the Department, dated December 21, 2018 states: "Arizona did not fully implement the provisions listed below by the effective date of September 30, 2018; therefore, you will be on a Corrective Action Plan (CAP) for any unmet requirements starting October 1, 2018 for a period not to exceed one year."</p> <p>Deficiencies in the letter related to this Article include:</p> <ul style="list-style-type: none"> • Disaster preparedness and response plan, pursuant to 45 CFR 98.16(aa); and • Criminal background checks, pursuant to 45 CFR 98.43. 	<p>The Department developed a CAP for each area of deficiency and responded to the Federal Office of Child Care on March 15, 2019. The Federal Office of Child Care accepted the CAP and the Department is currently engaged in the action steps needed to meet the requirements.</p>

8. Economic, small business, and consumer impact comparison:

The Department completed an economic, small business, and consumer impact statement for this Article during a 1999 rulemaking. In that report, the Department estimated that the consumers and regulated Family Child Care Homes would receive the "intangible benefits that rise from having clearly defined rules," which proved to be an accurate assessment of the impact of the 1999 rulemaking.

An economic, small business, and consumer impact statement was also completed for R6-5-5207 during a 2016 rulemaking. This rulemaking removed unnecessary restrictions that required infant/child cardiopulmonary resuscitation (CPR) and first aid (FA) training to be "approved by"

American Red Cross (ACR) or the American Heart Association (AHA) rather than “conform with” ACR or the AHA guidelines. This impacted which organizations could provide acceptable training in infant/child (CPR) and first aid (FA) to DES-certified child care providers, making it more difficult for providers to comply with the requirement. The restrictions also limited the number of vendors qualified to deliver CPR/FA training to applicants and DES-certified child care providers. Currently, the cost of a CPR/FA combined training through the ACR averages about \$90 per person and equivalent training through the AHA ranges from \$69 - \$95 per person, depending on the trainer or location of training. The amendments to this rule had a positive economic impact on both DES-certified child care providers and organizations that deliver a classroom or blended-learning CPR/FA combined course that conforms to the guidelines of the ACR or the AHA. The American Safety and Health Institute (ASHI) and MEDIC First Aid Training Centers in Arizona offer a CPR/FA combined course that is currently \$50 per person. By promoting fair competition among providers of equivalent CPR/FA training, especially in rural areas, the rules resulted in greater flexibility and cost-savings to DES-child care providers without adversely affecting public health and safety.

9. Has the agency received any business competitiveness analyses of the rules?

Yes No

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

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

The Department completed the proposed course of action identified in the previous Five-Year Review Report, approved by the Governor's Regulatory Review Council on September 9, 2014. Further concerns were identified in a rulemaking petition submitted to the Department on May 18, 2016 from the Health and Safety Institute to amend the rules to permit training and certification using hybrid (blended) learning approaches in addition to the traditional classroom approach for CPR/FA training. The concerns identified in the petition, as well as technical corrections to typographical errors and incorrect citations in R6-5-5201, R6-5-5202, R6-5-5207, R6-5-5217, R6-5-5218, and R6-5-5219 were addressed and the rules were

amended in a Notice of Proposed Rulemaking, 22 A.A.R. 1029, May 6, 2016 and a Notice of Final Rulemaking, 22 A.A.R. 3185, November 11, 2016.

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:

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. Amendments seek to align the rules with federal statutes and regulations and to make the rules more clear, concise, and understandable to the public, which is expected to reduce the burden and the costs associated with staff assistance and rework. Program subject matter experts indicate that amendments to the rules, as proposed in this report, are the most cost-effective way to bring the Department into compliance with federal requirements and ensure that the rules reflect current program practice.

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

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?

The Child Care and Development Block Grant (CCDBG) Act of 2014 and Child Care and Development Funds (CCDF) regulations at 45 CFR 98 and 99 are applicable to the subject of these rules. The Department has determined that the rules are not more stringent than corresponding federal law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

An analysis of the definition for general permit, as defined at A.R.S. § 41-1001(11), indicates that a certification of DES-child care providers meets the criteria of a general permit and meets the requirements of A.R.S. § 41-1037.

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 requested a moratorium exception to make amendments to Article 52 in order to comply with CCDF regulations in 45 CFR 98 on October 26, 2016, and resubmitted on July 7, 2017. The proposed amendments would ensure compliance in the rules with requirements to:

- Establish administrative procedures for a Disaster Preparedness Plan;
- Establish an expulsion policy to reduce expulsions and suspensions of preschool-aged children;
- Clarify health and safety standards for children in child care settings;
- Revise the hours of required health and safety training and professional development to meet the minimum health and safety training topics to 12 hours pre-service training and 12 hours of ongoing training;
- Establish criminal background checks for back-up child care providers;
- Establish administrative procedures for Intentional Program Violation (IPV) to investigate and recover fraudulent payment and to impose sanctions on DES-certified child care providers in response to fraud; and
- Implement risk-based monitoring of certified child care providers that reduce the depth of monitoring for low risk providers and those with strong safety records and increase monitoring intensity for higher risk providers.

The Governor's Office informed the Department on August 30, 2018 that the request to amend Article 52 had been denied.

The Department is not seeking to amend these rules at this time.

41-1003. Required rule making

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

41-1954. 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.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

46-802. Child care services

The department shall establish and administer child care services. Child care services include:

1. Child care assistance to eligible families.
2. Certification of child care home and in-home providers who are not required to be licensed pursuant to title 36, chapter 7.1 for the purposes of caring for children eligible for child care assistance.
3. Establishment of rights and duties of providers and the department for the provision of child care assistance and services.
4. Consumer education to families and the public, including activities that help families make informed decisions about child care options.
5. Activities that improve the quality and availability of child care.
6. Consultation, technical assistance, training and resources to improve the provision and expand the access to child care services.

46-807. Certification of family child care home and in-home providers; hearing

- A. The department shall establish health, safety and training standards for the certification of child care home providers and in-home providers.
- B. All child care personnel shall be fingerprinted according to section 41-1964.
- C. The department may deny the application or suspend or revoke the certification of a child care home or in-home provider for violation of any provisions of law or failure to maintain the standards of care. Written notice of the grounds of suspension or the proposed denial or revocation shall be given to the applicant or provider. The applicant or provider has a right to request a hearing on the suspension, denial or revocation of a certification, and a hearing shall be held pursuant to title 41, chapter 14, article 3 and according to rules of the department.

46-809. Rules

The department shall adopt rules it deems reasonable or necessary to implement child care services and to further the objectives of this article. Rules adopted by the department shall include:

1. Criteria for making child care assistance eligibility determinations.
2. Criteria for certifying child care home and in-home providers.
3. Criteria for operating child care resource and referral services and for suspending and terminating referrals to participating child care providers pursuant to section 41-1967.

41-1072. Definitions

In this article, unless the context otherwise requires:

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

41-1073. Time frames; exception

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

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

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

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

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

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

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

41-1074. Compliance with administrative completeness review time frame

- A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
- B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.
- C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075. Compliance with substantive review time frame

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

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

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

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

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

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

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

DEPARTMENT OF ECONOMIC SECURITY (F19-0805)

Title 6, Chapter 2, Department of Economic Security - Employment and Training



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 11, 2019

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 2, Department of Economic Security - Employment and Training

Summary

This five-year review report (5YRR) from the Arizona Department of Economic Security ("Department") relates to all Articles in Title 6, Chapter 2 related to employment and training. Specifically, the Division of Employment and Rehabilitation Services (DERS) is the division within the Department that is responsible for overseeing the Employment Service program in Arizona. Employment Service is a core program partner of the Workforce Innovation and Opportunity Act (WIOA) and provides placement services for job seekers and labor force recruitment services for employers. The Employment Service program focuses on providing a variety of employment-related labor exchange services including job search assistance, job referral and placement assistance for job seekers, reemployment services to Unemployment Insurance claimants, and recruitment services for employers with job openings.

In its previous 5YRR approved by the Council in August 2014, the Department indicated it would submit a rulemaking package to amend rules R6-2-101, R6-2-102, R6-2-103, and R6-2-201 to make them clear, concise, understandable, effective, and consistent with state and federal law as discussed in more detail below. The Department received an exception to the rulemaking moratorium on August 12, 2014 and anticipated filing a Notice of Final Rulemaking within six months. However, the Department indicates it did not complete this rulemaking due to Department-wide reprioritization that identified higher-priority rulemakings.

Proposed Action

The Department plans to amend R6-2-101, R6-2-103, and R6-2-201 under the exception to the moratorium received on August 12, 2014. However, the Department does not plan to amend R6-2-102 at this time, due to a recent Notice of Proposed Rulemaking issued by the U.S. Department of Labor that will amend 20 CFR 658.410 and 658.411. The amendments to these regulations would require additional revisions to this rule. The Department will seek an additional moratorium exception for R6-2-102 when the federal regulations are final. The Department anticipates filing a Notice of Proposed Rulemaking by July 2020.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to both general and specific statutory authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the rules have had an “intangible economic, small business, and consumer impact” and the rules continue to be necessary and useful to the public even though some rules are outdated. Even though outdated they believe they have no negative economic impact on consumers or small business. Stakeholders include the Department and job seekers either seeking or receiving services through DERS or employers seeking workers to fill vacant positions.

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

The Department believes that the rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying objectives. The Department indicates that the proposed amendments to the rules would provide the most cost-effective way to bring the Department into compliance with federal requirements and ensure that the rules reflect current program practice. The Department plans to amend the rules and intends to seek a moratorium exception when the federal regulations are final.

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

The Department has not received any written criticism of the rules within the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

The Department indicates that the rules are not clear, concise, and understandable. Specifically, rules R6-2-101, R6-2-102, R6-2-103, and R6-2-201 contain outdated terms and statutory references. The rules reference the Department's Authority Library, Employment Standards Administration (ESA), the Job Training Partnership Act (JTPA), United States Employment Service ("USES"), and America's Job Bank, which no longer exist. The rules also incorporate by reference 29 CFR 29.5, which is an outdated regulation. For the same reason, the Department indicates these same rules are also inconsistent with current law and are not effective in meeting their objective.

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

The Department indicates that it currently enforces its rules to the extent they do not conflict with state or federal law.

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

The Department indicates that the rules contained in Title 6, Chapter 2 are not more stringent than corresponding federal statutes and regulations, including the Wagner-Peyser Act, as amended by the WIOA of 2014, 20 CFR 651 through 654, and 20 CFR 658.400 through 658.424.

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?

The Department indicates that A.R.S. § 41-1037 does not apply because none of the rules were adopted after July 29, 2010.

9. Conclusion

As outlined above, the Department has indicated the rules are not clear, concise, understandable, consistent, or effective as they contain outdated terms and statutory references. The Department identified many of these same issues with the rules in their 5YRR in 2004 and indicated they would complete a rulemaking to amend R6-2-101, R6-2-102, and R6-2-103 by December 2005. In their 5YRR in 2009, the Department indicated that rulemaking was incomplete because the Department had to prioritize other rulemakings. Nevertheless, the Department again proposed to amend the rules, requested an exemption from the rulemaking moratorium in December 2009, and anticipated filing a Notice of Final Rulemaking within two years of receiving the exemption.

In their subsequent 5YRR in 2014, the Department indicated it had received an exception from the rulemaking moratorium in May 2012 and filed a Notice of Proposed Rulemaking to amend R6-2-101, R6-2-102, and R6-2-103 published in August 2013. The Department indicated that subsequent to the publication of the Notice of Proposed Rulemaking, the Department determined that further changes were needed to remove additional outdated definitions and

replace outdated references. In May 2014, the Department requested another exception from the Governor's Office to make these additional changes. Specifically, the Department planned to amend rules R6-2-101, R6-2-102, R6-2-103, R6-2-104 and R6-2-201 and anticipated filing a Notice of Final Rulemaking within one year of receiving an exemption from the rulemaking moratorium.

However, as indicated above, though the Department received an exception to the rulemaking moratorium on August 12, 2014 the Department did not complete this rulemaking due to Department-wide reprioritization that identified higher-priority rulemakings.

The Department plans to amend R6-2-101, R6-2-103, and R6-2-201 under the exception to the moratorium received on August 12, 2014. However, the Department does not plan to amend R6-2-102 at this time, due to a recent Notice of Proposed Rulemaking issued by the U.S. Department of Labor that will amend 20 CFR 658.410 and 658.411. The amendments to these regulations would require additional revisions to this rule. The Department will seek an additional moratorium exception for R6-2-102 when the federal regulations are final. The Department anticipates filing a Notice of Proposed Rulemaking by July 2020.

Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

MAY 31 2019

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 2. Included with the report are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to repond to any questions the Council members may have about the report. If you have any questions, please contact Nicole Tolton, Policy Chief, Policy and Planning Administration, at (602) 542-6555.

Sincerely,

Michael Traylor
Director

Enclosure

**Department of Economic Security
Title 6, Chapter 2
Five-Year Review Report**

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1003 and 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 23-645 and 23-648

2. The objective of each rule:

Rule	Objective
R6-2-101	This rule defines terms used in these rules so that anyone reading the rules will understand the meaning of special terms and any terms that are not used according to their ordinary meaning.
R6-2-102	This rule describes the complaint process related to the provision of employment services under 20 CFR 658.400 through 658.416, incorporated by reference in this rule.
R6-2-103	This rule describes the appeal and hearing process to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws under 20 CFR 658.417 and 658.418, incorporated by reference in this rule.
R6-2-104	This rule describes the Department's nondiscrimination policy in administration of the state employment office and describes the priority of service to qualified applicants for work.
R6-2-201	This rule describes services available to a worker, the application process, and procedures for when the Department conducts employment testing.
R6-2-202	This rule describes the Department's requirements for employers placing a job order, including bona fide occupational qualifications and how the Department shall refer workers to a job order.

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

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-201	This rule is ineffective in meeting its objective because it contains outdated terms and statutory references, such as the Department’s Authority Library, Employment Security Administration (ESA), the Job Training Partnership Act (JTPA), United States Employment Service (USES), and America’s Job Bank, which no longer exist. This rule is also ineffective because it incorporates, by reference, an outdated regulation: 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998).

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

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-201	This rule is inconsistent with current law because it contains outdated terms, such as the Department’s Authority Library, ESA, the JTPA, USES, and America’s Job Bank, which no longer exist. This rule is also ineffective because it incorporates, by reference, an outdated regulation: 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998).

5. Are the rules enforced as written?

Yes

No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-104, R6-2-201, R6-2-202	The Department enforces these rules to the extent that it does not conflict with state or federal law.

6. Are the rules clear, concise, and understandable?

Yes

No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-201	This rule is not clear, concise and understandable because it contains outdated terms and statutory references, such as the Department's Authority Library, ESA, the JTPA, USES, and America's Job Bank, which no longer exist. This rule is also ineffective because it incorporates, by reference, an outdated regulation: 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998). The Department may request an exception to the moratorium to amend Chapter 2 if WIOA is reauthorized in 2020 by removing the outdated references and regulations and updating such to reflect current references and regulations.

7. Has the agency received written criticisms of the rules within the last five years?

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

8. Economic, small business, and consumer impact comparison:

The Department previously completed an economic, small business, and consumer impact statement on these rules during a 1999 rulemaking. In that report, the Department estimated that the proposed rules would have an “intangible economic, small business, and consumer impact,” which has proven to be an accurate assessment of the impact of the 1999 rulemaking. While some of the rules in Chapter 2 are outdated and inconsistent with controlling statutes and regulations, the rules continue to be necessary and useful to the public.

The Division of Employment and Rehabilitation Services (DERS) is the division within the Department that is responsible for overseeing the Employment Service program in Arizona. Employment Service is a core program partner of the Workforce Innovation and Opportunity Act (WIOA) and provides placement services for job seekers and labor force recruitment services for employers. The Employment Service program focuses on providing a variety of employment-related labor exchange services including, job search assistance, job referral and placement assistance for job seekers, reemployment services to Unemployment Insurance claimants, and recruitment services for employers with job openings.

Although some of the rules in Chapter 2 are outdated, there is no negative economic impact on consumers or small businesses. Consumers directly impacted by these rules are job seekers either seeking or receiving services through the DERS or employers seeking workers to fill vacant positions. Job seekers either seeking or receiving services may continue to benefit from these rules by receiving higher quality referrals to job orders placed by employers. Small businesses may continue to benefit from these rules by obtaining an expanded pool of qualified applicants to job openings.

The U.S. Department of Labor allocates money to Arizona to support the Employment and Training program. These monies are primarily from the Unemployment Trust Fund, which is collected from employers' unemployment insurance payroll taxes.

In SFY 2018, operation costs, including administrative costs and services, was approximately \$13.9 million. The average program staffing level in SFY 2018 was a full-time employee equivalent (FTE) of 134 staff.

9. Has the agency received any business competitiveness analyses of the rules? Yes No

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

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

The previous Five-Year Review Report, approved by the Governor's Regulatory Review Council in August 2014, anticipated that the Department would submit a rulemaking package to amend rules R6-2-101, R6-2-102, R6-2-103, and R6-2-201 to make them effective, clear, concise, understandable, and consistent with state and federal law. The Department received an exception to the moratorium on August 12, 2014 to proceed with the rulemaking process and anticipated filing a Notice of Final Rulemaking within six months of receiving the moratorium exception request.

The proposed course of action was not completed, however, due to a Department-wide reprioritization that identified high priority rules, and the rules in Chapter 2 were not included on that list. Therefore, activity on Chapter 2 amendments ceased.

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:

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and

cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. Amendments seek to align the rules with federal statutes and regulations and to make the rules more clear, concise, and understandable to the public, which is expected to reduce the burden and the costs associated with staff assistance and rework. Program subject matter experts indicate that amendments to the rules, as proposed in this report, are the most cost-effective way to bring the Department into compliance with federal requirements and ensure that the rules reflect current program practice.

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

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?

The Department has determined that the rules contained in Chapter 2 are not more stringent than corresponding federal statutes and regulations, including the Wagner-Peyser Act, as amended by the WIOA of 2014, 20 CFR 651 through 654, and 20 CFR 658.400 through 658.424.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because none of the rules were adopted after 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 plans to amend the rules in this chapter under the exception to the moratorium received on August 12, 2014, except for R6-2-102, due to a recently issued Notice of Proposed Rulemaking issued by the U.S. Department of Labor that will amend 20 CFR 658.410 and 658.411. The amendments to these regulations would require additional revisions

to this rule. The Department will seek an additional moratorium exception for R6-2-102 when the federal regulations are final. The Department anticipates filing a Notice of Proposed Rulemaking by July 2020.

TITLE 6. ECONOMIC SECURITY

**CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY
EMPLOYMENT AND TRAINING**

(Authority: A.R.S. § 41-1954 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R6-2-101 through R6-2-103, adopted effective December 20, 1994 (Supp. 94-4).

Article 1, consisting of Sections R6-2-101 through R6-2-112, repealed effective December 20, 1994 (Supp. 94-4).

Section

- R6-2-101. Definitions
- R6-2-102. Complaints
- R6-2-103. Hearings and Appeals
- R6-2-104. Policy of Nondiscrimination; Schedule of Services
- R6-2-105. Repealed
- R6-2-106. Repealed
- R6-2-107. Repealed
- R6-2-108. Repealed
- R6-2-109. Repealed
- R6-2-110. Repealed
- R6-2-111. Repealed
- R6-2-112. Repealed

ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT

Article 2, consisting of Sections R6-2-201 through R6-2-210, adopted effective December 20, 1994 (Supp. 94-4).

Article 2, consisting of Sections R6-2-201 through R6-2-210, repealed effective December 20, 1994 (Supp. 94-4).

Section

- R6-2-201. Worker Services
- R6-2-202. Employer Services
- R6-2-203. Repealed
- R6-2-204. Expired
- R6-2-205. Repealed
- R6-2-206. Repealed
- R6-2-207. Repealed
- R6-2-208. Repealed
- R6-2-209. Repealed
- R6-2-210. Repealed

ARTICLE 3. REPEALED

Article 3, consisting of Sections R6-2-301 through R6-2-304, repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

Article 3, consisting of Sections R6-2-301 through R6-2-304, adopted effective December 20, 1994 (Supp. 94-4).

Article 3, consisting of Sections R6-2-301 through R6-2-303, repealed effective December 20, 1994 (Supp. 94-4).

ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS

Article 4, consisting of Sections R6-2-401 and R6-2-402, adopted effective December 20, 1994 (Supp. 94-4).

Article 4, consisting of Sections R6-2-401 through R6-2-409, repealed effective December 20, 1994 (Supp. 94-4).

Section

- R6-2-401. Repealed
- R6-2-402. Expired
- R6-2-403. Repealed
- R6-2-404. Repealed

- R6-2-405. Repealed
- R6-2-406. Repealed
- R6-2-407. Repealed
- R6-2-408. Repealed
- R6-2-409. Repealed

ARTICLE 5. RESERVED

ARTICLE 6. REPEALED

Article 6, consisting of Sections R6-2-601 through R6-2-620, repealed effective July 30, 1993 (Supp. 93-3).

ARTICLE 1. GENERAL PROVISIONS

R6-2-101. Definitions

The following definitions apply to this Chapter:

1. "America's Job Bank" means a nationwide computer database linking more than 1800 local Employment Service offices. The services of America's Job Bank are available to job seekers and employers via the Internet.
2. "Applicant" means a person who has applied to the Department for worker services and who is a United States citizen or a non-citizen who is legally authorized to work in the United States.
3. "Apprentice" means a worker who is at least age 16 if a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade under standards of apprenticeship that meet the requirements of 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998), which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
4. "Apprenticeship agreement" means a written agreement between an apprentice and an employer or a committee acting on behalf of the employer, containing the terms and conditions for employment of the apprentice.
5. "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.
6. "Apprenticeship program registration" means the acceptance and centralized recording of an apprenticeship program by the ESA that meets the basic standards and requirements established for apprenticeship programs under federal law.
7. "Apprenticeship program sponsor" means a person, association, committee, or organization operating an apprenticeship program and in whose name the program is registered and approved.
8. "BFOQ" or "bona fide occupational qualification" means a finding by an employer that age, sex, national origin, or religion is a characteristic necessary to an individual's ability to perform the job.
9. "Department" means the Arizona Department of Economic Security.
10. "DOT" or "Dictionary of Occupational Titles" means the reference work published by the United States Employ-

- ment Service, which contains brief, non-technical definitions of job titles, distinguishing numeric codes, and worker trait data.
11. "Disabled veteran" means:
 - a. A veteran who is entitled to compensation under laws administered by the United States Secretary of Veterans Affairs, or
 - b. A person who is discharged or released from active military duty because of a service-connected disability.
 12. "Employer job referral services" means Department activities that help an employer obtain workers with the occupational qualifications needed by the employer.
 13. "Employment counseling" means formulation of a vocational plan that is consistent with a person's vocational skills and interests, and advice on appropriate measures for implementation of that plan.
 14. "Employment test" means a standardized method or device for measuring a person's possession of, interest in, or ability to acquire job skills and knowledge.
 15. "ESA" or "Employment Security Administration" means the administrative unit within the Department's Division of Employment and Rehabilitation Services with responsibility for all worker and employer services.
 16. "Essential functions of a job" means the fundamental job duties of a particular employment position.
 17. "Geographic labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between geographical areas.
 18. "Industrial analysis services" means Department activities to assist employers and labor organizations in determining the cause of worker resource problems in a particular business, and provision of information developed by the USES for resolving such problems.
 19. "Job bank" means a computerized list of all currently available jobs and employment opportunities listed with the Department.
 20. "Job development" means the process by which the Department obtains a job or interview with an employer for a specific applicant for whom the local ESA office has no suitable job opening on file.
 21. "Job order" means a request by an employer for the referral of job seekers made available to job seekers via the Department's Job Bank.
 22. "JTPA" means the federal Job Training Partnership Act found at 29 U.S.C. 1501 et seq.
 23. "Labor market area" means a geographic area consisting of a central city, or group of cities, and the surrounding territory within a reasonable commuting distance.
 24. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 25. "Occupational labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between occupations and industry types.
 26. "Older worker" means a person age 40 or older who is working or who is unemployed and wishes to work.
 27. "Person with a disability" or "disabled worker" means a person who:
 - a. Has a physical or mental impairment that substantially limits 1 or more of that person's major life activities;
 - b. Has a record of such an impairment; or
 - c. Is regarded as having such an impairment.
 28. "Physical or mental impairment" means:
 - a. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting 1 or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
 - b. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 29. "Placement" means that a public or private employer has hired an applicant that the Department referred to the employer for a job or interview.
 30. "Qualified worker" means a worker who possesses the skills, knowledge, and abilities to perform the essential functions of a job.
 31. "Reasonable accommodation" means a modification of, or an adjustment to a process, position, or term of employment, that will permit a disabled worker to enjoy the same benefits and privileges of employment as those enjoyed by persons without disabilities.
 32. "Substandard work order" means a work order:
 - a. Containing employment terms that violate employment-related laws, or
 - b. Offering work at wages or conditions that are substantially inferior to those generally prevailing in the labor market area for the same or similar work.
 33. "Substantially limits" when used in reference to a disability, means:
 - a. Unable to perform a major life activity that the average person in the general population can perform; or
 - b. Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
 34. "Targeted jobs tax credit" means an income tax credit available to businesses that hire persons whom ESA has certified as meeting certain criteria described in 26 U.S.C. 51 (Office of the Federal Register, National Archives and Records Administration, August 10, 1993), which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
 35. "USES" means the United States Employment Service, which is the unit in the United States Department of Labor's Employment and Training Administration designed to promote a national system of public job service offices.
 36. "Veteran" means a person who served in the active military service, and who was discharged or released from service under conditions other than dishonorable.
 37. "Vocational plan" means a plan developed jointly by an ESA counselor or counselor-trainee and an applicant that describes:
 - a. The applicant's short-range and long-range occupational goals, and
 - b. The actions to be taken to implement the plan.

Department of Economic Security - Employment and Training

38. "Worker" means a U.S. citizen or a non-citizen who is legally authorized to work in the United States and who is employed or who is unemployed and wishes to work.
39. "Worker services" means the functions the Department performs for the benefit of applicants and workers, including employment counseling, employment testing, preparation of a vocational plan, and referral for employment opportunity.
40. "Worker job referral services" means Department activities to help a worker promptly obtain a job for which the worker is occupationally qualified.
41. "Youth worker" means a worker younger than age 22.

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-102. Complaints

The Department shall process all complaints related to the provision of employment services under 20 CFR 658.400 through 658.416 (Office of the Federal Register, National Archives and Records Administration, April 1, 1998), which are incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-103. Hearings and Appeals

The Department shall conduct any hearing or appeal to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws, and 20 CFR 658.417 and 658.418 (Office of the Federal Register, National Archives and Records Administration, April 1, 1998), which are incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-104. Policy of Nondiscrimination; Schedule of Services

In the administration of the state employment office, the Department shall:

- A. Not discriminate against any applicant or employer because of age, race, sex, color, religious creed, national origin, disability or political affiliation or belief unless a BFOQ exists;
- B. Actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications; and

- C. Use the following priority schedule to select and refer qualified applicants for work:
1. Disabled veteran applicants;
 2. Other veteran applicants;
 3. Other applicants.

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4). New Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-105. Repealed**Historical Note**

Adopted effective September 24, 1974 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-106. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-107. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-108. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-109. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-110. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-111. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-112. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed effective December 20, 1994 (Supp. 94-4).

ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT**R6-2-201. Worker Services**

- A. As permitted by available resources, the Department shall provide services to a worker who is a United States citizen or a

non-citizen authorized to work in the United States. The services include but are not limited to the following:

1. Employment counseling;
 2. Aptitude testing;
 3. Apprenticeship training; and
 4. Job referral services.
- B.** A worker applying for services shall file an application with the Department. The application shall include the worker's:
1. Name, address, telephone number, social security number, and date of birth;
 2. Prior work experience, including information on salary, job duties, and any past military service;
 3. Educational background, including technical or other vocational training the worker has completed;
 4. Career goals, hobbies, and volunteer work;
 5. Availability for work, including a willingness to travel or relocate, desire for full or part-time employment, and desired working hours; and
 6. Special skills or proficiencies, including a language other than English or the use of equipment.
- C.** The Department shall obtain information about a worker's disability as is necessary to provide the worker with appropriate services. This information may include asking the worker whether the worker can perform the essential functions of a particular job, with or without reasonable accommodation.
- D.** When the Department conducts employment testing, the Department shall:
1. Use only standardized tests and techniques approved by the United States Employment Service; and
 2. Not release the results of the tests without the written consent of the tested worker.

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-202. Employer Services

- A.** The Department shall require the following information from an employer who places a job order:
1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications a worker needs to satisfactorily perform the work, with or without reasonable accommodation;
 2. An employer's hiring requirements, including the type of license or certification needed, or the type of equipment or tools the worker must supply;
 3. The terms and conditions of work, including hours, salary, benefits, promotional opportunities, and travel requirements;
 4. The job location and instructions for arranging a job interview.
- B.** The Department shall refer workers to the employer who most closely match the requirements in the job order. If qualified workers are not available from the Department's files and, if resources are available, the Department shall recruit qualified workers to fill the employer's order.
- C.** The Department shall not accept a job order from an employer for processing if:
1. The employer's requirements are discriminatory based on age, sex, national origin, or religion, unless the discriminatory characteristic is a bona fide occupational qualification necessary to perform the job. An example of a bona fide occupational qualification that is not discriminatory

is the requirement for a female worker in a female intimate apparel retail outlet.

2. The terms and conditions of work are substandard under A.R.S. § 23-776(C)(2).
 3. The position is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.
 4. A worker is required to pay a fee for the job.
- D.** If an employer refuses to modify a job order deemed unacceptable by subsection (C), the Department shall notify the employer in writing of discontinuance of services. The notification shall include the employer's right of appeal.

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-203. Repealed

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section repealed by final rulemaking at 16 A.A.R. 510, effective March 2, 2010 (Supp. 10-1).

R6-2-204. Expired

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2615, effective June 30, 2014 (Supp. 14-3).

R6-2-205. Repealed

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-206. Repealed

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-207. Repealed

Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-208. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-209. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-210. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

ARTICLE 3. REPEALED**R6-2-301. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Former Section R6-2-301 repealed, new Section R6-2-301 adopted effective May 2, 1978 (Supp. 78-3).
Apprenticeship Program Handbook amended effective August 8, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-302. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-303. Repealed**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).
Amended effective May 6, 1976 (Supp. 76-3). Amended effective August 1, 1979 (Supp. 79-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-304. Repealed**Historical Note**

Adopted effective December 20, 1994 (Supp. 94-4).
Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS**R6-2-401. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section

repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

R6-2-402. Expired**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).
Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective October 31, 2004 (Supp. 05-1).

R6-2-403. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-404. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-405. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-406. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-407. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-408. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

R6-2-409. Repealed**Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

ARTICLE 5. RESERVED**ARTICLE 6. REPEALED****R6-2-601. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-602. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-603. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-604. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-605. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-606. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-607. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-608. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-609. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-610. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-611. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-612. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).

Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-613. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-614. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-615. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-616. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-617. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-618. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-619. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

R6-2-620. Repealed**Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).
Repealed effective July 30, 1993 (Supp. 93-3).

41-1003. Required rule making

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

41-1954. 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.

23-645. State-federal cooperation

In the administration of this chapter, the department shall:

1. Cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter;
2. Take such action as may be necessary to secure to this state and its citizens all advantages available under the provisions of the social security act that relate to unemployment compensation, the federal unemployment tax act, the Wagner-Peyser act and the federal-state extended unemployment compensation act of 1970;
3. Comply with the regulations prescribed by the United States department of labor relating to the receipt or expenditure by this state of money granted under any of such acts; and
4. Make such reports, in such form and containing such information as the secretary of labor may from time to time require and comply with such provisions as the secretary of labor may find from time to time necessary to assure the correctness and verification of such reports.

23-648. Manpower services

- A. There shall be established and maintained by the department free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of Congress entitled "an act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" approved June 6, 1933.
- B. The provisions of the act of Congress, as amended, referred to in subsection A, are accepted by this state in conformity with section 4 of such act, and this state will observe and comply with the requirements thereof.
- C. The department is designated and constituted the agency of this state for the purpose of the act of Congress, as amended, referred to in subsection A. The department shall cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and shall do and perform all things necessary to secure to this state the benefits of that act, as amended, in the promotion and maintenance of a system of public employment offices.
- D. The department shall not engage in any activity under this section not prescribed by federal or state law or federal regulation.
- E. The department shall not participate or engage in radio, television or newspaper advertising of specific job openings unless prescribed pursuant to federal law.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-0810)
Title 9, Chapter 34, All Articles, Grievance System



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-0810)**
Title 9, Chapter 34, All Articles, Grievance System

Summary

The Five-Year-Review-Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to all articles in Title 9, Chapter 34, relating to the grievance system. The rules address the following:

- **Article 1: Request for Eligibility Hearing;**
- **Article 2: Appeal, Grievance, and Hearing for an Enrolled Person;**
- **Article 3: Appeal and Hearing for an FFS Member;**
- **Article 4: Claim Dispute.**

In the previous 5YRR for these rules, AHCCCS proposed a rulemaking to provide clarity and alignment with litigation settlements. AHCCCS did not initiate the rulemaking and carried it over to this 5YRR.

Proposed Action

Following approval of this report from the Council, AHCCCS intends to initiate a rulemaking to provide clarity and alignment with litigation settlements within 180 days.

AHCCCS is also considering additional technical and clarifying changes may occur in order to provide clarity, conciseness, and understandability.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. AHCCCS cites to both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration has determined that the economic impact of Chapter 34 does not differ significantly from what was originally determined by the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2001.

The stakeholders include the Administration, AHCCCS members, AHCCCS providers, AHCCCS 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?

The Administration has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. These rules provide a framework for the grievance process. The Administration has identified several deficiencies in the rules, and it intends to submit a rulemaking to the Council within 180 days.

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

No. AHCCCS 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. With the exception of R9-34-101, R9-34-102, and R9-34-404, the rules are clear, concise, and understandable. AHCCCS notes that the above rules could be made more clear, concise, and understandable by moving definitions to align with other chapters, editing definitions, and adding cross references for clarity.

Additionally, AHCCCS identifies that all rules are consistent with other rules and statutes, and are effective.

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

Yes. 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 authority to exceed the requirements of federal law?**

No. AHCCCS identifies that the rules are not more stringent than corresponding 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?**

AHCCCS indicates that this question is not applicable to these rules.

9. **Conclusion**

As indicated above, AHCCCS intends to initiate the rulemaking identified in their last 5YRR in order to provide clarity and alignment with litigation settlements. AHCCCS notes that the rules may also undergo slight technical and clarifying changes during the rulemaking. AHCCCS indicated that they intend to initiate the rulemaking within 180 days and selected the 180 day time frame for security purposes. Council staff recommends approval of this report.

February 26, 2019

Ms. Connie Wilhelm, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Wilhelm:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 34, All Articles. 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).

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 34

February 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01

Specific Statutory Authority: A.R.S. § 36-2903.01

2. The objective of each rule:

Rule	Objective
R9-34-101	Provide the purpose of eligibility hearings regulations to ensure understanding of the public of the reason to request a state fair hearing.
R9-34-102	Provide definitions related to eligibility hearings within Article 1 to ensure understanding of terms used through the rule text.
R9-34-103	Describe when the time frame to file for a state fair hearing begins to ensure understanding of the date the timeframes begin for filing.
R9-34-104	Describe what the petitioner's rights are to ensure the public understands of what right they have when requesting a hearing or documentation.
R9-34-105	Describe who may file a request for a State Fair Hearing to ensure the public understands who can file a request.
R9-34-106	Describe that a petitioner may only request a State Fair Hearing for an adverse action to ensure the public understands what is considered an adverse action and under what circumstance they can file.
R9-34-107	Describe the time limit for requesting a State Fair Hearing to ensure that the public understands how much time they have to request a state fair hearing.
R9-34-108	Describe the format and contents of the request for a State Fair Hearing to ensure that the public understands what the request must contain.
R9-34-109	Specifies that AHCCCS will send a Notice of Hearing if the request is timely and contains the information listed in R9-34-108, to ensure that the public understands within what timeframe they should expect a response.
R9-34-110	Describe under which circumstances a Request for a State Fair Hearing will be denied, to ensure that the public understands the reason their request can be denied.
R9-34-111	Identify the time frame for sending a Director's decision after a State Fair Hearing is requested, to ensure that the public understands within what timeframe a Director's decision will be made.
R9-34-112	Describe when a petitioner may withdraw a Request for a State Fair Hearing from AHCCCS or from OAH, to ensure that the public understands when a withdrawal may be submitted.
R9-34-113	Describe when the Director shall grant a motion for Rehearing or Review, to ensure that the public understands when a motion for rehearing or review will be granted.
R9-34-114	Describe under which circumstances AHCCCS Coverage shall continue during a State Fair Hearing Process, to ensure that the public understands that they could continue to receive AHCCCS service while their request for a State Fair Hearing is in process.
R9-34-201	Identify the purpose of appeal, grievance and hearings regulations, to ensure that the public understands the reason and how an appeal, grievance and hearing can apply to their circumstances.
R9-34-202	Provide definitions related to appeals, grievances and hearings within Article 2, to ensure that the public understands the meaning of the terms used within the rules.

R9-34-203	Describe when the time frame to file for a State Fair Hearing begins, to ensure that the public understands the time frame that must be met to file a State Fair Hearing request.
R9-34-204	Describe the format and language of a Notice of Action, to ensure that the public understands the format and language used when receiving a Notice of Action.
R9-34-205	Describe the content of the Notice of Action, to ensure that the public understands what the Notice of Action contains.
R9-34-206	Describe the contractor Notice of Action time-frame for Service Authorization Requests, to ensure that the public understands the timeframe a contractor must meet when issuing a Notice of Action.
R9-34-207	Describe when the contractor shall send a Notice of Action, to ensure that the public understands the timeframe that must be met from the contractor when issuing a Notice of Action.
R9-34-208	Describe who may file a grievance, an appeal, or request a State Fair Hearing, to ensure that the public understands which person or entity may file a grievance, appeal or request for State Fair Hearing.
R9-34-209	Describe the time-frame an enrollee has for filing an appeal or grievance with the contractor, to ensure that the public understands what timeframe they must meet when filing an appeal or grievance.
R9-34-210	Describe the contractor's general requirements for the grievance or appeal process, to ensure that the public understands the requirements that must be met by the contractor.
R9-34-211	Describe contractor special requirements for the appeal process, to ensure that the public understands the requirements that must be met by the contractor.
R9-34-212	Describe the contractor's time-frame for a standard disposition of a grievance, to ensure that the public understands the timeframe that must be met by the contractor for a standard disposition of a grievance.
R9-34-213	Describe the contractor's time-frame for a standard resolution of an appeal, to ensure that the public understands the timeframe that must be met by the contractor for a standard resolution of an appeal.
R9-34-214	Describe when the contractor's must process an expedited resolution of an appeal and to ensure that punitive action is not taken, to ensure that the public understands the requirements that must be met by the contractor for an expedited resolution of an appeal.
R9-34-215	Describe the contractor's time-frame for an expedited appeal resolution, to ensure that the public understands the timeframe that must be met by the contractor for expedited appeal resolution.
R9-34-216	Describe the content of the contractor's Notice of Appeal resolution, to ensure that the public understands what the NOA must contain from the contractor.
R9-34-217	Describe requirements for the enrollee's request for a State Fair Hearing, to ensure that the public understands the requirements that must be met when filing a State Fair Hearing with the contractor.
R9-34-218	Describe the AHCCCS time-frame for a resolution of a State Fair Hearing, to ensure that the public understands the timeframe that must be met by the contractor when resolving a State Fair Hearing request.
R9-34-219	Describe requirements for the enrollee's request for an expedited State Fair Hearing, to ensure that the public understands the requirements that must be met when filing an expedited State Fair Hearing with the contractor.
R9-34-220	Describe the AHCCCS time-frame for a resolution of an expedited State Fair Hearing, to ensure that the public understands the timeframe that must be met by the contractor when resolving an expedited State Fair Hearing.
R9-34-221	Describe the withdrawal of a request for a State Fair Hearing, to ensure that the public understands the withdrawal requirements that must be met when withdrawing a State Fair Hearing request with the contractor.
R9-34-222	Describe the circumstances when AHCCCS must deny a request for a State Fair Hearing, to ensure that the public understands when a contractor may deny a request for a State Fair Hearing with the contractor.
R9-34-223	Describe the circumstances when a motion for rehearing or review will be granted, to ensure that the public understands the situations that must be met to receive a motion for rehearing or review with a contractor.
R9-34-224	Describe the continuation of services while the contractor appeals and the State Fair Hearing is pending, to ensure that the public understands that services may continue while their appeal or State Fair Hearing is in process with the contractor.

R9-34-225	Describe when disputed services will be provided when a reversed appeal resolution occurs, to ensure that the public understands how services disputed may be covered if an appeal is reversed by the contractor.
R9-34-301	Describe the purpose of the appeal and state fair hearing requirements for a fee-for-service member, to ensure that the public understands the circumstances or reasons applicable to file an appeal or a State Fair Hearing request with the Administration.
R9-34-302	Describe the definitions applicable to the appeal and state fair hearing process for a fee-for-service member, to ensure that the public understands the meanings of the terms used within rule describing the appeal and State Fair Hearing process with the Administration.
R9-34-303	Describe how to compute time for purposes of Article 3, to ensure that the public understands the timeframe applicable to file an appeal or a State Fair Hearing request with the Administration.
R9-34-304	Describe the language and format of the Notice of Action, to ensure that the public understands the language and format used by the Administration when receiving a NOA from the Administration.
R9-34-305	Describe the content of the Notice of Action, to ensure that the public understands what the NOA must contain when receiving the NOA from the Administration.
R9-34-306	Describe the time-frame for sending a Notice of Action for Service Authorization Requests, to ensure that the public understands the timeframes that must be met by the Administration when sending a NOA.
R9-34-307	Describe the time-frame for sending a Notice of Action for Service Termination, Suspension, or Reduction, to ensure that the public understands the timeframes that must be met by the Administration when sending a NOA.
R9-34-308	Describe who may file an appeal or request a State Fair Hearing to ensure that the public understands which person or entity may file an appeal or State Fair Hearing with the Administration.
R9-34-309	Describe the time-frame for filing an appeal to ensure that the public understands the timeframes that must be met when filing an appeal.
R9-34-310	Describe the general requirements for the appeal process to ensure that the public understands the requirements that must be met when filing an appeal with the Administration.
R9-34-311	Describe the special requirements for the appeal process to ensure that the public understands the requirements that must be met when filing an appeal with the Administration.R9-34-312. - Describe the time-frame for a standard resolution of an appeal to ensure that the public understands the timeframes that must be met by the Administration when resolving an appeal.
R9-34-312	Describe the timeframe for the resolution of a standard appeal.
R9-34-313	Describe the content of the Notice of Appeal Resolution to ensure that the public understands what the Notice of Appeal resolution must contain.
R9-34-314	Describe the requirements for the request for a State Fair Hearing to ensure that the public understands the requirement that must be met when filing a State Fair Hearing request with the Administration.
R9-34-315	Describe the time-frame for resolution of a State Fair Hearing when there is standard resolution of an appeal to ensure that the public understands the timeframes that must be met by the Administration when resolving a State Fair Hearing.
R9-34-316	Describe the request for an expedited resolution of an appeal to ensure that the public understands the requirements the Administration must meet when resolving an expedited appeal.
R9-34-317	Describe the time-frame for resolution of an expedited State Fair Hearing to ensure that the public understands the timeframes that must be met by the Administration when resolving an expedited State Fair Hearing.
R9-34-318	Describe the withdrawal of a request for a State Fair Hearing to ensure that the public understands the content of a withdrawal of a State Fair hearing request submitted to the Administration.
R9-34-319	Describe the denial of a request for a State Fair Hearing to ensure that the public understands under which circumstances the Administration may deny a request for a State Fair hearing submitted to the Administration.
R9-34-320	Describe when a motion for rehearing or review can occur to ensure that the public understands under which circumstances the Administration may issue a motion for rehearing or review for a State Fair hearing submitted to the Administration.

R9-34-321	Describe continuation of services while the appeal and the State Fair Hearing are pending, to ensure that the public understands that services may continue while their appeal or State Fair Hearing is in process with the Administration.
R9-34-322	Describe continuation of services when there is a reversed appeal resolution, to ensure that the public understands that services may continue while an appeal resolution is reversed by the Administration.
R9-34-401	Describe the purpose of the claim dispute and request for State Fair Hearing, to ensure that the public understands the reason a claim dispute may be filed or a request for State Fair hearing.
R9-34-402	Describe definitions that specifically apply to the claim dispute and request for State Fair Hearing to ensure that the public understands the meaning of the terms used when requesting a State Fair Hearing for a claim dispute.
R9-34-403	Describe computation of time for purposes of Article 4 (claim disputes), to ensure that the public understands the timeframe applicable to file an appeal or a State Fair Hearing related to a claim dispute with the Administration.
R9-34-404	Describe the content of a claim dispute, to ensure that the public understands what the content of the claim dispute must have to file an appeal or a State Fair Hearing request with the Administration related to a claim dispute.
R9-34-405	Describe the filing of a claim dispute involving a member enrolled with a contractor to ensure that the public understands the requirements that must be met when filing a claim dispute with a contractor.
R9-34-406	Describe the filing of a claim dispute by a contractor regarding reinsurance to ensure that the public understands the requirements that must be met when filing a claim dispute related to reinsurance with the Administration.
R9-34-407	Describe the filing of a claim dispute for a claim involving a FFS Member to ensure that the public understands the requirements that must be met when filing a claim dispute with the Administration.
R9-34-408	Describe the denial of a request for a State Fair Hearing to ensure that the public understands under which circumstances the Administration may deny a request for a State Fair hearing submitted to the Administration or contractor.
R9-34-409	Describe the motion for rehearing or review to ensure that the public understands under which circumstances the Administration or contractor may issue a motion for rehearing or review for a State Fair hearing submitted to the Administration.

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

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

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

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

Rule	Explanation
R9-34-101	Definitions should all be moved to R9-34-101 to align location with other chapters.
R9-34-102	Put computation of time for all types of grievances and appeals in one location, with one definition of time for clarity.
R9-34-404	Cross-references to additional or updated federal regulations, including 42 CFR 441.13 should be added for clarity.

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:** These regulations govern the rights of AHCCCS members to appeal agency and contractor actions, however no suggested changes will incur further costs by either the agency or members.
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 called for a rulemaking to provide clarity and alignment with litigation settlements. This rulemaking was never initiated, but is carried over to this 5YRR.
11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**
The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons because the majority of recommended changes reflect changes to federal regulations in this area. The minor, or technical and clarifying changes that do not fall under these federal regulations are recommended as changes because stakeholders or AHCCCS staff has determined confusion can stem from some of the organization or text of the rules. When changes are suggested for such programmatic reasons, instead of to comply with federal regulation or state statute, AHCCCS has determined to choose the least burdensome method possible.
12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X
Chapter 34 is consistent with statute A.R.S. § 36-2903.01, 42 CFR 438.400 et seq. and 42 CFR 431.200 et seq.
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**
Following approval of this 5YRR by GRRC, a rulemaking will be initiated within 180 days to make the above changes. Additional technical and clarifying changes may also occur in the rulemaking.

TITLE 9. HEALTH SERVICES

CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
GRIEVANCE SYSTEM

Editor's Note: New 9 A.A.C. 34 made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING

Article 1, consisting of R9-34-101 through R9-34-114, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

Section

- R9-34-101. Purpose
- R9-34-102. Definitions
- R9-34-103. Computation of Time
- R9-34-104. Petitioner's Rights
- R9-34-105. Who May File
- R9-34-106. Requesting a State Fair Hearing
- R9-34-107. Time-frame for Requesting a State Fair Hearing
- R9-34-108. Format and Contents of the Request for a State Fair Hearing
- R9-34-109. Notice of Hearing
- R9-34-110. Denial of a Request for a State Fair Hearing
- R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing
- R9-34-112. Withdrawal of a Request for a State Fair Hearing
- R9-34-113. Motion for Rehearing or Review
- R9-34-114. AHCCCS Coverage During the State Fair Hearing Process

ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON

Article 2, consisting of R9-34-201 through R9-34-225, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

Section

- R9-34-201. Purpose
- R9-34-202. Definitions
- R9-34-203. Computation of Time
- R9-34-204. Language and Format of the Notice of Action
- R9-34-205. Content of the Notice of Action
- R9-34-206. Contractor Notice of Action Time-frame for Service Authorization Requests
- R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction
- R9-34-208. Who May File
- R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor
- R9-34-210. Contractor General Requirements for Grievance or Appeal Process
- R9-34-211. Contractor Special Requirements for the Appeal Process
- R9-34-212. Contractor Time-frame for Standard Disposition of a Grievance
- R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal
- R9-34-214. Contractor Process for an Expedited Resolution of an Appeal
- R9-34-215. Contractor Time-frame for an Expedited Appeal Resolution
- R9-34-216. Content of Contractor Notice of Appeal Resolution
- R9-34-217. Enrollee Request for a State Fair Hearing
- R9-34-218. AHCCCS Time-frame for Resolution of a State Fair Hearing
- R9-34-219. Enrollee's Request for an Expedited State Fair Hearing
- R9-34-220. AHCCCS Time-frame for Resolution of Expedited

- R9-34-221. State Fair Hearing
- R9-34-222. Withdrawal of a Request for a State Fair Hearing
- R9-34-223. Denial of a Request for a State Fair Hearing
- R9-34-224. Motion for Rehearing or Review
- R9-34-224. Continuation of Services While the Contractor Appeal and the State Fair Hearing are Pending
- R9-34-225. Reversed Appeal Resolutions

ARTICLE 3. APPEAL AND HEARING FOR AN FFS MEMBER

Article 3, consisting of R9-34-301 through R9-34-322, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

Section

- R9-34-301. Purpose
- R9-34-302. Definitions
- R9-34-303. Computation of Time
- R9-34-304. Language and Format of the Notice of Action
- R9-34-305. Content of the Notice of Action
- R9-34-306. Time-frame for Notice of Action for Service Authorization Requests
- R9-34-307. Time-frame for Notice of Action for Service Termination, Suspension, or Reduction
- R9-34-308. Who May File
- R9-34-309. Time-frame for Filing an Appeal
- R9-34-310. General Requirements for the Appeal Process
- R9-34-311. Special Requirements for the Appeal Process
- R9-34-312. Time-frame for Standard Resolution of an Appeal
- R9-34-313. Content of the Notice of Appeal Resolution
- R9-34-314. Request for a State Fair Hearing
- R9-34-315. Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal
- R9-34-316. Request for Expedited Resolution of an Appeal
- R9-34-317. Time-frame for Resolution of Expedited State Fair Hearing
- R9-34-318. Withdrawal of a Request for a State Fair Hearing
- R9-34-319. Denial of a Request for a State Fair Hearing
- R9-34-320. Motion for Rehearing or Review
- R9-34-321. Continuation of Services While the Appeal and the State Fair Hearing are Pending
- R9-34-322. Reversed Appeal Resolutions

ARTICLE 4. CLAIM DISPUTE

Article 4, consisting of R9-34-401 through R9-34-409, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

Section

- R9-34-401. Purpose
- R9-34-402. Definitions
- R9-34-403. Computation of Time
- R9-34-404. Content of Claim Dispute
- R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor
- R9-34-406. Filing a Claim Dispute from a Contractor for Reinsurance
- R9-34-407. Filing a Claim Dispute for a Claim Involving an FFS Member
- R9-34-408. Denial of a Request for a State Fair Hearing
- R9-34-409. Motion for Rehearing or Review

ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING

Article 1, consisting of R9-34-101 through R9-34-114, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-101. Purpose

This Article establishes the requirements and process for a petitioner to request a State Fair Hearing regarding an adverse action affecting eligibility. Except for the adverse action in R9-34-102(A)(5), this Article does not apply to a person determined eligible by the Arizona Department of Economic Security under 9 A.A.C. 22, Article 14.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-102. Definitions

- A. “Adverse action” by AHCCCS means:
1. Denial of eligibility,
 2. Discontinuance of eligibility,
 3. The imposition of or increase in Arizona Long Term Care System (ALTCS) share of cost determined under A.A.C. R9-28-408 or R9-28-410,
 4. An eligibility determination that the petitioner claims is beyond the established time-frame, or
 5. The imposition of or increase in a premium or copayment.
- B. “AHCCCS” means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- C. “Day” means calendar day unless otherwise specified.
- D. “Director” means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- E. “Director’s Decision” means the final administrative decision under A.R.S. § 41-1092(5).
- F. “Filed” means the date that AHCCCS receives a request for a State Fair Hearing as established by a date stamp on the request or other record of receipt.
- G. “Petitioner” means applicant, member, or other representative who is described and discussed in A.A.C. R9-22-1501, R9-22-1704, R9-22-1903, R9-22-2004, R9-27-302, R9-28-401, R9-28-1303, R9-29-203, R9-31-302, R9-31-1702, or for an adverse action under subsection (A)(5), an applicant, member, or other representative under 9 A.A.C. 22, Article 14.
- H. “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-103. Computation of Time

- A. Computation of time begins the day after the date on the Notice of Adverse Action and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. The 30-day time-frame for filing a request for a State Fair Hearing begins with the date the petitioner receives the Notice of Adverse Action.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-104. Petitioner’s Rights

AHCCCS shall allow a petitioner the right to:

1. A State Fair Hearing; and

2. Copies, at the petitioner’s expense, of any relevant document not protected from disclosure by law.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-105. Who May File

A petitioner who requests a State Fair Hearing shall make the request according to this Article.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-106. Requesting a State Fair Hearing

A petitioner may request a State Fair Hearing under this Article only for an adverse action.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-107. Time-frame for Requesting a State Fair Hearing

A petitioner shall request a State Fair Hearing in writing with AHCCCS within 30 days after the petitioner receives the Notice of Adverse Action.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-108. Format and Contents of the Request for a State Fair Hearing

A petitioner shall submit a written request for a State Fair Hearing to AHCCCS. The request shall contain the case name, the adverse action taken by AHCCCS, and the reason for the State Fair Hearing.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-109. Notice of Hearing

AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a request for a State Fair Hearing that is timely and contains the information listed in R9-34-108.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-110. Denial of a Request for a State Fair Hearing

AHCCCS shall deny a request for a State Fair Hearing upon written determination by AHCCCS that:

1. The request for a State Fair Hearing is untimely;
2. The request for a State Fair Hearing is not for an adverse action permitted under this Article;
3. The request for a State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing

AHCCCS shall mail a Director’s Decision to the petitioner no later than 30 days after the date of the Administrative Law Judge’s rec-

ommended decision and within 90 days after the date that the petitioner filed the request for a State Fair Hearing not including days for continuances granted at the petitioner's request.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-112. Withdrawal of a Request for a State Fair Hearing

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the petitioner before AHCCCS mails a Notice of Hearing under R9-34-109.
- B. If AHCCCS mailed a Notice of Hearing under R9-34-109, the petitioner shall send a written request for withdrawal to the Office of Administrative Hearings (OAH).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-113. Motion for Rehearing or Review

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a petitioner's rights:

1. Irregularity in the proceedings of a State Fair Hearing that deprived a petitioner of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-114. AHCCCS Coverage During the State Fair Hearing Process

- A. If a petitioner requests a State Fair Hearing because of an increase in the share-of-cost, premium, or copayment and the request is filed before the effective date of the increase, AHCCCS shall not enforce the increase until a Director's Decision is rendered that supports the increase.
- B. If a petitioner files a request for a State Fair Hearing for a discontinuance action before the effective date of the discontinuance, the petitioner shall continue to receive AHCCCS coverage until a Director's Decision is rendered. A petitioner may waive coverage while the Director's Decision is pending.
- C. A petitioner, eligible under 9 A.A.C. 22, Article 31, who requests AHCCCS coverage during the State Fair Hearing process, shall comply with the premium payment requirements under A.A.C. R9-31-1419.
- D. A petitioner whose benefits are continued shall be financially liable for all fee-for-service and capitation payments made by AHCCCS during a period of ineligibility, if a discontinuance decision is upheld under A.R.S. § 41-1092.08.
- E. If a petitioner requests a hearing regarding the termination of family planning services under A.A.C. R9-22-1424 or the guaranteed enrollment period under 9 A.A.C. 22, Article 17, the petitioner shall not continue to be AHCCCS eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the Director's Decision.

- F. If a denial of eligibility is overturned, the effective date of AHCCCS eligibility shall be set forth in the Director's Decision.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON

Article 2, consisting of R9-34-201 through R9-34-225, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-201. Purpose

This Article establishes the grievance, appeal, and State Fair Hearing requirements for a person enrolled with an AHCCCS contractor. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-202. Definitions

The following definitions apply for purposes of this Article:

1. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
2. "Action" by a contractor means:
 - a. The denial or limited authorization of a requested service, including the type or level of service;
 - b. The reduction, suspension, or termination of a previously authorized service;
 - c. The denial, in whole or in part, of payment for a service;
 - d. The failure to provide a service in a timely manner as set forth in contract;
 - e. The failure of a contractor to act within the timeframes specified in this Article; or
 - f. For an enrollee residing in a rural area with only one contractor, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the contractor's network.
3. "Appeal" means a request for review of an action.
4. "Contractor" means contractor or program contractor as defined in A.R.S. § 36-2901, 36-2931, 36-2971 and 36-2981; the Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services.
5. "Day" means calendar day unless otherwise specified.
6. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
7. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
8. "Enrollee" means a person eligible for AHCCCS under A.R.S. Title 36, Chapter 29 and who is enrolled with an AHCCCS contractor.
9. "Filed" means the date that the contractor or AHCCCS, whichever is applicable, receives the request as established by a date stamp on the request or other record of receipt.
10. "Grievance" means an expression of dissatisfaction about any matter other than an action. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal

relationships such as rudeness of a provider or employee or failure to respect the enrollee's rights.

11. "Institution for Mental Disease" means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
12. "Rural" has the same meaning as in A.R.S. § 36-2171.
13. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
14. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
 - a. A legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
 - b. A legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-203. Computation of Time

- A. Computation of time in calendar days, begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. Computation of time in working days, begins the day after the act, event or decision and includes all working days.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-204. Language and Format of the Notice of Action

A contractor shall ensure that the Notice of Action is in writing and meets the following language and format requirements:

1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of enrollees or potential enrollees in the contractor's geographic service area as established by contract.
2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.
3. The format of the Notice of Action is easily understood and available in alternative formats, such as braille, large font, or enhanced audio, and in an appropriate manner that takes into consideration the special needs of an enrollee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-205. Content of the Notice of Action

A contractor shall ensure that the Notice of Action explains the following:

1. The action the contractor has taken or intends to take;
2. The reasons for the action;
3. The enrollee's right to file an appeal with the contractor;
4. The procedures for exercising the rights specified in this Article;
5. The circumstances under which an expedited resolution is available and how to request it; and
6. The circumstances under which an enrollee has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the enrollee is liable for the costs of services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-206. Contractor Notice of Action Time-frame for Service Authorization Requests

- A. For an authorization decision, not covered under subsection (B), for a service requested on behalf of an enrollee, the contractor shall mail a Notice of Action within 14 calendar days following the receipt of the enrollee's request.
- B. For an authorization request in which the provider indicates or the contractor determines that following the time-frame in subsection (A) could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the contractor shall make an expedited authorization decision and mail the Notice of Action as expeditiously as the enrollee's health condition requires, but not later than three working days after receipt of the request for service.
- C. If the enrollee requests an extension of the time-frame in subsection (A) or (B), the contractor shall extend the time-frame up to an additional 14 days as requested by the enrollee.
- D. If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
 1. Give the enrollee written notice of the reason for the decision to extend the time-frame and inform the enrollee of the right to file a grievance if the enrollee disagrees with the decision, and
 2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- E. For service authorization decisions not reached within the maximum time-frame in this Section, the authorization shall be considered denied on the date that the time-frame expires.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction

- A. For termination, suspension, or reduction of previously authorized AHCCCS covered service, a contractor shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).
- B. The contractor may mail the Notice of Action no later than the date of action if:
 1. The contractor has factual information confirming the death of an enrollee;
 2. The contractor receives a clear written statement signed by the enrollee that the enrollee no longer wishes services or the enrollee gives information to the contractor that requires termination or reduction of services and indicates that the enrollee understands that this shall be the result of supplying that information;
 3. The enrollee is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
 4. The enrollee is an inmate of a public institution that does not receive federal financial participation;
 5. The enrollee's whereabouts are unknown and the post office returns mail, directed to the enrollee, to the contractor indicating no forwarding address; or
 6. The contractor establishes the fact that the enrollee has been accepted for Medicaid by another state.

- C. The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the enrollee.
- D. If the contractor denies payment to a provider, the contractor shall send the Notice of Action to the enrollee at the time of the action affecting the claim.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-208. Who May File

- A. An enrollee shall file a grievance, an appeal, or request a State Fair Hearing according to this Article.
- B. An authorized representative, including a provider, acting on behalf of the enrollee, with the enrollee's written consent, may file an appeal or request a State Fair Hearing on behalf of an enrollee. A provider is permitted to file a grievance with a contractor at the contractor's discretion.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor

- A. An enrollee shall file an appeal either orally or in writing with the contractor within 60 days after the date of the Notice of Action.
- B. The enrollee shall file a grievance either orally or in writing with the contractor.
- C. The enrollee shall file a grievance directly with the contractor. AHCCCS shall refer to the contractor any grievance filed with AHCCCS. An enrollee is not entitled to a State Fair Hearing on a grievance.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-210. Contractor General Requirements for Grievance or Appeal Process

- A. A contractor shall provide reasonable assistance to enrollees in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf, and text telephone) and interpreter capability.
- B. The contractor shall acknowledge receipt of each grievance orally or in writing. The contractor shall acknowledge receipt of each appeal in writing.
- C. The contractor shall ensure that the individual who makes a decision on a grievance or an appeal was not involved in any previous level of review or decision-making.
- D. The contractor shall ensure that a health care professional who makes decisions on any of the following appeals or grievances has the appropriate clinical expertise in treating the enrollee's condition or disease:
 1. An appeal of a denial that is based on lack of medical necessity,
 2. A grievance regarding denial of expedited resolution of an appeal, or
 3. A grievance or appeal that involves clinical issues.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-211. Contractor Special Requirements for the Appeal Process

- A. A contractor shall treat an oral inquiry seeking to appeal an action as an appeal.
- B. A resolution of an appeal by the contractor before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).
- C. The contractor shall provide a reasonable opportunity for an enrollee to present evidence, and allegations of fact or law, in person and in writing. The contractor shall inform the enrollee of the limited time available for this in the case of an expedited resolution.
- D. The contractor shall provide the enrollee and representative the opportunity, before and during the appeal process, to examine the enrollee's case file, including medical records, documents, and records considered during the appeal process, not protected from disclosure by law.
- E. The contractor shall include, as a party to the appeal, the enrollee or the legal representative of a deceased enrollee's estate.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-212. Contractor Time-frame for Standard Disposition of a Grievance

For disposition of a grievance, a contractor shall complete disposition and provide oral or written notice to the enrollee of the contractor's decision within 90 days after the day the contractor receives the grievance.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal

- A. For standard resolution of an appeal, a contractor shall resolve the appeal and mail the written Notice of Appeal Resolution to the enrollee within 30 days after the day the contractor receives the appeal.
- B. If the enrollee requests an extension of the 30-day time-frame in subsection (A), the contractor shall extend the time-frame up to an additional 14 days.
- C. If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
 1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
 2. Issue and carry out the resolution as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D. If a Notice of Appeal Resolution is not sent within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-214. Contractor Process for an Expedited Resolution of an Appeal

- A. A contractor shall establish and maintain a review process for an expedited appeal. The contractor shall conduct an expedited appeal if:

1. The contractor receives a request for an appeal from an enrollee and the contractor determines that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function;
 2. The contractor receives a request for an expedited appeal from an enrollee supported with documentation from the provider that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function; or
 3. The contractor receives a request for an expedited appeal directly from a provider, with the enrollee's written consent, and the provider indicates that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function.
- B.** The contractor shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports an enrollee's appeal.
- C.** If the contractor denies a request for expedited resolution of an appeal from an enrollee, the contractor shall:
1. Resolve the appeal within the time-frame in R9-34-213; and
 2. Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-215. Contractor Time-frame for an Expedited Appeal Resolution

- A.** For expedited resolution of an appeal, a contractor shall resolve the appeal and mail a written Notice of Appeal Resolution to the enrollee within three working days after the day the contractor receives the appeal. The contractor shall make reasonable efforts to provide prompt oral notice.
- B.** If the enrollee requests an extension of the three working day time-frame in subsection (A), the contractor shall extend the time-frame up to an additional 14 days.
- C.** If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
 2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D.** For resolution decisions not reached within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-216. Content of Contractor Notice of Appeal Resolution

- A.** A contractor shall ensure that the written Notice of Appeal Resolution includes the results of the resolution process and the date it was completed.
- B.** For an appeal not resolved wholly in favor of the enrollee, the Notice of Appeal Resolution shall contain:

1. The right to request a State Fair Hearing, and how to do so;
2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request;
3. The factual and legal basis for the decision; and
4. That the enrollee shall be liable for the cost of continued services if the Director's Decision upholds the contractor's decision.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-217. Enrollee Request for a State Fair Hearing

- A.** An enrollee may request a State Fair Hearing on the contractor's resolution of an appeal. The request shall be in writing, submitted to and received by the contractor, no later than 30 days after the date the enrollee receives the Notice of Appeal Resolution.
- B.** If an enrollee wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-224.
- C.** AHCCCS shall mail a Notice of Fair Hearing under A.R.S. § 41-1092.05 if a timely request for a State Fair Hearing is received.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-218. AHCCCS Time-frame for Resolution of a State Fair Hearing

AHCCCS shall mail a Director's Decision to the enrollee no later than 30 days after the date of the Administrative Law Judge's recommended decision and within 90 days after the date that the enrollee filed the appeal with the contractor, not including the number of days the enrollee took to file for a State Fair Hearing, and days for continuances granted at the enrollee's request.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-219. Enrollee's Request for an Expedited State Fair Hearing

An enrollee may request an expedited State Fair Hearing on the contractor's resolution of an expedited appeal. The request shall be in writing, submitted to and received by the contractor no later than 30 days after the enrollee receives the contractor's Notice of Appeal Resolution.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-220. AHCCCS Time-frame for Resolution of an Expedited State Fair Hearing

Within three working days after the date AHCCCS receives the case file and information from the contractor concerning an expedited appeal resolution, AHCCCS shall mail to the enrollee the AHCCCS Director's Decision which results from the State Fair Hearing and the Administrative Law Judge's Recommended Decision. AHCCCS shall make reasonable efforts to provide oral notice of the Director's Decision.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-221. Withdrawal of a Request for a State Fair Hearing

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the enrollee before AHCCCS mails a Notice of a State Fair Hearing under A.R.S. § 41-1092, et seq.
- B. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., an enrollee shall send a written request for withdrawal to the OAH.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-222. Denial of a Request for a State Fair Hearing

AHCCCS shall deny a request for a State Fair Hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The request for hearing is moot, as determined by AHCCCS, based on the factual circumstances of each case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-223. Motion for Rehearing or Review

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an enrollee of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of the enrollee at the State Fair Hearing.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-224. Continuation of Services While the Contractor Appeal and the State Fair Hearing Are Pending

- A. For the purposes of this Section, timely filing means filing on or before the later of the following:
1. Within 10 days after the date that the contractor mails the Notice of Action, or
 2. The effective date of the action as indicated in the Notice of Action.
- B. The contractor shall continue the enrollee's services if:
1. The enrollee files the appeal timely;
 2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
 3. The services were ordered by an authorized provider;
 4. The original period covered by the original authorization has not expired; and
 5. The enrollee requests continuation of services.
- C. If, at the enrollee's request, the contractor continues or reinstates the enrollee's services while the appeal is pending, the contractor shall continue services until one of following occurs:

1. The enrollee withdraws the appeal;
 2. Ten days pass after the contractor mails the Notice of Appeal Resolution to the enrollee, unless the enrollee, within the 10-day time-frame, has requested in writing a State Fair Hearing with continuation of benefits until a Director's Decision is reached;
 3. AHCCCS mails a Director's Decision adverse to the enrollee; or
 4. The time-period or service limits of a previously authorized service have been met.
- D. If the Director's Decision upholds the contractor's action, the contractor may recover the cost of the services furnished to the enrollee while the appeal is pending if the services were furnished solely because of the requirements of this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-225. Reversed Appeal Resolutions

- A. If the contractor or the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the contractor shall authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.
- B. If the contractor or the Director's Decision reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the contractor shall pay the provider for those services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

ARTICLE 3. APPEAL AND HEARING FOR AN FFS MEMBER

Article 3, consisting of R9-34-301 through R9-34-322, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-301. Purpose

This Article establishes the appeal and State Fair Hearing requirements for an AHCCCS fee-for-service (FFS) member.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-302. Definitions

- A. "Action" by AHCCCS or a tribal contractor means:
1. The denial or limited authorization of a requested service, including the type or level of service;
 2. The reduction, suspension, or termination of a previously authorized service;
 3. The failure to provide services in a timely manner as set forth in contract; or
 4. The failure of AHCCCS to act within the time-frames specified in this Article.
- B. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- C. "Appeal" means a request for review of an action.
- D. "Day" means calendar day unless otherwise specified.
- E. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- F. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
- G. "FFS member" means an FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on an FFS basis.

- H. “Filed” means the date that AHCCCS receives a request as established by a date stamp on the request or other record of receipt.
- I. “Institution for Mental Disease” means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
- J. “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
- K. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
 1. A legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
 2. A legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-303. Computation of Time

- A. Computation of time in calendar days begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. Computation of time for working day begins the day after the act, event, or decision and includes all working days.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-304. Language and Format of the Notice of Action

The Notice of Action shall be in writing and meet the following language and format requirements:

1. The Notice of Action is available in each non-English language spoken by a significant number or percentage of FFS members as established by contract.
2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-305. Content of the Notice of Action

The Notice of Action explains the following:

1. The action AHCCCS has taken or intends to take;
2. The reasons for the action;
3. The factual and legal basis for the decision;
4. The FFS member’s right to file an appeal with AHCCCS;
5. The procedures for exercising the rights specified in this Section;
6. The circumstances under which an expedited resolution is available and how to request it; and
7. The circumstances under which an FFS member has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the FFS member shall be liable for the costs of these services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-306. Time-frame for Notice of Action for Service Authorization Requests

- A. For an authorization decision, not covered in subsection (B), for a service requested on behalf of the FFS member, AHCCCS shall mail a Notice of Action within 14 calendar days following receipt of the FFS member’s request.
- B. For authorization requests in which the provider indicates or AHCCCS determines that following the time-frame in subsection (A) could seriously jeopardize the FFS member’s life or health, or ability to attain, maintain, or regain maximum function, AHCCCS shall make an expedited authorization decision and provide notice as expeditiously as the FFS member’s health condition requires, but not later than three working days after receipt of the request for service.
- C. If the FFS member requests an extension of the time-frame in subsection (A) or (B), AHCCCS shall extend the time-frame up to an additional 14 days as requested by the FFS member.
- D. If AHCCCS needs additional information and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
 1. Give the FFS member written notice of the reason for the decision to extend the time-frame; and
 2. Mail and carry out the determination as expeditiously as the FFS member’s health condition requires and no later than the date the extension expires.
- E. For service authorization decisions not reached within the time-frames in this Section, the authorization shall be considered denied on the date that the time-frame expires.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-307. Time-frame for Notice of Action for Service Termination, Suspension, or Reduction

- A. For termination, suspension, or reduction of previously authorized AHCCCS covered service, AHCCCS shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).
- B. AHCCCS may mail the Notice of Action no later than the date of action if:
 1. AHCCCS has factual information confirming the death of an FFS member;
 2. AHCCCS receives a clear written statement signed by the FFS member that the FFS member no longer wishes services or the FFS member gives information that requires termination or reduction of services and indicates that the FFS member understands that this shall be the result of supplying that information;
 3. The FFS member is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
 4. The FFS member is an inmate of a public institution that does not receive federal financial participation;
 5. The FFS member’s whereabouts are unknown and the post office returns mail, directed to the FFS member, to the contractor indicating no forwarding address; or
 6. AHCCCS establishes the fact that the FFS member has been accepted for Medicaid by another state.
- C. AHCCCS may shorten the period of advance notice to five days before the date of action if AHCCCS has verified facts indicating probable fraud by the FFS member.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-308. Who May File

- A. An FFS member shall file an appeal or request a State Fair Hearing according to this Article.
- B. An authorized representative, including a provider acting on behalf of the FFS member with the FFS member's written consent, shall file an appeal or request a State Fair Hearing on behalf of an FFS member.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-309. Time-frame for Filing an Appeal

An FFS member shall file an appeal either orally or in writing with AHCCCS within 60 days after the date the FFS member receives the Notice of Action.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-310. General Requirements for the Appeal Process

- A. AHCCCS shall provide reasonable assistance to an FFS member in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf and text telephone) and interpreter capability.
- B. AHCCCS shall acknowledge receipt of each appeal in writing.
- C. AHCCCS shall ensure that the individual who makes a decision on an appeal was not involved in any previous level of review or decision-making.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-311. Special Requirements for the Appeal Process

- A. AHCCCS shall provide that an oral inquiry seeking to appeal an action is treated as an appeal.
- B. A resolution of an appeal by AHCCCS before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).
- C. AHCCCS shall provide a reasonable opportunity for the FFS member to present evidence and allegations of fact or law prior to issuance of an appeal resolution.
- D. AHCCCS shall provide the enrollee and representative the opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, documents not protected from disclosure by law, and records considered during the appeal process.
- E. AHCCCS shall schedule a hearing and mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely appeal and:
 1. The prior authorization request, as defined in 9 A.A.C. 22, Article 1, was reviewed by two independent medical professionals prior to mailing the Notice of Action; or
 2. The FFS member requests a State Fair Hearing for expedited resolution that meets the criteria in R9-34-316.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-312. Time-frame for Standard Resolution of an Appeal

- A. For standard resolution of an appeal, AHCCCS shall resolve the appeal and mail written Notice of Appeal Resolution to the FFS member within 30 days after the day AHCCCS receives the appeal.

- B. If the FFS member requests an extension of the 30 day time-frame in subsection (A), AHCCCS shall extend the time-frame up to an additional 14 days if requested by the FFS member.
- C. If additional information is needed by AHCCCS and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in subsection (A) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
 1. Give the FFS member written notice of the reason for the decision to extend the time-frame, and
 2. Mail and carry out the resolution as expeditiously as the FFS member's health condition requires and no later than the date the extension expires.
- D. For resolution decisions not reached within the time-frames in this Section, the appeal shall be considered denied on the date that the time-frames expires.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-313. Content of the Notice of Appeal Resolution

- A. The written Notice of Appeal Resolution shall include the results of the resolution process and the date it was completed.
- B. For appeals not resolved wholly in favor of the FFS member, the Notice of Appeal Resolution shall contain,
 1. The right to request a State Fair Hearing, and how to do so,
 2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request,
 3. The factual and legal basis for the decision; and
 4. That the FFS member shall be liable for the cost of continued services if the Director's Decision upholds AHCCCS' decision.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-314. Request for a State Fair Hearing

- A. An FFS member may request a State Fair Hearing under AHCCCS' standard resolution of an appeal. The request shall be in writing, submitted to and received by AHCCCS, no later than 30 days after the FFS member receives the AHCCCS Notice of Appeal Resolution.
- B. If an FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.
- C. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing under the requirements of this Article.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-315. Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal

AHCCCS shall mail a Notice of Final Decision to the FFS member no later than 30 days after the date the Administrative Law Judge sends the recommended decision to AHCCCS, and within 90 days after the date that the FFS member filed the appeal with AHCCCS, not including the days for continuances granted at the enrollee's request.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-316. Request for Expedited Resolution of an Appeal

- A. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 when AHCCCS receives an appeal request from an FFS member no later than 30 days after the FFS member receives the AHCCCS Notice of Action and:
1. AHCCCS determines that taking the time for a standard resolution could seriously jeopardize the FFS member's life, health, or ability to attain, maintain, or regain maximum function;
 2. The expedited appeal request is supported with documentation by the provider supporting that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function; or
 3. AHCCCS receives an expedited appeal request directly from the provider who indicates that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function.
- B. AHCCCS shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports an FFS member's appeal.
- C. If AHCCCS denies a request for expedited resolution of an appeal from an FFS member, AHCCCS shall:
1. Resolve the appeal within the time-frame in R9-34-315, and
 2. Make reasonable efforts to give the FFS member prompt oral notice of the denial, and follow up within two calendar days with a written notice.
- D. If an FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-317. Time-frame for Resolution of Expedited State Fair Hearing

AHCCCS shall mail a written Hearing Decision to the FFS member within three working days after the date that the hearing has concluded.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-318. Withdrawal of a Request for a State Fair Hearing

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the FFS member before AHCCCS mails a notice of hearing under A.R.S. § 41-1092 et seq.
- B. If AHCCCS mailed a notice of hearing under A.R.S. § 41-1092 et seq., an FFS member shall send a written request for withdrawal to OAH.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-319. Denial of a Request for a State Fair Hearing

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092 et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The request for State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; or

4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-320. Motion for Rehearing or Review

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an FFS member of a State Fair Hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-321. Continuation of Services While the Appeal and the State Fair Hearing are Pending

- A. For the purposes of this Section, timely filing means filing on or before the later of the following:
1. Within 10 days from the date that AHCCCS mails the Notice of Action, or
 2. The intended effective date of AHCCCS' proposed action.
- B. AHCCCS shall continue the FFS member's services if:
1. The FFS member files the appeal timely;
 2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
 3. An authorized provider ordered the services;
 4. The original period covered by the original authorization has not expired; and
 5. The FFS member requests continuation of services.
- C. If, at the FFS member's request, AHCCCS continues or reinstates the FFS member's services while the appeal is pending, AHCCCS shall continue the services until one of following occurs:
1. The FFS member withdraws the appeal;
 2. Ten days pass after AHCCCS mails the Notice of Appeal Resolution to the FFS member unless the FFS member within the 10-day time-frame has requested a State Fair Hearing in writing with continuation of benefits until a Director's Decision is reached;
 3. AHCCCS mails a hearing decision adverse to the FFS member; or
 4. The time-period or service limits of a previously authorized service have been met.
- D. If the Director's Decision upholds AHCCCS' action, the FFS member shall be liable for the cost of the services furnished to the FFS member while the appeal is pending, to the extent that the services were furnished solely because of the requirements of this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-322. Reversed Appeal Resolutions

- A. If the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, AHCCCS shall authorize or provide the disputed services promptly, and as expeditiously as the FFS member's health condition requires.
- B. If the Director's Decision reverses a decision to deny authorization of services, and the FFS member received the disputed services while the appeal was pending, AHCCCS shall pay the provider for those services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

ARTICLE 4. CLAIM DISPUTE

Article 4, consisting of R9-34-401 through R9-34-409, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-401. Purpose

This Article establishes process and requirements for a provider or contractor to resolve a claim dispute or request a State Fair Hearing. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-402. Definitions

- A. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- B. "Claim dispute" means a dispute involving a payment of a claim, denial of a claim, imposition of a sanction or reinsurance.
- C. "Contractor" means contractor or program contractor as defined in A.R.S. Title 36, Chapter 29; the Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services.
- D. "Day" means calendar day unless otherwise specified.
- E. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- F. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
- G. "FFS member" means an FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on an FFS basis and not enrolled with an AHCCCS contractor.
- H. "Filed" means the date that AHCCCS receives a request as established by a date stamp on the request or other record of receipt.
- I. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-403. Computation of Time

Computation of time for calendar day begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-404. Content of Claim Dispute

A claim dispute shall specify in detail the factual and legal basis for the claim dispute and the relief requested. AHCCCS shall deny a claim dispute if the factual or legal basis is not detailed.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor

- A. For a claim for services rendered to a member enrolled with a contractor, the provider shall file a written claim dispute with the contractor under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. The contractor shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with the contractor, unless the provider and contractor agree to a longer period.
- C. The contractor's written Notice of Decision shall include:
1. The date of the decision,
 2. The factual and legal basis for the decision,
 3. The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
 4. The manner in which a request for a State Fair Hearing is filed under A.R.S. § 41-1092, et seq.
- D. A provider may request a State Fair Hearing on the contractor's Notice of Decision if:
1. The provider files a written request for a State Fair Hearing with the contractor no later than 30 days after the date the provider receives the contractor's written Notice of Decision, or
 2. The contractor does not render a written Notice of Decision within 30 days after the claim dispute is filed and the provider files a written request for a State Fair Hearing within 30 days after the date that the Notice of Decision should have been mailed.
- E. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 to the parties if a contractor receives a timely request for hearing from the provider.
- F. AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a provider shall send a written request for withdrawal to OAH.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-406. Filing a Claim Dispute From a Contractor for Reinsurance

- A. A contractor shall file a written reinsurance claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. AHCCCS shall mail a written Notice of Decision of the claim dispute for reinsurance to the contractor no later than 30 days after the contractor files the claim dispute with AHCCCS, unless AHCCCS and contractor agree to a longer period.
- C. AHCCCS' written Notice of Decision shall include:
1. The date of the decision,
 2. The factual and legal basis for the decision,

3. The contractor's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
 4. The manner in which a contractor is to file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A contractor may request a State Fair Hearing on AHCCCS' Notice of Decision if:
1. The contractor files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date the contractor receives the AHCCCS' written Notice of Decision regarding reinsurance, or
 2. AHCCCS does not render a written Notice of Decision regarding reinsurance within 30 days after the claim dispute is filed and the contractor files a written request for a State Fair Hearing within 30 days after the date that the Notice of Decision should have been mailed.
- E.** AHCCCS shall mail a notice of a State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the contractor.
- F.** AHCCCS shall mail a Director's Decision to the contractor no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the contractor before AHCCCS mails a notice of hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a contractor shall send a written request for withdrawal to OAH.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-407. Filing a Claim Dispute for a Claim Involving an FFS Member

- A.** For a claim for an FFS member, the provider shall file a written claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B.** AHCCCS shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with AHCCCS, unless AHCCCS and the provider agree to a longer period.
- C.** AHCCCS' written Notice of Decision shall include:
1. The date of the decision,
 2. The factual and legal basis for the decision,
 3. The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
 4. The manner in which a provider is to file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A provider may request a State Fair Hearing on AHCCCS' Notice of Decision if:
1. The provider files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date the provider receives the AHCCCS' written Notice of Decision, or

2. AHCCCS does not render a written Notice of Decision within 30 days after the claim dispute is filed and the provider files a written request for a State Fair Hearing based on AHCCCS' failure or refusal to decide the claim dispute within 30 days after the date that the Notice of Decision should have been mailed.

- E.** AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the provider.
- F.** AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a provider shall send a written request for withdrawal to OAH.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-408. Denial of a Request for a State Fair Hearing

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The provider or contractor waives the right to a hearing; or
4. The request for hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

R9-34-409. Motion for Rehearing or Review

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a provider's rights:

1. Irregularity in the proceedings of a hearing that deprived a provider of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

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.

DEPARTMENT OF TRANSPORTATION (O19-0801)

Title 17, Chapter 5, Articles 6-7, Department of Transportation - Commercial Programs



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2019

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

FROM: Council Staff

DATE: July 8, 2019

SUBJECT: DEPARTMENT OF TRANSPORTATION (O19-0801)

Title 17, Chapter 5, Articles 6, Ignition Interlock Device Manufacturers and Ignition Interlock Service Providers; Article 7, Ignition Interlock Device Technicians

This One Year Review Report (1YRR) from the Department of Transportation (ADOT) relates to rules in Title 17, Chapter 5, Articles 6 and 7 relating to Ignition Interlock Device Manufacturers and Ignition Interlock Service Providers and Ignition Interlock Device Technicians. These rules were made pursuant to Laws 2017, Ch. 331, § 12, which granted ADOT a one-time exemption from the Administrative Procedure Act (APA) in Title 41, Chapter 6 of the Arizona Revised Statutes. The exemption from the APA is valid for one year from the effective date of the session law, which was June 30, 2018.

Pursuant to Laws 2017, Ch. 331, § 12, "[f]or an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rule has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rule adopted under the rulemaking exemption should be amended or repealed."

Proposed Action

If ADOT receives an exception from the rulemaking moratorium, it plans to submit a rulemaking to the Council to amend the ignition interlock rules by July 2020. This rulemaking will also include R17-5-614, the ignition interlock device installation fee rule. This rule was

previously established through exempt rulemaking and must now be approved through a regular rulemaking.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. ADOT cites to both general and specific authority for these rules, including the session law granting ADOT the one-time exemption from the APA.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department adopted the rules under review through the exempt rulemaking process, so there was no requirement to submit an economic, small business, and consumer impact statement (EIS) at that time. In this review, the Department estimates that the rules are the least costly and burdensome option for the regulated public.

The Department charges an installation fee of \$20 to each ignition interlock user. The Department estimates that approximately 20,000 Arizona drivers have an ignition interlock device installed each year, so the total revenue generated from this fee is approximately \$400,000 annually. The Department notes that these fees cover the Department's costs of administering the ignition interlock program.

The stakeholders include the Department, ignition interlock service providers, ignition interlock manufacturers, and individuals required to install an ignition interlock device.

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

The Department indicates that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Department notes that there are certain rules that need improvement. The Department intends to submit a rulemaking to the Council that addresses these rules by July 2020, pending approval of an exemption to the rulemaking moratorium.

4. Has the agency received any written criticisms of the rules since they were adopted?

No. ADOT has not received any written criticisms of these rules since they were adopted.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. ADOT indicates that the rules are mostly clear, concise, understandable, effective, and consistent with other statutes. ADOT identifies two rules (R17-5-601 (Definitions) and R17-5-616 (Civil Penalties; Hearing) that are not consistent with A.R.S. § 28-1465

(Rulemaking; ignition interlock service providers; and manufacturers civil penalty) for the reasons indicated in its report.

It also identifies two rules (R17-5-616(B) (Civil Penalties; Hearing) and R17-5-621(B)(1) (Service Center Application) whose clarity could be improved.

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

Yes. ADOT indicates that the rules are enforced as written. However, it notes an issue with R17-5-615 (Rolling Retest; Missed Rolling Retest; Extension of Ignition Interlock Period) relating to enforcement and compliance with the rolling retest requirement. The specific issue is detailed in the 1YRR.

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. There is no corresponding 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?

Yes. An ignition interlock device manufacturer must first obtain ADOT certification of the device to allow device installation. Under A.R.S. § 28-1468, an ignition interlock service provider has to apply for authorization of an ignition interlock provider contract. This can be considered a general permit as it is defined in A.R.S. § 41-1001(11). ADOT complies with A.R.S. § 41-1037.

9. Conclusion

ADOT has submitted a timely 1YRR on these rules, which were adopted pursuant to a session law exemption, that is consistent with A.R.S. § 41-1095. If ADOT receives an exception to the rulemaking moratorium, it intends to submit a Notice of Final Rulemaking on these rules to the Council by July 2020. That rulemaking will include R17-5-614, which contains a fee previously established in the exempt rulemaking. Council staff finds that the rationale for the proposed course of action is adequate. Council staff recommends approval of this report.



Director's Office

An Arizona Management System Agency

Douglas A. Ducey, Governor
John S. Halikowski, Director
Scott Omer, Deputy Director/Chief Operating Officer
Kevin Bieisty, Deputy Director for Policy
Dallas Hammit, Deputy Director for Transportation

June 7, 2019

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

RE: One-Year Review Report for A.A.C. Title 17, Chapter 5, Articles 6 and 7

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Transportation's One-Year Review Report on A.A.C. Title 17, Chapter 5, Articles 6 and 7. Included with the report are copies of the authorizing statutes, current rules, economic impact statement, and proposed rules.

Department staff reviewed all of the rules in A.A.C. Title 17, Chapter 5, Articles 6 and 7, and does not intend for any of the Department's rules in these articles to expire under A.R.S. § 41-1056(J).

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you have any questions about this report, please contact Jane McVay at (602) 712-4279 or at jmcvay@azdot.gov.

Sincerely,

John S. Halikowski
Director



Administrative Rules and Agency Policy

A.A.C. Title 17 – Transportation

Chapter 5

Department of Transportation - Commercial Programs

**Article 6 - Ignition Interlock Device Manufacturers and
Ignition Interlock Service Providers**

Article 7 – Ignition Interlock Device Technicians

One-Year Review Report

**Submitted to the Governor’s Regulatory
Review Council**

June 2019

**Governor's Regulatory Review
Council One-Year-Review Report
17 A.A.C., Chapter 5, Articles 6, 7**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 28-366, 28-1462, 28-1468

Specific Statutory Authority: A.R.S. § 28-1301; Title 28, Chapter 4, Article 5; Ch. 331, § 12,
Laws 2017 (Session law authorizing the rule exemption)

2. The objective of each rule:

Rule	Objective
R17-5-601	The objective of this rule is to define terms necessary to ensure understanding the rules relating to ignition interlock device manufacturers, ignition interlock service providers, and ignition interlock technicians.
R17-5-602	This rule contains the certification requirements that a manufacturer must meet to certify an ignition interlock device and the Department's notification procedure regarding improper reporting.
R17-5-603	The purpose of this rule is to detail the technical and operating requirements of an ignition interlock device.
R17-5-604	This rule establishes the application and other requirements for a manufacturer to certify an ignition interlock device and provides the requirements for new ignition interlock installations beginning July 1, 2018.
R17-5-605	This rule establishes the licensing time frames for manufacturer certification of an ignition interlock device.
R17-5-606	The objective of this rule is to detail the the application process for a manufacturer to certify an ignition interlock device model and the circumstances in which the Department will deny device certification.
R17-5-607	This rule contains the circumstances and process by which the Director will cancel certification of an ignition interlock device.
R17-5-608	R17-5-608 contains the procedures and required notification process for a manufacturer to modify an ignition interlock device.
R17-5-609	The objectives of this rule are to list the responsibilities of an ignition interlock service provider and a manufacturer regarding the Department's ignition interlock program.
R17-5-610	R17-5-610 lists the ignition interlock activities and information that a manufacturer must electronically report to the Department.

R17-5-611	R17-5-611 contains the requirements for an ignition interlock service provider to provide assistance to persons with an ignition interlock device that fails to operate properly, the recordkeeping requirements for a manufacturer, and the notification process to ignition interlock users when ignition interlock services change.
R17-5-612	The objective of this rule is to delineate the recordkeeping requirements of an ignition interlock service provider and a manufacturer.
R17-5-613	This rule requires the Department to investigate any complaint relating to an ignition interlock device or an ignition interlock service provider, and requires the Department to inspect service centers and the principal place of business of a manufacturer.
R17-5-614	This rule requires an ignition interlock service provider to collect an ignition interlock device installation fee when an ignition interlock is installed in a motor vehicle to comply with A.R.S. § 28-1462(H).
R17-5-615	The objective of R17-5-615 is to detail the rolling retest requirements that an ignition interlock user must follow and the action that the Department will take when a user fails to take required rolling retests or when the ignition interlock device records breath alcohol concentration(s) equal to or greater than the legal limits.
R17-5-616	This rule prescribes the reasons for which the Director may prescribe civil penalties against an ignition interlock device manufacturer, the amount of civil penalties, and the steps in the overall process.
R17-5-617	This rule prescribes the circumstances in which the Director will issue a cease and desist order against a party to an ignition interlock service provider authorization agreement, the action required, and allows an ignition interlock service provider to request a hearing.
R17-5-618	R17-5-618 specifies that an ignition interlock service provider must have at least one readily accessible service center in each county in the state that must provide installation, inspection, calibration, and removal of ignition interlock devices by trained technicians or employees.
R17-5-619	The objective of this rule is to specify the documents and the implementation plan that an ignition interlock service provider that applies for a service contract must submit to the Department.
R17-5-620	R17-5-620 specifies the licensing time frames for each step of the authorization process.
R17-5-621	R17-5-621 describes the application process requirements for an ignition interlock service provider to submit a service center application and the time frames for processing an application.
R17-5-622	R17-5-622 contains the requirements for the technician application by an ignition interlock service provider and the time frames for processing an application.

R17-5-623	This rule contains the ineligibility provisions for an ignition interlock service provider whose agreement has been terminated and the process that the Department will use to notify ignition interlock users to obtain another service provider .
R17-5-701	The objective of this rule is to clarify the definitions that apply to Article 7.
R17-5-702	R17-5-702 outlines the responsibilities of an ignition interlock service provider to ensure that a technician has specified qualifications and performs duties specified in the rules.
R17-5-706	This rule details when an ignition interlock user must obtain calibration checks of an ignition interlock device, how calibration should be performed, and that a device that does not maintain calibration should be repaired to meet standards or be removed.

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.

The rules are generally effective in achieving their objectives, however, the Department believes their effectiveness can be improved by making the following changes:

Rule	Explanation
R17-5-601	The Department does not always receive reports from manufacturers when an IISP installs an ignition interlock device. To make the rules more effective, the Department recommends expanding the improper reporting definition to include a manufacturer failing to send a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after installing the device.
R17-5-601	To ensure proper and accurate calibration of ignition interlock devices, the Department recommends defining the term reference value as “An alcohol reference solution prepared and tested in a laboratory with a reference value and used to perform an accuracy check of the calibration of an ignition interlock device.”
R17-5-604(D), (E)	To comply with A.R.S. § 28-1462(C)(4), the Department recommends modifying R17-5-604(D) by striking July 1, 2018 and requiring any installation of certified ignition interlock devices to meet all the requirements in Article 6, including wireless reporting and the capability to take a digital image. The current rules allowed ignition interlock users with an older model ignition interlock device installed before July 1, 2018 to keep them if they continued to operate properly. The Department plans to amend Subsection (E) to require those users with devices that do not report wirelessly or take a digital image to promptly return to the person’s IISP to exchange the device for a device that meets the requirements of subsection D.
R17-5-601, R17-5-603(D)	To make the rules more effective, the Department plans to differentiate between the set point of the certified ignition interlock device (CIID) above which the device will not start, and the accuracy of a CIID which is determined by calibration, and to use a more effective

	industry standard for calibration. To accomplish this, the Department plans to strike from the definition of set point: "The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters." In R17-5-603(D), the Department plans to revise this rule to state: "All devices shall have an accuracy that is within plus or minus 0.005 of the reference value when used at ambient temperatures of -20 degrees Celsius to 83 degrees Celsius."
R17-5-610(F)	To clarify reporting of user noncompliance with the rules, the Department recommends amending this rule to require tampering, failing to take rolling retests, and other noncompliant actions to be transmitted electronically and wirelessly by the manufacturer to the Department in real-time within 24 hours.
R17-5-612(D)	The Department recommends amending this provision to require a manufacturer to submit other information required by the Department in the quarterly reports.
R17-5-616(A)	The Department recommends striking the verbiage in R17-5-616(A) that refers to reporting of ignition interlock data "that may cause the Department to erroneously initiate corrective action against a person." This change is recommended because not all types of improper reporting as defined cause the Department to erroneously initiate corrective action.
R17-5-616(E)	The rules allow the Department to impose civil penalties on manufacturers that are responsible for improper reporting of ignition interlock data and provide that the County Attorney or Attorney General must bring action to enforce these civil penalties. The Department believes the rule would be more effective by providing that: "If the manufacturer fails to pay the civil penalty within 30 days after the order is final, the Director may file an action in Superior Court in the county in which the hearing is held to collect the civil penalty."

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

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

The rules are generally consistent with other rules and statutes, but the Department includes the following comments on consistency.

Rule	Explanation
R17-5-601, R17-5-616	The definition of improper reporting in R17-5-601 and the civil penalty rule, R17-5-616, are not consistent with A.R.S. § 28-1465 because the rules only allow civil penalties to be imposed against manufacturers. However, the statute allows them to be imposed against ignition interlock service providers or manufacturers. A.R.S. § 28-1465 was amended in 2017, however, other changes to the ignition interlock statutes in 2018 require all ignition interlock device reporting to originate from the manufacturer, and this statute is inconsistent with other ignition interlock statutes. Since ignition interlock service providers are contracted with the Department, the Department could cancel the service provider's

	contract for improper reporting. For this reason, no rule changes are recommended.
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5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

The rules are enforced as written, however, the Department notes the following issue with enforcement and compliance with the rolling retest requirement.

Rule	Explanation
R17-5-615	This rule specifies when an ignition interlock user's ignition interlock device requires a user to take a rolling retest and when the Department will extend a user's ignition interlock period for failing to take rolling retests. Some drivers do not comply with the rolling retest requirement and incur a six-month extension of the rolling retest period. The Department provides written notification to the person and extends the person's ignition interlock period for six months for each failure to take a set of three consecutive rolling retests within 18 minutes during a drive cycle. Continuous lack of compliance by a user with the rolling retest requirement over time can result in extension of a user's ignition interlock period for many years. The rules are consistent with the rolling retest statute requiring the Department to extend a user's ignition interlock period for six months for each set of three missed rolling retests. The Department is continuing to monitor and review the extent of this complex issue, which may require future rule, legislative, or other Departmental action.

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

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

The rules are generally clear, concise, and understandable, but the Department believes the following changes will increase the clarity, conciseness, and understandability of the rules.

Rule	Explanation
R17-5-616(B)	To clarify this rule, the Department recommends amending this rule to clarify that the Director shall mail a notice to the manufacturer stating that civil penalties may be imposed for improper reporting.
R17-5-621(B)(1)	To make the application process more efficient and ensure users can identify their service provider, the Department recommends that the ignition interlock service provider's application for a service center must be submitted with the name that matches the service center name.

7. **Has the agency received written criticisms of the rules since the rule was adopted?** Yes No

Commenter	Comment	Agency's Response

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8. **Estimated economic, small business, and consumer impact of the rules:**

Legislation enacted in 2017 and 2018 required the Department of Transportation to modify the ignition interlock program by providing contracted services on a statewide basis. Ignition interlock service providers who choose to provide ignition interlock services to install, service, repair, and replace ignition interlock devices must meet requirements in the authorization agreement and statutory requirements, submit an implementation plan, and be approved by the Department in an application process to provide services for at least 3 years. The Department has contracted with nine service providers that collectively provide ignition interlock services to users at a total of 279 service centers in 15 counties of the state. Many requirements of ignition interlock service providers are statutory. The Department believes there has been a substantial economic impact on those service providers that have chosen to contract, locate, rent, or purchase property, operate, equip, and staff service centers to provide services in all counties of the state.

The Department has 9 manufacturers that have certified an ignition interlock device. Most of the manufacturers are large businesses that design, construct, and produce an ignition interlock device that, following Department certification, is offered for installation by an ignition interlock service provider. The statutes require new devices installed to operate wirelessly and contain a camera, and to meet National Highway Traffic Safety Administration (NHTSA) standards. Those manufacturers that did not have a device with this capability available by July 1, 2018 incurred costs to manufacture a new device with this capability and pay for a laboratory test to ensure the device meets NHTSA standards. The statutes require a manufacturer to report ignition interlock activity of users to the Department. The rules contain specific reporting requirements that have entailed additional programming and Internet costs and recordkeeping requirements that entail employee, software, and technology costs.

The rule impact is on a group of approximately 20,000 drivers, who as of December 2018 are required by the Department or a court to install an ignition interlock on their vehicles following a DUI conviction. Service center expansion has provided ignition interlock users more convenient locations to obtain ignition interlock services. As authorized by statute, users are required to pay an ignition interlock device installation fee of \$20 at the time the ignition interlock is installed. This fee is transmitted monthly to the Department and is used to fund the ignition interlock program. This fee is not deposited in the general fund and has no impact on state revenue.

Ignition interlock service providers impose numerous other fees of varying amounts that a user must pay, but these fees are established by the provider. Ignition interlock users must take rolling retests while driving. Due to statute and rule changes, the rolling retest standard was strengthened. If a user fails to take three consecutive rolling retests or if a user's breath alcohol concentration exceeds the legal limits, the Department will extend the user's ignition interlock period. Due to the extension, the user is required to pay more fees to the service provider. Additional information is contained in the economic, small business, and consumer impact statement prepared by the Department on these rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

Although Chapter 105, Laws 2018 and Chapter 331, Laws 2017 did not require the Department to complete any additional steps or processes, or to provide an opportunity to comment on the rules, the Department requested public comment, informed ignition interlock stakeholders about the rules, and made many rule changes in response to the stakeholder comments. The Department posted the proposed rules on the Department's website for 30 days. In addition, the Department conducted numerous group and individual stakeholder meetings to review the proposed rules and to respond to questions about the rules and program changes.

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 option for any process or procedure required of the regulated public or industry. The Department established the one-time ignition interlock device installation fee of \$20 at the lowest cost feasible to provide the funds necessary for administration of the ignition interlock program. This is the only fee that a person with an ignition interlock device pays that is transmitted to the Department. Based on approximately 20,000 Arizona drivers who have an ignition interlock installed on their vehicle at any given time, a fee of \$20 per device installation was estimated to generate revenue of \$400,000 annually, which fully funds the administrative costs of the ignition interlock program.

Clarification of the improper reporting rules is expected to result in more accurate reporting of individual ignition interlock activity, which benefits ignition interlock users. The rules also benefit ignition interlock users through the expansion of ignition interlock services in service centers located throughout all 15 counties, including rural areas, saving users time to obtain services. The program changes allow compliance checks on the ignition interlock device to be reported and performed electronically in real-time, thereby requiring fewer trips to service centers and lowering costs to users. In summary, the Department believes that the benefits to ignition interlock users and the public safety benefits to the general public of the program changes, including the strengthening of the rolling retest requirement, greatly outweigh the cost to ignition interlock users.

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

The rules are not more stringent than federal law and there is no corresponding federal law directly related to these rules.

13. **For rules 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:**

An ignition interlock device manufacturer must first obtain Department certification of the manufacturer's ignition interlock device to allow device installation. A.R.S. § 28-1468 requires an ignition interlock service provider to apply for authorization of an ignition interlock provider contract. This authorization can be considered a general permit because authorization allows each IISP to conduct activities in a class that are substantially similar in nature and that are granted to a qualified applicant to conduct identified activities.

14. **Proposed course of action**

activities.

14. Proposed course of action

If the Department receives approval from the Governor's Office for an exemption from the rulemaking moratorium, Executive Order 2019-01, the Department anticipates filing ignition interlock rule changes with the Governor's Regulatory Review Council in a regular rulemaking by July 2020. The rulemaking will also include A.A.C.R17-5-614, the ignition interlock device installation fee rule, which was established through exempt rulemaking, and must be approved in a regular rulemaking.

IGNITION INTERLOCK PROPOSED RULES

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS

R17-5-601. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

“Alcohol concentration” means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

“Alveolar breath sample” means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

“Anticircumvention feature” means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

“Authorization agreement” or “agreement” means an agreement authorized by the Director that an IISP enters into with the Department to provide ignition interlock services under A.R.S. § 28-1468.

“Breath alcohol test” means analysis of a sample of the person’s expired alveolar breath to determine alcohol concentration.

“Bump starting” means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

“Business day” means a day other than a Saturday, Sunday, or state holiday.

“Calibration” means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

“Cancellation” means the termination of a manufacturer’s ignition interlock device certification for ignition_interlock device installation.

“Certification” means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

“Certified ignition interlock device,” “CIID,” or “device” means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the NHTSA specifications; that connects a breath analyzer to a motor vehicle’s ignition system; that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device; and determines whether the alcohol concentration in the person’s breath is below a preset level.

“Circumvent” or “circumvention” means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

The bump start of a motor vehicle with a certified ignition interlock device;

The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle;

The introduction of an intentionally contaminated or a filtered breath sample;

The intentional disruption or blocking of a digital image identification device;

The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) or, if the person is under 21 years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person’s body;

Operating a motor vehicle without a properly functioning certified ignition interlock device and;

When a person, who is required to maintain a functioning certified ignition interlock device is starting or operating the motor vehicle, permits another individual to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

“Corrective action” means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a person’s driving privilege and the usage or discontinuation of usage of a CIID.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person’s driver license or non-operating identification license number.

“Data logger” means the electronic record of all ignition interlock device activity during the period when the device is installed.

“Data storage system” means a computerized recording of all events monitored by an ignition interlock device, which may be reproduced in the form of specific reports.

“Defective ignition interlock device” means an ignition interlock device that:

1. Does not meet the NHTSA specifications;
2. Does not pass calibration tests; or
3. Does not meet the accuracy and device standards prescribed in these rules.

“Drive cycle” means either the period of time from when a motor vehicle is initially turned on to the next time the ignition is turned off, or the period of time from when an initial breath alcohol test is performed and failed, to the time a breath alcohol test is successfully taken and the ignition is turned off.

“Early recall” means that a person’s ignition interlock device recorded one tampering or circumvention event, or any ignition interlock malfunction, that requires a person to return to a service center within 72 hours.

“Emergency bypass” means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

“Emergency situation” means a circumstance in which the person informs the IISP or IISP-certified technician that the person’s vehicle needs to be moved to comply with the law, or the person has a valid and urgent need to operate the vehicle.

“Established place of business” means a business location that is:

- Approved by the Department;
- Located in Arizona;
- Not used as a residence; and

Where an IISP or its agent or subcontractor provides authorized ignition interlock services.

“False sample” means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the person.

“Filtered breath sample” means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

“Free restart” means a function of a CIID that will allow a person to restart the vehicle, under the conditions provided in R17-5-615, without completing another breath alcohol test.

“FTP” means file transfer protocol, the exchange of files over any network that supports electronic data interchange reporting that is transmitted through the Internet and prescribed by the Department.

“Global positioning system” means the ability of a wireless certified ignition interlock device to identify and transmit its geographic location through the operation of the device.

“Ignition interlock device installation fee” means the fee required in A.R.S. § 28-1462, and established by the Department in R17-5-614, that is paid by a person to an IISP when a CIID is installed on, or transferred to a person’s vehicle.

“Ignition interlock period” means the period in which a person is required to use a CIID that is installed on a vehicle.

“Ignition interlock service provider” or “IISP” means a person who is an authorized representative of a manufacturer and who is under contract with the Department to install or oversee the installation of ignition interlock devices by the provider’s authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

“Improper reporting” means any of the following:

Failure of a manufacturer to report any violations to the Department within 24 hours as required in R17-5-610(D)(1), or failure to send a person’s ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(C);

Failure of a manufacturer to submit to the Department valid and substantiated proof or evidence of a reportable activity related to a violation, including a summary report and relevant data loggers as required in R17-5-610(D)(2), within 10 days after the Department’s request;

Failure of a manufacturer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing a calibration check, that results in the Department mailing a driver license suspension to a person;

Failure of a manufacturer to electronically send a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after installing a CIID;

Electronic reporting by a manufacturer to the Department, of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

Knowingly reporting a violation that occurs when a participant’s vehicle has high or low voltage;

Reporting an incident that occurs when a person has a free restart test to start the person’s vehicle;

Reporting an incident that occurs in which a manufacturer downloads data from the device during a calibration check and tampers with the data or a CIID; or

An incident that occurs after the person’s vehicle is turned off.

“Independent laboratory” means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

“Manufacturer” means a person or an organization that is located in the United States, that is responsible for the design, construction, and production of an ignition interlock device and that is certified by the Department to offer ignition interlock devices for installation in motor vehicles in this state.

“Material modification” means a change to a CIID that affects the functionality of the device.

“Missed rolling retest” means the person refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period prescribed in R17-5-615(E).

“Mobile services” means ignition interlock services provided by an IISP or its agents or subcontractors at a publicly accessible location other than the IISP’s service center, that meet the requirements of R17-5-618.

“NHTSA” means the United States Department of Transportation’s National Highway Traffic Safety Administration.

“NHTSA specifications” means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

“Permanent lock-out” means a feature of the CIID in which a motor vehicle will not start until the CIID is reset by an IISP or an IISP-certified technician.

“Person” means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning CIID, and who becomes a customer of an IISP for installation and servicing of the CIID.

“Positive result” means a test result indicating that the alcohol concentration meets or exceeds the set point value.

“Principal place of business” means the administrative headquarters of a manufacturer or an IISP that is located in Arizona, is zoned for commercial, and is not used as a residence.

“Purge” means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

“Real-time” or “real-time reporting” means the instant transmission of unfiltered ignition interlock violations as defined in R17-5-601, and data as prescribed in R17-5-610, including photographs, to the manufacturer’s website for viewing by the Department without delay, as electronic or digital service permits.

“Reference sample device” means a device containing a sample of known alcohol concentration.

“Reference value” means an alcohol reference solution prepared and tested in a laboratory with a reference value and used to perform an accuracy check of the calibration of a CIID.

“Retest set point” has the same meaning as set point.

“Rolling retest” means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

“Service center” means an established place of business approved by the Department from which an IISP or its agents or subcontractors provide ignition interlock services to persons from one or more counties.

“Set point” means an alcohol concentration of 0.020 g/210 liters of breath. ~~The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters.~~

“Tampering” means an overt or conscious attempt to physically disable or otherwise disconnect the CIID from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

“Technician” means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, calibrate, service or remove certified ignition interlock devices.

“Temporary lock-out” means a feature of the CIID which will not allow a motor vehicle to start for five minutes after a breath alcohol test result indicating an alcohol concentration above the set point.

“Vehicle identification number” or “VIN” means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

“Violation” (when referencing acts or omissions on the part of a person in the ignition interlock program) includes, but is not limited to any of the following reportable activities performed by a person which a manufacturer shall promptly report to the Department:

- Circumventing the CIID as defined in R17-5-601;

- Tampering with the CIID as defined in A.R.S. § 28-1301;

- Failing to provide proof of compliance or inspection of the CIID under A.R.S. § 28-1461(E)(4);

- Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;

- Attempting to operate the vehicle with an alcohol concentration value in excess of the set point if the person is under 21 years of age;

- Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute time frame during a person’s drive cycle;

- Disconnecting or removing a CIID, except:

 - On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or

 - On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

“Violation reset” means the unplanned servicing and inspection of a CIID and the downloading of information from its data storage system by an IISP as a result of an early recall that requires the manufacturer to unlock the device.

R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration

- A. The accuracy of the CIID shall be determined by analysis of an external standard generated by a reference sample device.
- B. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D. All devices shall ~~meet the setpoint requirements of R17-5-601 when used at ambient temperatures of -20° Celsius to 83° Celsius~~ have an accuracy that is within plus or minus 0.005 of the reference value when used at ambient temperatures of -20 degrees Celsius to 83 degrees Celsius.
- E. A device shall be designed so that anticircumvention features will be difficult to bypass.
 1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of circumvention by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
 2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. A CIID shall have global positioning system capability, and the manufacturer shall electronically and wirelessly download in real-time from the device and transmit daily to the Department, a person’s ignition interlock activity in an FTP batch file.
- G. A CIID shall be equipped with a camera, which shall not distract or impede the driver in any manner from safe and legal operation of the vehicle, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass, or circumvention, and report this information directly to the manufacturer.
- H. The camera shall be able to record and store visual evidence of each person providing a breath alcohol test, and shall meet the following requirements:
 1. At device installation, the camera shall take a reference picture of the person, which shall be kept on file;
 2. A clear photograph shall be taken for each event, including initial vehicle start, all rolling retests, and whenever a violation is recorded;
 3. Each photograph shall be a wide-angle view of the front cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and
 4. The camera shall produce a digital image, identifiable verification, or a photograph of the person in all lighting conditions, including brightness, darkness, and low light conditions.
- I. A device shall:
 1. Automatically purge alcohol before allowing analysis.
 2. Have a data storage system with the capacity to sufficiently record and maintain a record of the person’s daily driving activities that occur between each regularly scheduled calibration check referenced under R17-5-610 and R17-5-706. An IISP shall download and transmit any digital images taken during a person’s calibration check, during each rolling retest, and each time a person with the ignition interlock requirement or another individual starts the motor vehicle. A manufacturer shall make these digital images available to the Department on request.
 3. Use the most current version of the manufacturer’s software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer’s software and firmware shall:

- a. Require device settings and operational features to include, but not limited to, sample delivery requirements, the set point, free restart, rolling retest requirements, violation settings, and temporary and permanent lock-outs; and
 - b. Prohibit modification of the device settings or operational features by a service center, or an IISP-certified technician unless the Department approves the modification under subsection (J).
4. Record all emergency bypasses in its data storage system.
 5. Provide a visual reminder on the device that a calibration check must be performed on the person's CIID every 90 days, with prominent device notifications during each 77-day to 90-day interval within a person's ignition interlock period, of the following:
 - a. The device needs service; and
 - b. The time remaining until a permanent lock-out occurs.
 6. Notify a person that failure to get the calibration check, including calibration and data download, by the end of each 90-day period will cause the vehicle to be in a permanent lock-out mode, and shall record the event in the data storage system.
 7. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5, for one instance of tampering or circumvention, or any ignition interlock device malfunction, emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the IISP in 72 hours for a violation reset.
 8. Enter into a permanent lock-out if a person does not return to the IISP for a violation reset within 72 hours after an early recall occurs.
 9. When a violation results in a permanent lock-out mode, the device shall:
 - a. Immobilize the person's vehicle;
 - b. Uniquely record the event in the data storage system; and
 - c. Require a violation reset by the IISP.
 10. Enter into a temporary lock-out mode for five minutes when the device detects during the initial breath alcohol test that a person's breath alcohol concentration is at or above the set point.
 11. After the five-minute temporary lock-out, the device shall allow subsequent breath alcohol tests with no further lock-out as long as each subsequent test produces a valid and substantiated breath test.
 12. Have security protections and the capability to provide visual evidence of any actual or attempted tampering, alteration or bypass of the device, or circumvention.
- J.** No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
 2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
 3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires any modification, the manufacturer shall immediately notify the Department.

R17-5-604. Ignition Interlock Device Certification; Application Requirements

- A.** A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.
- B.** To certify an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
 1. The manufacturer's name;
 2. The address of the manufacturer's principal place of business in this state and telephone number;
 3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;

4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
 5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
 6. The manufacturer's electronic mail address.
 7. The following statements, signed by the manufacturer:
 - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
 - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
 - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or the manufacturer's authorized IISP relating to the installation and operation of the ignition interlock device; and
 - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
 - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
 - d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.
- C. A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a photograph, drawing, or other graphic depiction of the device;
 2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;
 3. An independent laboratory's report for each device model that:
 - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015. The NHTSA specifications and technical corrections are incorporated by reference and are on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007, and the NHTSA Office of Research and Technology, 1200 New Jersey Avenue SE, Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
 - b. Provides the independent laboratory's name, address, and telephone number; and
 - c. Provides the name and model number of the ignition interlock device tested.
 4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3), that states all of the following:
 - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exist.
 - b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013 with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
 - c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
 - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device.

- e. The laboratory presented accurate test results to the Department.
- 5. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
 - a. A product liability policy with a current effective date;
 - b. The name and model number of the ignition interlock device model covered by the policy;
 - c. Policy coverage of \$1,000,000 and \$3,000,000 in the aggregate;
 - d. The manufacturer as the insured and the state of Arizona as an additional insured;
 - e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
 - f. The insurance company shall notify the Department's Risk Management, Insurance and Indemnification Section in writing at least 30 days before canceling the product liability policy.
- 6. A statement that the ignition interlock device has a camera, includes a global positioning system, and provides real-time reporting.
- D. ~~Beginning on July 1, 2018, for~~ For any new installation of ~~an~~ a certified ignition interlock device or any replacement of a device on a person's motor vehicle with another device, an IISP or an IISP-certified technician shall install only a certified ignition interlock device that meets the additional requirements in this Article, and meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
- E. A person whose CIID was installed prior to July 1, 2018, ~~and the device meets or exceeds the 2013 NHTSA specifications, with the 2015 NHTSA technical corrections, and continues to operate properly, shall keep the CIID on the person's vehicle,~~ that does not meet all the requirements of Subsection D shall promptly return to the person's IISP to exchange the CIID for a CIID that meets all the requirements of Subsection D.

R17-5-610. Reporting; Reportable Activity

- A. A person shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.
- B. A manufacturer shall develop and the IISP shall ensure that each IISP-certified technician complies with the IISP's written procedures for the installation of a CIID.
- C. Certified ignition interlock device installation verification.
 - 1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of the device installation.
 - 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
 - a. Department-assigned service center number;
 - b. Person's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Report type;
 - h. Technician identification number;
 - i. A unique identification number for the CIID;
 - j. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
 - k. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- D. Certified ignition interlock device calibration check.

1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing a calibration check on an installed CIID.
 2. A manufacturer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means , which shall include:
 - a. A summary report stating why the data logger or any other evidence confirms the occurrence of a violation, including any photographs of the person; and
 - b. A data logger that shows at least 12 hours of data before and after the violation.
 3. A manufacturer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means, which may include:
 - a. Photographs;
 - b. Video recordings;
 - c. Written statements; and
 - d. Any other evidence relevant to a violation.
 4. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the calibration check shall contain all of the following information:
 - a. Department-assigned service center number;
 - b. Person's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Report type;
 - h. Missed rolling retest count, dates, and times;
 - i. Technician identification number;
 - j. Alcohol concentration violation count dates and times;
 - k. Tampering violation count, dates, and time;
 - l. Circumvention count, dates, and time;
 - m. Device download date;
 - n. Device download time;
 - o. Bypass code indication, date, and time;
 - p. A unique identification number for the CIID;
 - q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
 - r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- E. Certified ignition interlock device removal report.**
1. When a certified ignition interlock device is removed, a manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours.
 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
 - a. Department-assigned service center number;
 - b. Person's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Removal date;

- h. Report type;
 - i. Technician identification number;
 - j. A unique identification number for the CIID;
 - k. The last six digits of the vehicle identification number that matches the vehicle information on the data logger;
 - l. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID;
 - m. Missed rolling retest count, dates, and times;
 - n. Device download date; and
 - o. Device download time.
- F.** Reportable activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances of any of the following transmitted electronically and wirelessly by the manufacturer to the Department in real-time within 24 hours ~~by a person of any of the following~~:
- 1. Tampering with a CIID as defined in A.R.S. § 28-1301;
 - 2. Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute timeframe during a person's drive cycle;
 - 3. Failing to provide proof of compliance or inspection of the CIID as required under A.R.S. § 28-1461(E)(4);
 - 4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;
 - 5. Attempting to operate the vehicle with an alcohol concentration in excess of the set point if the person is under 21 years of age;
 - 6. Circumvention of a CIID as defined in R17-5-601; or
 - 7. Disconnecting or removing a CIID, except:
 - a. On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or
 - b. On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.
- G.** A person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition. A missed rolling retest is reportable activity for a person's noncompliance under subsection (F).
- H.** A manufacturer shall screen each person's data loggers to ensure that there is no improper reporting.
- I.** A manufacturer shall ensure that a CIID has the necessary programming to identify each person's ignition interlock period and each drive cycle to report and send data and violations to the Department as required by these rules.
- J.** A manufacturer shall review within 10 days all reports generated by the Department and returned to the manufacturer for verification of accurate reporting. If a manufacturer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer shall immediately contact the Department to correct the person's record before corrective action is initiated against a person as a result of misreported ignition interlock data.
- K.** A manufacturer shall immediately contact the Department if the manufacturer finds that the reported information indicates:
- 1. An obvious mechanical failure of a CIID;
 - 2. Obvious errors in the recorded CIID data that cannot be attributed to a person's actions; or
 - 3. Obvious errors in the transmission of CIID data to the Department, including misreported instances of tampering.
- L.** A manufacturer shall ensure that a CIID electronically and wirelessly uploads data in real-time to the manufacturer's website, that is maintained by the manufacturer, and the manufacturer shall submit all required information and reports in a daily FTP file to the Department.

- M. In cases where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available.
- N. A manufacturer shall include the date of the last upload on the person's account on the manufacturer's website.
- O. A CIID shall have constant communication between the manufacturer's server and relay unit while the device is in use.
- P. All data, including photographs, shall be available to the Department for viewing on the manufacturer's website within five minutes after the data is recorded on the device, or as soon as electronic or digital reception permits.

R17-5-612. Records Retention; Submission of Copies and Quarterly Reports

- A. During the duration of the ignition interlock service authorization agreement, an IISP shall retain each person's ignition interlock activity records in an electronic format, including a secure database, or a paper format. The retained records shall consist of every document relating to installation, operation, and removal of the CIID. The IISP shall maintain all daily ignition interlock activity records of each person in the device's data storage system, or in a secure database at a commercial business location in this state, that the Department may access during posted business hours. An IISP shall inform the Department where all individual ignition interlock activity records are located.
- B. Prior to the end or termination of an ignition interlock service authorization agreement, the manufacturer shall obtain all person's ignition interlock records and provide the Department with electronic access to the records for three years.
- C. A manufacturer shall provide copies of each person's ignition interlock records to the Department within 10 days after Department personnel request copies of records, including records relating to installation and operation of the CIID.
- D. A manufacturer shall electronically send to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
 1. The number of CIID's the IISP currently has in service;
 2. The number of CIID's installed since the previous quarterly report; ~~and~~
 3. The number of CIID's removed by the IISP since the previous quarterly report; ~~and~~
 4. Other information required by the Department.
- E. An IISP shall maintain and make available to the Department the ignition interlock records of all persons served by the IISP, records relating to the authorization agreement, and employee background check information at a commercial business location in this state of the manufacturer or the IISP during normal business hours.

R17-5-614. Ignition Interlock Device Installation Fee; Financial Records

(No changes proposed, but this rule will be included in proposed rules to comply with A.R.S. § 41-1008(E).

- A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.
- B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP on ServiceArizona.com, or as specified by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.
- C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.
- D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.
- E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.

- F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.

R17-5-616. Civil Penalties; Hearing

- A. After notice and an opportunity for a hearing, the Director may impose a civil penalty pursuant to A.R.S. § 28-1465, against a manufacturer of a certified ignition interlock device for improper reporting to the Department of ignition interlock data, as defined in R17-5-601, ~~that may cause the Department to erroneously initiate corrective action against a person.~~ The Director may impose and collect a civil penalty against a manufacturer of a certified ignition interlock device, who is responsible for an occurrence of improper reporting, as follows:
1. \$100 for the first occurrence, but not to exceed \$1,000 per series of occurrences of improper reporting on a specific date;
 2. \$250 for the second occurrence, but not to exceed \$2,500 per series of occurrences of improper reporting on a specific date; and
 3. \$500 for the third or subsequent occurrence, but not to exceed \$5,000 per series of occurrences of improper reporting on a specific date.
- B. The Director, on finding that a manufacturer engaged in improper reporting, shall mail a notice to the manufacturer stating that civil penalties may be imposed for improper reporting. The notice shall:
1. Specify the basis for the action; and
 2. State that the manufacturer may, within 15 days after receipt of the notice, file a written request for a hearing with the Department's Executive Hearing Office as prescribed in 17 A.A.C. 1, Article 5.
- C. A manufacturer who is aggrieved by an assessment, decision, or order of the Department under A.R.S. § 28-1465 and this Section may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- D. The manufacturer shall pay the civil penalty imposed under this Section to the Department no later than 30 days after the order is final.
- E. ~~Action to enforce the collection of a civil penalty assessed under subsection (A) shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in which the hearing is held.~~ If the manufacturer fails to pay the civil penalty within 30 days after the order is final, the director shall file an action in the superior court in the county in which the hearing is held to collect the civil penalty.

R17-5-621. Service Center Application

- A. On approval by the Director of an IISP's signed application for authorization to provide ignition interlock services, an IISP shall submit to the Department a properly completed service center application for approval of the IISP's service centers.
- B. An IISP shall provide the following information to the Department:
1. The service center name, which shall match the name on the service center;
 2. The business address of the established place of business of each service center or business location;
 3. The telephone number of each established place of business of each service center or business location;
 4. The service center's legal status as a sole proprietorship, partnership, limited liability company, or a corporation;
 5. The name of the sole proprietor, each partner, officer, director, manager, member, agent, or 20% or more stockholder;
 6. The name and model number of each CIID the IISP plans to install;

7. An indication of any service centers that will provide mobile services;
8. Any applicable business licenses and the governmental entity; and
9. The following statements signed by the IISP:
 - a. A statement that all information provided on the application, including all information provided on any attachment to the application is complete, true, and correct;
 - b. A statement that the IISP agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
 - c. A statement that the IISP agrees to comply with all requirements in these rules; and
 - d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.
- C. The Department shall process an IISP's service center application only if the IISP meets all applicable application requirements.
- D. The Department shall, within 10 days of receiving a service center application, provide notice to the IISP that the application is either complete or incomplete.
 1. The date of receipt is the date the Department receives the application.
 2. If an application is incomplete, the notice shall specifically identify the required information that is missing.
- E. An IISP with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
 1. After receiving all of the required information, the Department shall notify the IISP that the application is complete.
 2. The Department may deny approval of a service center if the IISP fails to provide the required information within 15 days of the date on the notice.
- F. The Department shall render a decision on a service center application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (D) or (E).
- G. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a service center:
 1. Administrative completeness review time frame: 10 days.
 2. Substantive review time frame: 30 days.
 3. Overall time frame: 40 days.
- H. If a service center is no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.
- I. An IISP shall be the authorized representative of a specific manufacturer while the authorization agreement is in effect, for a service center to install the manufacturer's CIID.
- J. If an IISP, subcontractor, or agent opens or relocates a service center, or the service center is operated by another entity, an IISP, subcontractor, or agent shall submit a new service center application for approval.
- K. An IISP shall use this process to reapply to the Department for a service center application.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION -

COMMERCIAL PROGRAMS

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK

SERVICE PROVIDERS

ARTICLE 7. IGNITION INTERLOCK DEVICE TECHNICIANS

R17-5-601 to R17-5-623, R17-5-701, R17-5-702, and R17-5-706

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

This rulemaking implements the provisions of Chapter 105, Laws 2018 and Chapter 331, Laws 2017 (SB 1401) relating to the Department of Transportation's ignition interlock program. Chapter 331 authorized the Department to approve an application to contract with Ignition Interlock Service Providers (IISP's) beginning July 1, 2018, to provide ignition interlock services to persons required by a court or the Department to have an ignition interlock device installed on their motor vehicle. Each IISP must develop an implementation plan and provide services through service centers with at least one service center in each county of the state. This legislation prescribes the responsibilities of an ignition interlock device manufacturer to electronically report ignition interlock activity to the Department daily in real-time; the services that an IISP and technicians must provide to ignition interlock users; and the required actions of an ignition interlock user.

The Department had a one-time rulemaking exemption from the Administrative Procedure Act to adopt rules to implement this legislation. The Department received approvals from Matt Clark at the Governor's Office for this rulemaking on June 17, 2017 and April 16, 2018. The Department filed exempt rules with the Secretary of State's Office on June 6, 2018 with an effective date of July 1, 2018.

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

Prior to this revision, the rules and legislation required a manufacturer to certify an ignition interlock device. Following device certification, the manufacturer's certified device is available for installation. A manufacturer applied to the Department to set up established places of business operated by certified installers and service representatives to provide ignition interlock services at service center locations chosen. No requirement existed to have fixed service centers in each county of the state. Availability of ignition interlock services was limited in rural areas and often only mobile services were available. These rules prescribe the requirements for an IISP to apply for authorization for an ignition interlock contract to provide services at service centers operated by technicians certified by the IISP in all counties of the state. With the program changes, the number of service centers has expanded substantially in all counties of the state, including rural areas. Currently ignition interlock users may

select one of nine Ignition Interlock Service Providers in the state. Collectively, there are 279 existing ignition interlock service centers operating in counties throughout the state.

The rules define improper reporting and prescribe the requirements for a manufacturer to report ignition interlock activity, violations, and rolling retest data on a daily basis in real-time to the Department within 24 hours. A.R.S. § 28-1465 authorizes the Department to establish civil penalties for improper reporting by a manufacturer. The rules establish tiered civil penalties which may be imposed against an ignition interlock device manufacturer for improper reporting of ignition interlock data.

Ignition interlock devices installed after July 1, 2018 are required to have a camera and operate wirelessly. The program was streamlined so that ignition interlock device compliance checks are performed electronically, requiring fewer visits by users to service centers.

To comply with statute, the rules modify and strengthen the rolling retest requirements for ignition interlock users. The Department was granted authority to set an ignition interlock device installation fee by rule. The rules establish a new one-time ignition interlock device installation fee of \$20 that an ignition interlock user is required to pay beginning July 1, 2018, when an ignition interlock device is installed on a user's vehicle.

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

Due to the statutory requirement for an IISP to provide ignition interlock services through service centers, with at least one service center located in each county in the state, ignition interlock users throughout the state have greater choice to select an IISP and obtain more accessible services. Without the legislative changes, this ignition interlock service expansion in the state would not have occurred. Use of new ignition interlock devices also allows devices to have compliance checks and violations reported automatically, offering benefits to ignition interlock users. The 2014 rules provided that an ignition interlock user would have a rolling retest violation for refusing or failing to provide any set of four valid breath samples during the user's ignition interlock period. SB 1401 provided that an ignition interlock user who has a set of three consecutive missed rolling retests within 18 minutes during a drive cycle has a violation and receives an extension of 6 months of the user's ignition interlock period. In 2018 the Department modified the rules to implement these provisions, thereby strengthening the rolling retest requirement during a shorter period of time. The rules clarify the information that a manufacturer must report to the Department. Improper reporting of certain activity as a violation has, in some cases, resulted in the Department taking initial corrective action against a driver, that was determined to be in error, and was voided. The Department believes that clarification of reporting requirements and the overall program changes will result in a more effective program for ignition interlock users and the public.

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

Expansion of ignition interlock services statewide provides greater choice and accessibility of service center locations in rural and urban areas of the state. Prior to these rule changes, a user's ignition interlock device needed to be calibrated every 30, 60, and 90 days after installation, and later at 60 to 90-day intervals to download user data. The new ignition interlock devices check compliance electronically and require fewer service center visits. With the clarification of reporting requirements and improper reporting, the Department anticipates that improper reporting of user ignition interlock activity will be reduced, which benefits ignition interlock users and the Department. The rules require an IISP to instruct an ignition interlock user and provide information about ignition interlock usage, alcohol violations, and how to avoid violations that extend a user's ignition interlock period. The Department anticipates that greater user compliance with, and understanding of the rules and individual user requirements, will benefit users and the driving public.

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

Impact on Ignition Interlock Service Providers

Legislation enacted in 2017 and 2018 modified the requirements and process for businesses to provide ignition interlock services. This entailed setting up a process to authorize Ignition Interlock Service Providers that meet set requirements and are approved by the Department to provide statewide ignition interlock services. Ignition interlock service providers who choose to provide statewide ignition interlock services to install, service, repair, and replace ignition interlock devices must meet requirements in the authorization agreement and statute, including fulfilling bond requirements and submitting an implementation plan. The Department has contracted with nine Ignition Interlock Service Providers that collectively operate a total of 279 service centers in 15 counties of the state. IISP's are also responsible for certifying, properly training, and hiring technicians to provide services at service centers to persons required to install an ignition interlock device on their vehicles.

The Department believes that, as a result of legislative changes, there has been a substantial economic impact on those Ignition Interlock Service Providers that have chosen to contract, locate, rent or purchase property, operate, equip, and staff service centers that provide ignition interlock services to residents in all counties of the state. Due to the expansion of service centers and ability to serve additional ignition interlock users in other areas of the state, the Department anticipates that revenue generated over the three-year contract period by the IISP's from various fees they establish and charge ignition interlock users will offset costs and increase substantially.

The rules include a number of new requirements for an IISP. The rules establish a multi-step application process, including submission of an implementation plan, service center and technician applications. Each IISP is required to collect an ignition interlock device installation fee from an ignition interlock user and must transmit this fee electronically to the Department monthly. Since the applications are electronic and fees are submitted electronically, it is anticipated that minimal costs are involved.

To comply with statutory requirements, the rules give the Department additional enforcement authority over an Ignition Interlock Service Provider that violates the contract, statute, or the rules through cease and desist authority. A cease and desist action against a service provider would prevent the provider from doing business, negatively impacting the operation and revenue of the provider.

Impact on Manufacturers

The Department has nine manufacturers that have certified an ignition interlock device. Most of the ignition interlock manufacturers are large businesses that design, construct, and produce ignition interlock devices in many states; several manufacturers operate internationally. For this reason, most manufacturers do not fall within the definition of a small business in A.R.S. § 41-1001.

The statutes require ignition interlock manufacturers to certify ignition interlock devices with cameras and global positioning systems that operate wirelessly, and have these devices available for installation beginning July 1, 2018. Those manufacturers that did not have a device with this capability incurred costs to manufacture a new device and for a laboratory test to ensure the device meets National Highway Traffic Safety Administration requirements. Ignition interlock users with a device installed before July 1, 2018 that was working properly were not required to install a new device. Manufacturers were required to have devices available for users with a new ignition interlock requirement beginning July 1, 2018. Manufacturers must also meet statutory requirements to have product liability insurance for their devices.

The ignition interlock statutes authorize the Department to impose civil penalties for improper reporting. The rules provide that if a manufacturer improperly reports ignition interlock data, the Department may impose a civil penalty that may range for the first occurrence from \$100 to \$1,000 (for a series of occurrences), for the second occurrence from \$250 to \$2,500 (for a series of occurrences), and for the third occurrence from \$500 to \$5,000 (for a series of occurrences).

Manufacturers are responsible for transmitting ignition interlock data and violations to the Department in real-time within 24 hours. The rules define improper reporting of ignition interlock data, violations, and the types of reports that manufacturers must transmit to the Department. The rules require a manufacturer to provide additional information and digital photos of user ignition interlock activity to the Department and require daily electronic reporting. These reporting requirements, changes in rolling retest and other device requirements have required additional programming and Internet transmission costs. A manufacturer provides certified devices for installation to a service provider, which performs installation, service, calibration, and repair services to users, with charges established by each service provider. It is expected that service providers will recover these additional costs through various fees that service providers charge their customers.

A manufacturer has certain recordkeeping requirements during and after the contract period, as well as maintaining individual records in a secure database. To maintain records, a manufacturer has employee, software, and technology costs.

Impact on Ignition Interlock Users

The impact of the rules is on the group of approximately 20,000 drivers, who as of December 2018 are required by the Department or a court to install an ignition interlock device following conviction for a DUI offense. The expansion of service centers throughout the state provides ignition interlock users more options to choose an IISP with a service center located closer to user homes and offices, saving customers time to reach a service center. The rules provide more convenience to ignition interlock users by reducing the number of times a user must drive to a service center to calibrate and download data from a device. The rules contain significant changes for an ignition interlock user by strengthening and increasing the rolling retest requirement. A user must take rolling retests approximately every 6 minutes while driving. For a user who fails to take a set of three consecutive rolling retests within an 18-minute time frame, the Department will extend the ignition interlock period for an additional six months. It should be noted that those users that have a longer ignition interlock period will be responsible for paying more fees and charges to the providers, however, these fees do not result from the rules. Ignition interlock users receive training and information about ignition interlock device operating requirements from service center staff at the time of installation. The rule changes require an ignition interlock user to go to a service center for a calibration check only every 90 days. Previously, a user needed to download data from a device at a service center at 30 and 60 days, but due to the fact that this data is reported in real-time and these compliance checks are performed electronically, users have greater convenience and may pay less in fees to the service provider.

As required by statute, the Department established an ignition interlock device installation fee. Persons who had a new ignition interlock device installed in their vehicle after July 1, 2018 following a DUI conviction are required to pay a one-time ignition interlock installation fee of \$20. The Department established the fee at a modest cost to impose the least cost and burden on a user. The Department used an estimate of approximately 20,000 Arizona drivers that have an ignition interlock device on their vehicle at any given time. With a fee of \$20 per device installation, the fee was estimated to raise annual revenue of \$400,000, which fully covers the administrative costs of the ignition interlock program. This fee is transmitted monthly by a service provider to the Department and used to fund the Department's ignition interlock program. Ignition interlock users are required to pay other additional fees for ignition interlock services from Ignition Interlock Service Providers, however, those additional fees charged at a service center are set individually by that service provider, and not by rule.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Jane McVay
Address: Rules and Policy Development
Arizona Department of Transportation
206 S. 17th Ave., MD 180A
Phoenix, AZ 85007
Telephone: (602) 712-4279
E-mail: jmcvay@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Persons to bear costs	Persons directly benefiting
Ignition interlock users	Ignition interlock users and the public
Manufacturers	Ignition interlock users and the public
Ignition interlock service providers	Ignition interlock service providers, subcontractors, employees, ignition interlock users, and the public
Department of Transportation	Ignition interlock users and the public

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than \$10,000

Moderate \$10,000 to \$99,999

Substantial \$100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The economic impact of the rulemaking on the Department includes minimal resources necessary for the rulemaking. The Department also incurs the cost of necessary systems programming changes, database enhancements, and user interface improvements estimated at \$77,000 to implement the ignition interlock installation fee, placing the costs in the moderate range. The Department has implemented these rules without hiring any new employees. The rulemaking benefits the Department because reporting from manufacturers of ignition interlock activity has improved, reducing staff time to review ignition interlock data and ensuring that data is reported accurately. Other law enforcement agencies also benefit from more accurate reporting of ignition interlock violations and activity. The Department also benefits from collection of the ignition interlock device installation fee that is used to operate the ignition interlock program. The FY 2020 state budget appropriates \$320,000 to the Department from the ignition interlock device fund for the ignition interlock program.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

The rules do not impose any costs on political subdivisions, however, the Department anticipates that law enforcement and courts in political subdivisions will benefit by having improved reporting of user

ignition interlock activity and violations. Ignition interlock users in cities and counties throughout the state will benefit from increased availability of ignition interlock services.

Prior to July 1, 2018, the Department used funds from the Driving Under the Influence Abatement Fund and the State Highway Fund to cover administrative costs of the ignition interlock program. Due to the implementation of the ignition interlock device installation fee, monies from the DUI Abatement Fund may be available to political subdivisions for DUI enforcement grants. Additionally, collection of the ignition interlock device installation fee frees up State Highway Fund monies for right-of-way construction and maintenance of state highways and interstates.

- c. **Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:**

Legislation enacted in 2017 and 2018 authorized the Department to contract with Ignition Interlock Service Providers to provide calibration, installation, service, and removal of ignition interlock devices to users beginning July 1, 2018 for a period of at least three years. A total of nine Ignition Interlock Service Providers contracted with the Department to provide these services through subcontractors or employees. With the statutory requirement for an Ignition Interlock Service Provider to sign a three-year contract with the Department to provide ignition interlock services and have service center locations in all counties, Ignition Interlock Service Providers are expected to have significant increases in facility, payroll, equipment, and other business costs, as well as significant increases in revenue due to an increase in users served.

- 4. **General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:**

The Department has not hired any new employees to implement this rulemaking. The expansion of ignition interlock services throughout the state may have had a minor positive impact on private sector employment with the hiring of additional employees or subcontractors. The Department does not anticipate any other employment impacts due to the rulemaking.

- 5. **Statement of the probable impact of the proposed rulemaking on small businesses:**

- a. **Identification of the small businesses subject to the proposed rulemaking:**

A.R.S. § 41-1001 defines a small business as a concern that is independently owned and operated, not dominant in its field, and which employs fewer than 100 full-time employees, or which had gross annual receipts of less than \$4,000,000 last fiscal year. Most of the existing ignition interlock service providers offer ignition interlock services in numerous other states, and do not fall in the definition of a small business. One ignition interlock service provider offers ignition interlock and other services internationally in 140 countries with about 14,000 employees, generating revenue of \$2.6 billion in Euros in 2018. At the present time, there are nine Ignition Interlock Service Providers contracted with the Department.

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

The Department anticipates that the administrative requirements of the rules will have a minimal economic impact on qualified persons and businesses that provide ignition interlock services.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

The 2017 and 2018 ignition interlock legislation did not provide any options for Department to reduce the impact of the legislation or rules on small businesses. Small businesses that meet the qualifications to provide ignition interlock services in the state, fulfill the statutory and regulatory requirements, complete the necessary applications, and submit an implementation plan approved by the Department may provide ignition interlock services. The ignition interlock statutes do not contain an exemption for a small business owner who is required by a court or the Department to install an ignition interlock device on their vehicle.

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

The Department believes that the expansion of ignition interlock services from service centers throughout all Arizona counties benefits ignition interlock users, especially in the rural areas where ignition interlock services were limited and previously available only as mobile services. The rules also provide efficiencies and savings to users through electronic submission of compliance checks without requiring service center visits. As authorized by statute, the rules established a one-time ignition interlock device installation fee of \$20 beginning July 1, 2018 for ignition interlock users following a DUI conviction. In order to impose the least burden on ignition interlock consumers, the Department chose this modest fee, which funds the monitoring, oversight, and administration of the ignition interlock program and the Ignition Interlock Service Providers. This is the only fee that an ignition interlock consumer pays that the Department receives to cover the ignition interlock program costs. Overall, the Department believes the rules impose the least burden and costs to consumers who need these services.

6. Statement of the probable effect on state revenues:

This ignition interlock device installation fee paid by ignition interlock users beginning July 1, 2018 is transmitted to the Department for deposit in the ignition interlock device fund, which must be used to cover administrative functions of the Department's ignition interlock program. The funds are not deposited in the state general fund, and will not increase state revenue. The expansion of ignition interlock services to users through Ignition Interlock Service Providers and the hiring of additional employees or contractors may have a minor increase in corporate and individual income tax payment in the state.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:

See 5(c)

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if

explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None

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Historical Note

New Section recodified from R17-4-445 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-505. Repealed**Historical Note**

New Section recodified from R17-4-446 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

R17-5-506. Repealed**Historical Note**

New Section recodified from R17-4-447 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Repealed by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-507. Repealed**Historical Note**

New Section recodified from R17-4-448 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS

R17-5-601. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorization agreement" or "agreement" means an agreement authorized by the Director that an HSP enters into with the Department to provide ignition interlock services under A.R.S. § 28-1468.

"Breath alcohol test" means analysis of a sample of the person's expired alveolar breath to determine alcohol concentration.

"Bump starting" means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

"Business day" means a day other than a Saturday, Sunday, or state holiday.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the termination of a manufacturer's ignition interlock device certification for ignition interlock device installation.

"Certification" means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

"Certified ignition interlock device," "CIID," or "device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the NHTSA specifications; that connects a breath analyzer to a motor vehicle's ignition system; that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device; and determines whether the alcohol concentration in the person's breath is below a preset level.

"Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

The bump start of a motor vehicle with a certified ignition interlock device;

The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle;

The introduction of an intentionally contaminated or a filtered breath sample;

The intentional disruption or blocking of a digital image identification device;

The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) or, if the person is under 21 years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body;

Operating a motor vehicle without a properly functioning certified ignition interlock device and;

When a person, who is required to maintain a functioning certified ignition interlock device is starting or operating the motor vehicle, permits another individual to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

"Corrective action" means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a person's driving privilege and the usage or discontinuation of usage of a CIID.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data logger" means the electronic record of all ignition interlock device activity during the period when the device is installed.

"Data storage system" means a computerized recording of all events monitored by an ignition interlock device, which may be reproduced in the form of specific reports.

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"Defective ignition interlock device" means an ignition interlock device that:

1. Does not meet the NHTSA specifications;
2. Does not pass calibration tests; or
3. Does not meet the accuracy and device standards prescribed in these rules.

"Drive cycle" means either the period of time from when a motor vehicle is initially turned on to the next time the ignition is turned off, or the period of time from when an initial breath alcohol test is performed and failed, to the time a breath alcohol test is successfully taken and the ignition is turned off.

"Early recall" means that a person's ignition interlock device recorded one tampering or circumvention event, or any ignition interlock malfunction, that requires a person to return to a service center within 72 hours.

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

"Emergency situation" means a circumstance in which the person informs the IISP or IISP-certified technician that the person's vehicle needs to be moved to comply with the law, or the person has a valid and urgent need to operate the vehicle.

"Established place of business" means a business location that is:

- Approved by the Department.
- Located in Arizona;
- Not used as a residence; and
- Where an IISP or its agent or subcontractor provides authorized ignition interlock services.

"False sample" means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the person.

"Filtered breath sample" means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

"Free restart" means a function of a CIID that will allow a person to restart the vehicle, under the conditions provided in R17-5-615, without completing another breath alcohol test.

"FTP" means file transfer protocol, the exchange of files over any network that supports electronic data interchange reporting that is transmitted through the Internet and prescribed by the Department.

"Global positioning system" means the ability of a wireless certified ignition interlock device to identify and transmit its geographic location through the operation of the device.

"Ignition interlock device installation fee" means the fee required in A.R.S. § 28-1462, and established by the Department in R17-5-614, that is paid by a person to an IISP when a CIID is installed on, or transferred to a person's vehicle.

"Ignition interlock period" means the period in which a person is required to use a CIID that is installed on a vehicle.

"Ignition interlock service provider" or "IISP" means a person who is an authorized representative of a manufacturer and who is under contract with the Department to install or oversee the installation of ignition interlock devices by the provider's

authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

"Improper reporting" means any of the following:

Failure of a manufacturer to report any violations to the Department within 24 hours as required in R17-5-610(D)(1), or failure to send a person's ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(C);

Failure of a manufacturer to submit to the Department valid and substantiated proof or evidence of a reportable activity related to a violation, including a summary report and relevant data loggers as required in R17-5-610(D)(2), within 10 days after the Department's request;

Failure of a manufacturer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing a calibration check, that results in the Department mailing a driver license suspension to a person;

Electronic reporting by a manufacturer to the Department, of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

Knowingly reporting a violation that occurs when a participant's vehicle has high or low voltage;

Reporting an incident that occurs when a person has a free restart test to start the person's vehicle;

Reporting an incident that occurs in which a manufacturer downloads data from the device during a calibration check and tampers with the data or a CIID; or

An incident that occurs after the person's vehicle is turned off.

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

"Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction, and production of an ignition interlock device and that is certified by the Department to offer ignition interlock devices for installation in motor vehicles in this state.

"Material modification" means a change to a CIID that affects the functionality of the device.

"Missed rolling retest" means the person refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period prescribed in R17-5-615(E).

"Mobile services" means ignition interlock services provided by an IISP or its agents or subcontractors at a publicly accessible location other than the IISP's service center, that meet the requirements of R17-5-618.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

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"Permanent lock-out" means a feature of the CIID in which a motor vehicle will not start until the CIID is reset by an IISP or an IISP-certified technician.

"Person" means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning CIID, and who becomes a customer of an IISP for installation and servicing of the CIID.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or an IISP that is located in Arizona, is zoned for commercial, and is not used as a residence.

"Purge" means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Real-time" or "real-time reporting" means the instant transmission of unfiltered ignition interlock violations as defined in R17-5-601, and data as prescribed in R17-5-610, including photographs, to the manufacturer's website for viewing by the Department without delay, as electronic or digital service permits.

"Reference sample device" means a device containing a sample of known alcohol concentration.

"Retest set point" has the same meaning as set point.

"Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

"Service center" means an established place of business approved by the Department from which an IISP or its agents or subcontractors provide ignition interlock services to persons from one or more counties.

"Set point" means an alcohol concentration of 0.020 g/210 liters of breath. The accuracy of a device shall be 0.020 g/210 liters plus or minus 0.010 g/210 liters.

"Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the CIID from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

"Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, calibrate, service or remove certified ignition interlock devices.

"Temporary lock-out" means a feature of the CIID which will not allow a motor vehicle to start for five minutes after a breath alcohol test result indicating an alcohol concentration above the set point.

"Vehicle identification number" or "VIN" means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

"Violation" (when referencing acts or omissions on the part of a person in the ignition interlock program) includes, but is not limited to any of the following reportable activities performed by a person which a manufacturer shall promptly report to the Department:

Circumventing the CIID as defined in R17-5-601;

Tampering with the CIID as defined in A.R.S. § 28-1301;

Failing to provide proof of compliance or inspection of the CIID under A.R.S. § 28-1461(E)(4);

Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;

Attempting to operate the vehicle with an alcohol concentration value in excess of the set point if the person is under 21 years of age;

Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute time frame during a person's drive cycle;

Disconnecting or removing a CIID, except:

- On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or
- On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

"Ventilation reset" means the unplanned servicing and inspection of a CIID and the downloading of information from its data storage system by an IISP as a result of an early recall that requires the manufacturer to unlock the device.

Historical Note

New Section recodified from R17-4-709 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration; Cancellation of Certification; Notice

- A. An ignition interlock device manufacturer shall obtain certification by the Department under this Article before offering a new ignition interlock device model and before making material modifications to an existing ignition interlock device model for implementation and installation under Arizona law.
- B. Ignition interlock device certification by an ignition interlock device manufacturer shall occur prior to the IISP signing an authorization agreement with the Department.
- C. After receiving Department certification for a new ignition interlock device model and meeting all the requirements under R17-5-604, the ignition interlock device manufacturer is effectively certified by the Department to offer the certified ignition interlock device model for installation under Arizona law.
- D. An ignition interlock device manufacturer shall submit a new application to the Department under R17-5-604 for the certification of each new ignition interlock device model the manufacturer intends to offer for installation.
- E. Manufacturer certification issued by the Department under this Article shall automatically expire if:
 1. The manufacturer no longer provides at least one currently certified ignition interlock device model for installation under Arizona law; and
 2. The manufacturer has no pending application on file with the Department for the certification of a device under R17-5-604.
- F. Manufacturer certification of an ignition interlock device that was previously approved by the Department under this Article shall automatically expire within one year after the certification is granted if the manufacturer has not contracted with an

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IISP currently contracted with the Department to install the CIID.

- G. After the one-year cancellation period in subsection (I) ends, a manufacturer may reapply to the Department for certification by completing a new application for the certification of a device and meeting all certification requirements under this Article.
- H. If the Department determines that a manufacturer fails to properly report ignition interlock information and data to the Department in the manner prescribed in these rules, the Department may immediately provide written notice to the manufacturer with the following information:
 1. The name of the person and the date of the improper reporting; and
 2. The manufacturer shall send the required record or report to the Department within ten business days, if applicable.
- I. If the manufacturer fails to remedy the issues identified in the notice within ten business days, the Department may cancel the manufacturer device certification.
- J. If a manufacturer's certification expires as a result of subsections (E)(1) and (E)(2), the manufacturer may reapply for certification by submitting a new application to the Department for the certification of a device under R17-5-604.
- K. A manufacturer shall only appoint one IISP that is contracted with the Department and serves as an authorized representative of the manufacturer to provide ignition interlock services to the public.
- L. A manufacturer shall notify the Department within 24 hours if an IISP is no longer authorized by a manufacturer to install its CIID.

Historical Note

New Section recodified from R17-4-709.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-602 renumbered to R17-5-604; new R17-5-602 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration

- A. The accuracy of the CIID shall be determined by analysis of an external standard generated by a reference sample device.
- B. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.
- C. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D. All devices shall meet the setpoint requirements of R17-5-601 when used at ambient temperatures of -20° Celsius to 83° Celsius.
- E. A device shall be designed so that anticircumvention features will be difficult to bypass.
 1. Anticircumvention provisions on the device shall include, but are not limited to, prevention or preservation of any evidence of circumvention by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
 2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. A CIID shall have global positioning system capability, and the manufacturer shall electronically and wirelessly download in real-time from the device and transmit daily to the Department,

a person's ignition interlock activity in an FTP batch file.

- G. A CIID shall be equipped with a camera, which shall not distract or impede the driver in any manner from safe and legal operation of the vehicle, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass, or circumvention, and report this information directly to the manufacturer.
- H. The camera shall be able to record and store visual evidence of each person providing a breath alcohol test, and shall meet the following requirements:
 1. At device installation, the camera shall take a reference picture of the person, which shall be kept on file;
 2. A clear photograph shall be taken for each event, including initial vehicle start, all rolling retests, and whenever a violation is recorded;
 3. Each photograph shall be a wide-angle view of the front cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and
 4. The camera shall produce a digital image, identifiable verification, or a photograph of the person in all lighting conditions, including brightness, darkness, and low light conditions.
- I. A device shall:
 1. Automatically purge alcohol before allowing analysis.
 2. Have a data storage system with the capacity to sufficiently record and maintain a record of the person's daily driving activities that occur between each regularly scheduled calibration check referenced under R17-5-610 and R17-5-706. An IISP shall download and transmit any digital images taken during a person's calibration check, during each rolling retest, and each time a person with the ignition interlock requirement or another individual starts the motor vehicle. A manufacturer shall make these digital images available to the Department on request.
 3. Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware shall:
 - a. Require device settings and operational features to include, but not limited to, sample delivery requirements, the set point, free restart, rolling retest requirements, violation settings, and temporary and permanent lock-outs; and
 - b. Prohibit modification of the device settings or operational features by a service center, or an IISP-certified technician unless the Department approves the modification under subsection (J).
 4. Record all emergency bypasses in its data storage system.
 5. Provide a visual reminder on the device that a calibration check must be performed on the person's CIID every 90 days, with prominent device notifications during each 77-day to 90-day interval within a person's ignition interlock period, of the following:
 - a. The device needs service; and
 - b. The time remaining until a permanent lock-out occurs.
 6. Notify a person that failure to get the calibration check, including calibration and data download, by the end of each 90-day period will cause the vehicle to be in a permanent lock-out mode, and shall record the event in the data storage system.
 7. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5 for one instance of tampering or circumvention,

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- or any ignition interlock device malfunction, emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the IISP in 72 hours for a violation reset.
8. Enter into a permanent lock-out if a person does not return to the IISP for a violation reset within 72 hours after an early recall occurs.
 9. When a violation results in a permanent lock-out mode, the device shall:
 - a. Immobilize the person's vehicle;
 - b. Uniquely record the event in the data storage system; and
 - c. Require a violation reset by the IISP.
 10. Enter into a temporary lock-out mode for five minutes when the device detects during the initial breath alcohol test that a person's breath alcohol concentration is at or above the set point.
 11. After the five-minute temporary lock-out, the device shall allow subsequent breath alcohol tests with no further lock-out as long as each subsequent test produces a valid and substantiated breath test.
 12. Have security protections and the capability to provide visual evidence of any actual or attempted tampering, alteration or bypass of the device, or circumvention.
- J. No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
 2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
 3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires any modification, the manufacturer shall immediately notify the Department.
- Historical Note**
- New Section recodified from R17-4-709.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-603 renumbered to R17-5-606; new R17-5-603 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).
- R17-5-604. Ignition Interlock Device Certification; Application Requirements**
- A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.
 - B. To certify an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
 1. The manufacturer's name;
 2. The address of the manufacturer's principal place of business in this state and telephone number;
 3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
 4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
 5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
 6. The manufacturer's electronic mail address.
 7. The following statements, signed by the manufacturer:
 - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
 - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
 - i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or the manufacturer's authorized IISP relating to the installation and operation of the ignition interlock device; and
 - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
 - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
 - d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.
- C. A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a photograph, drawing, or other graphic depiction of the device;
 2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;
 3. An independent laboratory's report for each device model that:
 - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015. The NHTSA specifications and technical corrections are incorporated by reference and are on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007, and the NHTSA Office of Research and Technology, 1200 New Jersey Avenue SE, Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
 - b. Provides the independent laboratory's name, address, and telephone number; and
 - c. Provides the name and model number of the ignition interlock device tested.
 4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3), that states all of the following:
 - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists.
 - b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013 with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

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- c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
 - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device.
 - e. The laboratory presented accurate test results to the Department.
5. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
- a. A product liability policy with a current effective date;
 - b. The name and model number of the ignition interlock device model covered by the policy;
 - c. Policy coverage of \$1,000,000 and \$3,000,000 in the aggregate;
 - d. The manufacturer as the insured and the state of Arizona as an additional insured;
 - e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
 - f. The insurance company shall notify the Department's Risk Management, Insurance and Indemnification Section in writing at least 30 days before canceling the product liability policy.
6. A statement that the ignition interlock device has a camera, includes a global positioning system, and provides real-time reporting.
- D. Beginning on July 1, 2018, for any new installation of an ignition interlock device or any replacement of a device on a person's motor vehicle with another device, an IISP or an IISP-certified technician shall install only a certified ignition interlock device that meets the additional requirements in this Article, and meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
- E. A person whose CIID was installed prior to July 1, 2018, and the device meets or exceeds the 2013 NHTSA specifications, with the 2015 NHTSA technical corrections, and continues to operate properly, shall keep the CIID on the person's vehicle.

Historical Note

New Section recodified from R17-4-709.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-604 renumbered to R17-5-607; new R17-5-604 renumbered from R17-5-602 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2013 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-605. Application Processing; Time Frames; Exception

- A. The Department shall process an application for ignition interlock device certification only if an applicant meets all applicable application requirements.
- B. The Department shall, within 10 days of receiving an application for certification, provide notice to the applicant that the application is either complete or incomplete.

- 1. The date of receipt is the date the Department receives the application
 - 2. If an application is incomplete, the notice shall specifically identify what required information is missing.
- C. An applicant with an incomplete application shall provide all missing information to the Department within 15 days of the date indicated on the notice provided by the Department under subsection (B).
- 1. After receiving all of the required information, the Department shall notify the applicant that the application is complete.
 - 2. The Department may deny certification of an ignition interlock device if the applicant fails to provide the required information within 15 days of the date indicated on the notice.
- D. Except as provided under subsection (F), the Department shall render a decision on an application for certification of an ignition interlock device within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the applicant under subsections (B) or (C)(1).
- E. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for certification of an ignition interlock device:
- 1. Administrative completeness review time frame: 10 days.
 - 2. Substantive review time frame: 30 days.
 - 3. Overall time frame: 40 days.
- F. Established time frames may be suspended by the Department under A.R.S. § 41-1074 for certification of an ignition interlock device until the Department receives all external agency approvals required for certifying a new ignition interlock device model from the Department of Public Safety.

Historical Note

New Section recodified from R17-4-709.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-605 renumbered to R17-5-608; new R17-5-605 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2013 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

- A. An application for certification of an ignition interlock device model is complete when the Department receives:
 - 1. From the manufacturer, a properly prepared application form;
 - 2. From the manufacturer, all additional items required under R17-5-604(C);
 - 3. From the Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets or exceeds the NHTSA specifications in R17-5-604(C); and
 - 4. From the manufacturer, a letter or notification that the device meets the following standards:
 - a. The anticircumvention features in R17-5-603(E).
 - b. The data storage capacity requirement in R17-5-603(1)(2), and
 - c. The constant communication requirement in R17-5-610(F).
- B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or on finding any of the following:

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1. The design, material, or workmanship is defective, causing the ignition interlock device model to fail to function as intended;
 2. The manufacturer's product liability insurance coverage is terminated or canceled;
 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
 4. The manufacturer or the independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C), the requirements in this Article; or
 6. The Department receives a report of device disapproval from an independent laboratory or other external reviewer.
- C. The Department shall mail to the manufacturer, written notification of the certification or denial of certification of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
- D. If a manufacturer timely requests a hearing on the Director's decision to deny certification of an ignition interlock device model, the Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

Historical Note

New Section recodified from R17-4-709.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-606 renumbered to R17-5-609; new R17-5-606 renumbered from R17-5-603 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-607. Cancellation of Device Certification; Hearing

- A. The Director shall cancel an ignition interlock device model certification and remove the device from its list of CIID's on finding any of the following:
1. The design, material, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
 2. The manufacturer's product liability insurance coverage is terminated or canceled;
 3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
 4. The manufacturer or independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
 5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C);
 6. The manufacturer instructs the Department to cancel its certification of the ignition interlock device model;
 7. The manufacturer, the IISP, or the device does not comply with this Article or any other applicable rule or statute; or
- H. If the manufacturer has not contracted with an IISP authorized by the Department within one year after the device model certification.
- B. The Department, on finding any of the conditions described under subsection (A), or on finding that the manufacturer failed to timely remedy the issues identified in the notice provided under R17-5-602(1), shall mail to the manufacturer a notice and order of cancellation of certification for the specific ignition interlock device model. The notice and order of cancellation shall:
1. Specify the basis for the action;
 2. Specify the date when the one-year decertification begins and ends, and
 3. State that the manufacturer may, within 15 days after receipt of a notice and order of manufacturer device model cancellation, file a written request for a hearing with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5, to show cause as to why the ignition interlock device certification should not be cancelled.
- C. If a hearing to show cause is timely requested, the Department's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of manufacturer device model certification.
- D. Within 10 days after a hearing, the hearing officer shall issue to the manufacturer a written decision, which shall:
1. Provide findings of fact and conclusions of law; and
 2. Grant or cancel the certification.
- E. If the hearing officer affirms the manufacturer device model cancellation, the manufacturer may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 35 days of the date when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay while the appeal is pending.
- F. Within 60 days after the effective date of an order of cancellation, the manufacturer shall, at the manufacturer's own expense, ensure the removal of all ignition interlock devices that are not certified and facilitate the replacement of each device with a CIID.
- G. The manufacturer of a previously decertified ignition interlock device model may reapply to the Department for certification of another ignition interlock device model under R17-5-604 after the one-year device decertification period ends.
- H. After cancellation, the Department shall notify the IISP and the IISP-certified technicians that each of them is prohibited from installing the ignition interlock device for which the device certification was cancelled.
- I. Cancellation of a manufacturer's device model certification prohibits the manufacturer from performing its duties with respect to the device model that has been cancelled and making the device model available for installation in the state for a period of one year from the latest of the following dates when:
1. The Department cancels a manufacturer's device model certification, or
 2. The Department's Executive Hearing Office cancels the manufacturer's device model certification.

Historical Note

New Section recodified from R17-4-709.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-607 renumbered to R17-5-610; new R17-5-607 renumbered from R17-5-604 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final

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exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

Appendix A. Renumbered**Historical Note**

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix A renumbered to R17-5-610, Appendix A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix B. Renumbered**Historical Note**

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix B renumbered to R17-5-610, Appendix B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix C. Renumbered**Historical Note**

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix C renumbered to R17-5-610, Appendix C, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-608. Modification of a Certified Ignition Interlock Device Model

- A. A manufacturer shall notify the Department in writing at least 10 days before a material modification is made to a certified ignition interlock device model.
- B. Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the Department, a manufacturer shall:
 1. Submit to the Department a completed application form with the information required under R17-5-604(B) and all additional items required under R17-5-604(C), and
 2. Obtain certification of the materially modified ignition interlock device from the Department.
- C. The Department's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model.

Historical Note

New Section recodified from R17-4-709.07 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-608 renumbered to R17-5-611; new R17-5-608 renumbered from R17-5-605 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-609. IISP and Manufacturer Responsibilities

- A. An IISP shall refer a person only to the IISP's certified technician.
- B. An IISP shall provide the Department and each person with a toll-free telephone number to call to obtain the names and phone numbers of the IISP's certified technicians, the IISP service center locations, and hours of operation for the IISP service centers.
- C. An IISP shall certify each technician by providing adequate training and oversight for the technician to perform one of the

activities at a service center, which are installation, inspection, calibration, service, or removal of a CIID.

- D. An IISP shall provide to every person operating a motor vehicle equipped with a CIID, and any other persons who will operate the motor vehicle, training on how to operate the motor vehicle. An IISP shall instruct the person on all of the following:
 1. How to use the system;
 2. How to obtain service for the CIID;
 3. How to find answers to any additional questions;
 4. How the alcohol retest feature works;
 5. How drinking alcohol before a test may result in a reading of sensitive or fail;
 6. How the CIID shall not be removed, except by an IISP or IISP-certified technician;
 7. How noncompliance with a regularly scheduled calibration check for a person with a limited or restricted driving privilege shall result in suspension of the person's driving privilege under A.R.S. § 28-1463 until proof of compliance is submitted to the Department under A.R.S. § 28-1461, and the duration of the person's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1461;
 8. What the penalties are for circumvention of the CIID;
 9. What the penalties are for tampering with, or misusing the CIID;
 10. What will happen after failing a start-up breath alcohol test;
 11. What will happen after a person has a set of three consecutive valid and substantiated missed rolling retests within an 18-minute time frame during a drive cycle; and that a person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition;
 12. What events or actions will result in a temporary or permanent lock-out of the CIID; and
 13. How to provide a properly delivered alveolar breath sample.
- E. An IISP shall have each person sign a document stating that the IISP has instructed the person regarding each topic contained in subsections (D) and (L), and has received the manufacturer's written instructions for operation of the CIID.
- F. An IISP shall inform a person that a compliance check on a CIID is required 30 days and 60 days after installation of the device, which shall be done electronically.
- G. An IISP shall inform each person to bring the vehicle to a service center for a calibration check within every 77 to 90-day period until the person is eligible for device removal.
- H. An IISP shall check each CIID for evidence of tampering at least once every 90 days or more frequently if needed. This anticircumvention check shall be conducted at each person's calibration check at a service center as required under R17-5-706.
- I. An IISP shall ensure that the manufacturer reports to the Department electronically under R17-5-610 if any evidence of tampering is discovered, and the manufacturer shall submit valid and substantiated proof or evidence of a reportable activity. An IISP shall keep visual evidence of a person's tampering or circumvention for a minimum of three years after the termination of the person's required ignition interlock period.
- J. An IISP shall submit to the Department a list of the IISP-certified technicians, subcontractors, or agents, and service centers at the beginning of the contract with the Department, within 5 business days of making a change to the list previously provided, and on a monthly basis as requested by the Department.
- K. An IISP shall comply with the provisions of this Article and A.R.S. Title 28, Chapter 4, Article 5.

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- L. A manufacturer shall develop and an IISP shall provide each person a reference and problem solving guide at the time of installation that shall include information on the following:
1. Operating a motor vehicle equipped with the CIID;
 2. Cleaning and caring for the CIID; and
 3. Identifying and addressing any vehicle malfunctions or repairs that may affect the CIID.
- M. A manufacturer shall notify the Department within 10 days of a change of address of its principal place of business in this state.
- N. A manufacturer or an IISP shall provide a warning label, for each CIID installed, which shall have an orange background and shall include the following:
1. Be a minimum size of two inches by one inch;
 2. Be printed in a minimum of nine-point font;
 3. Be printed in Arial font, or a font of substantially similar size and legibility; and
 4. Contain the words in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- O. A manufacturer shall ensure that the IISP or the IISP-certified technician affixes conspicuously and maintains on each installed CIID the warning label described under subsection (N), which may be affixed to the device or to the device's cord.
- P. A manufacturer shall develop written instructions for the installation and removal of an ignition interlock device from a motor vehicle.
- Q. While a person maintains a functioning CIID in a vehicle under A.R.S. Title 28, Chapter 4, Article 5, the ignition interlock manufacturer shall electronically provide to the Department and transmit daily to the Department the information and reports prescribed in R17-5-610 and R17-5-615.
- R. The manufacturer is responsible for overseeing any agents or subcontractors, including vendors and distributors, as well as overseeing the manufacturer's IISP to ensure adherence to all performance standards.
- Historical Note**
- New Section recodified from R17-4-709.08 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-609 renumbered to R17-5-612; new R17-5-609 renumbered from R17-5-606 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed; new Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).
- R17-5-610. Reporting; Reportable Activity**
- A. A person shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.
- B. A manufacturer shall develop and the IISP shall ensure that each IISP-certified technician complies with the IISP's written procedures for the installation of a CIID.
- C. Certified ignition interlock device installation verification.
1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of the device installation.
 2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
 - a. Department-assigned service center number;
 - b. Person's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Report type;
 - h. Missed rolling retest count, dates, and times;
 - i. Technician identification number;
 - j. Alcohol concentration violation count, dates, time, and alcohol concentration;
 - k. Tampering violation count, dates, and time;
 - l. Circumvention count, dates, and time;
 - m. Device download date;
 - n. Device download time;
 - o. Bypass code indication, date, and time;
 - p. A unique identification number for the CIID;
 - q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
 - r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- D. Certified ignition interlock device calibration check.
1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing a calibration check on an installed CIID.
 2. A manufacturer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means, which shall include:
 - a. A summary report stating why the data logger or any other evidence confirms the occurrence of a violation, including any photographs of the person; and
 - b. A data logger that shows at least 12 hours of data before and after the violation.
 3. A manufacturer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means, which may include:
 - a. Photographs;
 - b. Video recordings;
 - c. Written statements; and
 - d. Any other evidence relevant to a violation.
 4. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the calibration check shall contain all of the following information:
 - a. Department-assigned service center number;
 - b. Person's full name (first, middle, last and suffix);
 - c. Date of birth;
 - d. Driver license or customer number;
 - e. Report date;
 - f. Install date;
 - g. Report type;
 - h. Missed rolling retest count, dates, and times;
 - i. Technician identification number;
 - j. Alcohol concentration violation count, dates, time, and alcohol concentration;
 - k. Tampering violation count, dates, and time;
 - l. Circumvention count, dates, and time;
 - m. Device download date;
 - n. Device download time;
 - o. Bypass code indication, date, and time;
 - p. A unique identification number for the CIID;
 - q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
 - r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.
- E. Certified ignition interlock device removal report.
1. When a certified ignition interlock device is removed, a manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours.

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2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
- Department-assigned service center number;
 - Person's full name (first, middle, last and suffix);
 - Date of birth;
 - Driver license or customer number;
 - Report date;
 - Install date;
 - Removal date;
 - Report type;
 - Technician identification number;
 - A unique identification number for the CIID;
 - The last six digits of the vehicle identification number that matches the vehicle information on the data logger;
 - Whether the Department, a court, or an out-of-state entity requires a person to have a CIID;
 - Missed rolling retest count, dates, and times;
 - Device download date; and
 - Device download time.
- F. Reportable activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a person of any of the following:
- Tampering with a CIID as defined in A.R.S. § 28-1301;
 - Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute timeframe during a person's drive cycle;
 - Failing to provide proof of compliance or inspection of the CIID as required under A.R.S. § 28-1461(E)(4);
 - Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;
 - Attempting to operate the vehicle with an alcohol concentration in excess of the set point if the person is under 21 years of age; 6. Circumvention of a CIID as defined in R17-5-601; or
 - Disconnecting or removing a CIID, except:
 - On repair of the vehicle, if the person provided to the HSP, technician, or service center advance notice of the repair and the anticipated completion date; or
 - On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.
- G. A person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition. A missed rolling retest is reportable activity for a person's noncompliance under subsection (F).
- H. A manufacturer shall screen each person's data loggers to ensure that there is no improper reporting.
- I. A manufacturer shall ensure that a CIID has the necessary programming to identify each person's ignition interlock period and each drive cycle to report and send data and violations to the Department as required by these rules.
- J. A manufacturer shall review within 10 days all reports generated by the Department and returned to the manufacturer for verification of accurate reporting. If a manufacturer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer shall immediately contact the Department to correct the person's record before corrective action is initiated against a person as a result of misreported ignition interlock data.
- K. A manufacturer shall immediately contact the Department if the manufacturer finds that the reported information indicates:
- An obvious mechanical failure of a CIID;
 - Obvious errors in the recorded CIID data that cannot be attributed to a person's actions; or
 - Obvious errors in the transmission of CIID data to the Department, including misreported instances of tampering.
- L. A manufacturer shall ensure that a CIID electronically and wirelessly uploads data in real-time to the manufacturer's website, that is maintained by the manufacturer, and the manufacturer shall submit all required information and reports in a daily FTP file to the Department.
- M. In cases where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available.
- N. A manufacturer shall include the date of the last upload on the person's account on the manufacturer's website.
- O. A CIID shall have constant communication between the manufacturer's server and relay unit while the device is in use.
- P. All data, including photographs, shall be available to the Department for viewing on the manufacturer's website within five minutes after the data is recorded on the device, or as soon as electronic or digital reception permits.

Historical Note

New Section recodified from R17-4-709.09 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-610 renumbered to R17-5-703; new R17-5-610 renumbered from R17-5-607 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

Exhibit A. Renumbered**Historical Note**

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit A renumbered to R17-5-703, Exhibit A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Exhibit B. Renumbered**Historical Note**

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit B renumbered to R17-5-703, Exhibit B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix A. Repealed**Historical Note**

Appendix A renumbered from R17-5-607, Appendix A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix B. Repealed**Historical Note**

Appendix B renumbered from R17-5-607, Appendix B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix C. Repealed

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Historical Note

Appendix C renumbered from R17-5-607, Appendix C, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-611. Emergency Assistance; Continuity of Service to Persons

- A. For events occurring outside of normal business hours, an IISP shall provide to each person a 24-hour emergency toll-free phone number answered by a live person at all times, to provide assistance in the event a CIID fails to operate properly or a vehicle experiences a problem relating to the installation, operation, or failure of a CIID.
1. During normal business hours, if the IISP or technician receives a call for emergency assistance, and determines that a vehicle is experiencing a problem relating to the installation, operation, or failure of a CIID, an IISP or a technician shall respond to the call within 24 hours of the initial contact and shall be available either to:
 - a. Provide telephonically, the technical information required for the person to resolve the issue; or
 - b. Provide or arrange for appropriate towing or roadside assistance services if unable to resolve the issue telephonically.
 2. After receiving a person's call for emergency or other assistance, the IISP, technician, or manufacturer, as appropriate, shall either:
 - a. Make the CIID functional, if possible, within 24 hours, or
 - b. Replace or repair the CIID within 48 hours of the initial contact.
- B. An IISP shall ensure uninterrupted service to a person for the duration of the person's ignition interlock period, which shall include facilitating the replacement of a technician, subcontractor, or an employee or agent who goes out of business, is removed, or a technician whose certification is cancelled by the IISP.
1. If a manufacturer terminates the IISP's authorization, the manufacturer shall obtain each person's records from the IISP and retain the records according to R17-5-612.
 2. At the end or termination of an ignition interlock service authorization agreement, the manufacturer shall provide the Department with electronic access to each person's ignition interlock records for three years.
 3. If a manufacturer authorizes a new IISP, the manufacturer shall notify each person affected by the authorization of the new IISP at least 30 days before the authorization becomes effective.
 4. If a manufacturer does not authorize a new IISP, the manufacturer at no cost to the person, shall:
 - a. Provide written notification to all persons who are affected by the loss of an IISP or lack of service in an area, at least 30 days before the IISP discontinues service. The written notification shall inform the person of the manufacturer's responsibility to facilitate removal and replacement of the CIID and shall provide the instructions necessary for the person to successfully exchange the device;
 - b. Remove the device from the vehicle of each affected person; and
 - c. Facilitate the replacement of each device through a manufacturer with an IISP that can provide service.
 5. A manufacturer shall notify the Department within 24 hours of replacing its IISP.
 6. An IISP shall submit to the Department an updated list of the IISP's certified technicians within 5 business days after making a change to the list provided to the Department under R17-5-609(J).
- C. Except in an emergency situation, a manufacturer, an IISP, or an IISP's-certified technician shall not remove another manufacturer's CIID without the express permission of that manufacturer.
1. If in an emergency situation a manufacturer, an IISP, or the IISP's-certified technician removes another manufacturer's CIID, that manufacturer, IISP, or the IISP's-certified technician shall return the device to the original manufacturer within 72 hours of the emergency removal; and
 2. The original manufacturer, on receipt of the device, shall provide to the Department an electronic report of the device removal under R17-5-610, which shall include the transmission of all data stored in its data storage system.
- D. In accordance with the IISP's implementation plan, an IISP shall facilitate the replacement of the IISP's service center if the service center goes out of business or the service center is closed, and the IISP does not have a service center in the county. An IISP shall notify the Department within 72 hours of replacing a service center location in a county.
1. If a service center closes and is replaced, the manufacturer shall make all reasonable efforts to obtain from the service center being replaced, all the individual ignition interlock records and data required to be retained under R17-5-612. The records shall be provided to, and maintained by the IISP.
 2. If an out-of-business or closed service center is not replaced, the manufacturer shall retain the records and data as required under R17-5-612, and shall provide the Department with electronic access to the records and data.
 - a. The manufacturer shall facilitate removal of all installed CIID's no longer serviced by the out-of-business or closed service center, and shall bear the cost of replacing each device with a serviceable CIID chosen by the person, even if the replacement device must be provided through an alternate manufacturer.
 - b. The manufacturer shall, within 30 days, make a reasonable effort to notify its customers of the change of service center or replacement of a device.
 3. If the manufacturer cannot comply with subsection (D)(1) or subsection (D)(2), the IISP shall:
 - a. Notify its customers and the Department that service will be terminated; and
 - b. Remove each device at no cost to the customer.

Historical Note

Section R17-5-611 renumbered from R17-5-608 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-612. Records Retention; Submission of Copies and Quarterly Reports

- A. During the duration of the ignition interlock service authorization agreement, an IISP shall retain each person's ignition interlock activity records in an electronic format, including a secure database, or a paper format. The retained records shall consist of every document relating to installation, operation, and removal of the CIID. The IISP shall maintain all daily ignition interlock activity records of each person in the device's data storage system, or in a secure database at a com-

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mercial business location in this state, that the Department may access during posted business hours. An IISP shall inform the Department where all individual ignition interlock activity records are located.

- B. Prior to the end or termination of an ignition interlock service authorization agreement, the manufacturer shall obtain all person's ignition interlock records and provide the Department with electronic access to the records for three years.
- C. A manufacturer shall provide copies of each person's ignition interlock records to the Department within 10 days after Department personnel request copies of records, including records relating to installation and operation of the CIID.
- D. A manufacturer shall electronically send to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
 1. The number of CIID's the IISP currently has in service;
 2. The number of CIID's installed since the previous quarterly report; and
 3. The number of CIID's removed by the IISP since the previous quarterly report.
- E. An IISP shall maintain and make available to the Department the ignition interlock records of all persons served by the IISP, records relating to the authorization agreement, and employee background check information at a commercial business location in this state of the manufacturer or the IISP during normal business hours.

Historical Note

Section R17-5-612 renumbered from R17-5-609 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-613. Inspections and Complaints

- A. The Department shall investigate any complaint that is related to a CIID or an IISP.
- B. An IISP and a manufacturer shall permit and fully cooperate with periodic on-site inspections of the IISP's service centers and principal places of business of the manufacturer at any time during normal business hours by an authorized representative of the Department, where records relating to the authorization agreement and individual ignition interlock device records are maintained.
- C. The Department shall conduct on-site inspections of a manufacturer, or a service center under the provisions of A.R.S. § 41-1009. The inspection shall include an examination of ignition interlock activity, records and verification of an adequate supply of the warning labels that meet the requirements of A.R.S. § 28-1462 and R17-5-609.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-614. Ignition Interlock Device Installation Fee; Financial Records

- A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.
- B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department

on a monthly basis through a payment account created by the IISP on ServiceArizona.com, or as specified by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.

- C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.
- D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.
- E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.
- F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-615. Rolling Retest; Missed Rolling Retest; Extension of Ignition Interlock Period

- A. A manufacturer shall report to the Department any valid and substantiated missed rolling retests, as defined in R17-5-601, that occur during the time period prescribed in subsection (C).
- B. A CIID shall have the capability to require a rolling retest and meet the requirements of a rolling retest. A person shall be prompted for the first rolling retest within five to 15 minutes after the initial test required to start an engine, and the device shall prompt for additional rolling retests at random intervals of up to 30 minutes after each previously requested and passed rolling retest.
- C. A certified ignition interlock device shall:
 1. Emit a warning light, tone, or both, to alert a person that a rolling retest is required;
 2. Allow a period of six minutes after the warning light, tone, or both, to allow a person to take a rolling retest;
 3. Require a person to perform a new test to restart an engine if it is switched off during or after a rolling retest warning;
 4. Allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test, except when a rolling retest is in progress;
 5. Use the set point value for startups and retests;
 6. Record, in its data storage system, the result of each rolling retest performed by a person during the person's drive cycle, and any valid and substantiated missed rolling retests; and
 7. Immediately require another rolling retest each time a person refuses to perform a requested rolling retest.
- D. Until a person successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal or failure of the person to perform the requested rolling retest.
- E. The Department shall count one missed rolling retest for a person who refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not

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followed by the person providing a valid and substantiated breath sample within six minutes.

- F. Failure to take a rolling retest when a person's breath alcohol concentration is equal to or exceeds the set point shall not sound the vehicle horn, nor any type of siren, bell, whistle or any device emitting a similar sound, or any unreasonable loud or harsh sound that is audible outside of the vehicle, and shall not cause the engine of the vehicle to shut off.
- G. The Department shall extend a person's ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of three consecutive missed rolling retests that occur within an 18-minute time frame during a drive cycle.
- H. If during one drive cycle, a person who is at least 21 years of age, has two or more breath alcohol concentrations of 0.08 or more, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.
- I. If during one drive cycle, a person who is under 21 years of age, has any breath alcohol concentration one or more times, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.
- J. Except as provided in subsections (H) and (I), if during one drive cycle, a person has more than one violation as defined in R17-5-601, the Department shall extend a person's ignition interlock period for six months for each violation.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-616. Civil Penalties; Hearing

- A. After notice and an opportunity for a hearing, the Director may impose a civil penalty pursuant to A.R.S. § 28-1465, against a manufacturer of a certified ignition interlock device for improper reporting to the Department of Ignition Interlock data, as defined in R17-5-601, that may cause the Department to erroneously initiate corrective action against a person. The Director may impose and collect a civil penalty against a manufacturer of a certified ignition interlock device, who is responsible for an occurrence of improper reporting, as follows:
 1. \$100 for the first occurrence, but not to exceed \$1,000 per series of occurrences of improper reporting on a specific date;
 2. \$250 for the second occurrence, but not to exceed \$2,500 per series of occurrences of improper reporting on a specific date; and
 3. \$500 for the third or subsequent occurrence, but not to exceed \$5,000 per series of occurrences of improper reporting on a specific date.
- B. The Director, on finding that a manufacturer engaged in improper reporting, shall mail to the manufacturer a notice that civil penalties may be imposed for improper reporting. The notice shall:
 1. Specify the basis for the action; and
 2. State that the manufacturer may, within 15 days after receipt of the notice, file a written request for a hearing with the Department's Executive Hearing Office as prescribed in 17 A.A.C. 1, Article 5.
- C. A manufacturer who is aggrieved by an assessment, decision, or order of the Department under A.R.S. § 28-1465 and this Section may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- D. The manufacturer shall pay the civil penalty imposed under this Section to the Department no later than 30 days after the order is final.

- E. Action to enforce the collection of a civil penalty assessed under subsection (A) shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in which the hearing is held.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-617. Cease and Desist

- A. If the Director has reasonable cause to believe that a party to an IISP authorization agreement is violating any provision of state statute, administrative rule, or the authorization agreement, the Director will immediately issue and serve a cease and desist order by mail to the IISP's last known address.
- B. On receipt of the cease and desist order, the IISP shall immediately cease and desist from further engaging in any activity that is not authorized in state statute, administrative rule, or the agreement, and that is specified in the cease and desist order.
- C. On failure of the IISP to comply with the cease and desist order, the IISP may request a hearing with the Department's Executive Hearing Office under 17 A.A.C. 1, Article 5 within 15 days. On failure of the IISP to comply with the cease and desist order, the Director will immediately cancel the agreement with the IISP.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-618. Service Centers; Mobile Services

- A. An IISP shall have at least one readily accessible service center in each county in this state that performs all ignition interlock services, including service, calibration, installation, inspection, and removal of a CIID by a technician who is trained and certified by the IISP for the specific service area.
- B. An IISP, subcontractor, agent, or an employee who operates a service center, or provides mobile services as an extended service provided by a service center on a temporary or emergency basis, shall meet the requirements in these rules before conducting CIID-related business in this state.
- C. A service center shall maintain sufficient staffing to provide an acceptable level of ignition interlock device services during all posted business hours.
- D. A technician that provides mobile services shall be stationed and employed at the IISP's service center and be certified in the ignition interlock service area the technician will provide.
- E. When a service center technician provides mobile services, an IISP shall ensure that the service center has another technician or employee available at the service center to provide ignition interlock device services.
- F. An IISP's service center shall:
 1. Be located in a permanent, fixed-site facility that accommodates installing, inspecting, downloading, calibrating, monitoring, maintaining, servicing, and removing a CIID;
 2. Provide a designated waiting area for a person that is separate from the installation area;
 3. Ensure that a person does not witness installation of the CIID;
 4. Through the IISP, the IISP-certified technician or employee, provide the necessary training required by R17-5-601(D) for a person to operate a CIID;
 5. Ensure that a technician meets the necessary requirements in order to receive and maintain certification before a technician or an IISP conducts ignition interlock device business in this state; and

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6. Have the necessary equipment and tools to provide all ignition interlock services in a professional manner.
- G. A service center that provides mobile services shall:
1. Have the capability to provide all the ignition interlock services in subsection (F)(1);
 2. Meet the requirements in subsection (F)(3) through (F)(6);
 3. Have permission from the motor vehicle owner to provide mobile services; and
 4. Ensure that a technician provides business identification to a person requesting service prior to performing services, along with the service center certificate and the technician's training certificate.
- H. A service center that provides mobile services shall not operate from a tow truck.
- I. An IISP that operates a service center, shall ensure that an IISP-certified technician utilizes all of the following:
1. The analysis of a reference sample such as headspace gas from a mixture of water and alcohol, the results of which shall agree with the reference sample predicted value, or other methodologies approved by the Department. The preparatory documentation on the reference sample solution, such as a certificate of analysis, shall be made available to the Department on request.
 2. The set point value established under R17-5-601. All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).
 3. The most current versions of manufacturer software and firmware to ensure continuous compliance under this Article and A.R.S. Title 28, Chapter 4, Article 5.
- J. An IISP shall ensure that a motor vehicle used to provide mobile services from a service center has current vehicle registration in this state and maintains the required mandatory insurance and financial responsibility coverage in A.R.S. § 28-4009.
- K. A technician shall ensure that a person who receives mobile services receives the same level of training and service as a person who receives services at a service center.
- L. The manufacturer shall ensure that a CID electronically transmits the Summarized Reporting Record for a calibration check to the Department as provided in R17-5-610(D)(4).
- Historical Note**
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).
- R17-5-619. Application; IISP Implementation Plan**
- A. An IISP that applies for authorization of an ignition interlock service provider contract under A.R.S. § 28-1468 shall submit all documents and meet all the requirements in the ignition interlock service provider authorization agreement; in Title 28, Chapter 5, Article 4, Arizona Revised Statutes; and these rules.
- B. In addition to this information, an IISP shall submit to the Department, with the application, a detailed implementation plan that outlines the steps and time frames necessary for the IISP to be fully operational. The implementation plan must include:
1. The IISP's plan for establishing a service center in every county in this state;
 2. The IISP's procedures for imposing progressive discipline on its employees, agents, or subcontractors who fail to comply with the requirements of Arizona statute; Department administrative rules; or the terms of the authorization agreement;
 3. A plan for transitioning ignition interlock services to another IISP that ensures continuous monitoring will occur if a participant decides to transition services to another IISP or if the IISP ceases conducting business or leaves this state;
4. A means by which the IISP will provide all participant records and information or electronic access to the records and information to the ignition interlock device manufacturer in the event the IISP ceases conducting business or leaves this state. At the end or termination of an ignition interlock service authorization agreement, the manufacturer shall provide the Department with electronic access to all person's ignition interlock records for three years; and
5. Documentation that the IISP is an authorized agent of the manufacturer and a point of contact for the manufacturer, including the IISP's telephone number and e-mail address.
- C. An IISP shall be approved by the Director through the application for authorization agreement process before offering ignition interlock services in the state.
- D. An IISP shall use this process to reapply to the Director for reauthorization of an ignition interlock service provider contract.
- Historical Note**
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).
- R17-5-620. Authorization Time Frame; Ignition Interlock Service Provider**
- A. The Director shall, within 10 days of the date of receipt of an application for authorization of an ignition interlock service provider contract, provide notice to the IISP that the application is either complete or incomplete.
1. The date of receipt is the date the Director receives the application.
 2. If an application is incomplete, the dated notice shall specifically identify the required information that is missing.
- B. An applicant with an incomplete application shall provide all missing information to the Director within 15 days of the Director's notice.
1. After receiving all of the required information, the Director shall notify the IISP that the application is complete.
 2. The Director may deny an IISP's application if the IISP fails to provide the required information within 15 days of the Director's notice.
- C. The Director shall render a decision on an application for authorization within 30 days of the date on the notice acknowledging receipt of a complete application, provided to the applicant under subsections (A) or (B).
- D. If the Director denies an application for authorization, the Director shall notify the IISP in writing within 20 days after the denial, and of the grounds for the denial in accordance with A.R.S. § 28-1468 (E).
- E. For the purposes of A.R.S. § 41-1073, the Department establishes the following time frames for the purpose of reviewing an application for authorization:
1. Administrative completeness review time frame: 10 days
 2. Substantive review time frame: 30 days.
 3. Overall time frame: 40 days.
- F. The Director shall use this process for reapplication for authorization of an ignition interlock service provider contract.
- Historical Note**
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).
- R17-5-621. Service Center Application**
- A. On approval by the Director of an IISP's signed application for authorization to provide ignition interlock services, an IISP

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- shall submit to the Department a properly completed service center application for approval of the IISP's service centers.
- B.** An IISP shall provide the following information to the Department:
1. The service center name;
 2. The business address of the established place of business of each service center or business location;
 3. The telephone number of each established place of business of each service center or business location;
 4. The service center's legal status as a sole proprietorship, partnership, limited liability company, or a corporation;
 5. The name of the sole proprietor, each partner, officer, director, manager, member, agent, or 20% or more stockholder;
 6. The name and model number of each CIID the IISP plans to install;
 7. An indication of any service centers that will provide mobile services;
 8. Any applicable business licenses and the governmental entity; and
 9. The following statements signed by the IISP:
 - a. A statement that all information provided on the application, including all information provided on any attachment to the application is complete, true, and correct;
 - b. A statement that the IISP agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
 - c. A statement that the IISP agrees to comply with all requirements in these rules; and
 - d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.
- C.** The Department shall process an IISP's service center application only if the IISP meets all applicable application requirements.
- D.** The Department shall, within 10 days of receiving a service center application, provide notice to the IISP that the application is either complete or incomplete.
1. The date of receipt is the date the Department receives the application.
 2. If an application is incomplete, the notice shall specifically identify the required information that is missing.
- E.** An IISP with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
1. After receiving all of the required information, the Department shall notify the IISP that the application is complete.
 2. The Department may deny approval of a service center if the IISP fails to provide the required information within 15 days of the date on the notice.
- F.** The Department shall render a decision on a service center application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (D) or (E).
- G.** For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a service center:
1. Administrative completeness review time frame: 10 days.
 2. Substantive review time frame: 30 days.
 3. Overall time frame: 40 days.
- H.** If a service center is no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.
- I. An IISP shall be the authorized representative of a specific manufacturer while the authorization agreement is in effect, for a service center to install the manufacturer's CIID.
 - J. If an IISP, subcontractor, or agent opens or relocates a service center, or the service center is operated by another entity, an IISP, subcontractor, or agent shall submit a new service center application for approval.
 - K. An IISP shall use this process to reapply to the Department for a service center application.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-622. Technician Application

- A.** On approval by the Department of an IISP's service center application, an IISP shall submit to the Department for approval, a properly completed technician application with the following information:
1. Name of the technician;
 2. The technician's date of birth;
 3. The technician's residence address;
 4. The technician's driver license number;
 5. Name of the service center where the technician is employed;
 6. Location of the service center where the technician is employed; and
 7. The following statements signed by the technician and the IISP:
 - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form is complete, true, and correct;
 - b. A statement that the technician and the IISP agree to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
 - c. A statement that the technician agrees to comply with all requirements in these rules; and
 - d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.
- B.** The Department shall process a technician's application only if a technician meets all applicable application requirements.
- C.** The Department shall, within 10 days of receiving a technician application, provide notice to the applicant that the application is either complete or incomplete.
1. The date of receipt is the date the Department receives the application.
 2. If an application is incomplete, the notice shall specifically identify the required information that is missing.
- D.** An applicant with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
1. After receiving all of the required information, the Department shall notify the applicant that the application is complete.
 2. The Department may deny approval of a technician application if the applicant fails to provide the required information within 15 days of the date on the notice.
- E.** The Department shall render a decision on a technician application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (C) or (D).

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- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a technician:
1. Administrative completeness review time frame: 10 days.
 2. Substantive review time frame: 30 days.
 3. Overall time frame: 40 days.
- G. If an IISP and the IISP's technician are no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.
- H. An IISP shall be the authorized representative of a specific manufacturer that has an authorization agreement in effect for a technician to service the manufacturer's CIID.
- I. An IISP shall submit a separate technician application when an IISP hires a new technician.
- J. After the Department approves a technician, the Department will assign to each technician, a unique technician identification number to identify each technician who installs, calibrates, inspects, or removes a CIID.
- K. An IISP shall use this process to reapply to the Department for a technician application.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-623. Termination of Authorization; Notification

- A. If the Director terminates an IISP's authorization agreement, the Director shall notify each person with the manufacturer's CIID that the person has 30 days to obtain another IISP.
- B. Any IISP owner or principal whose agreement has been terminated as a result of the IISP's authorization being cancelled is not eligible to re-apply for authorization from the Department until 36 months after the date of termination.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

ARTICLE 7. IGNITION INTERLOCK DEVICE TECHNICIANS**R17-5-701. Definitions**

The definitions provided under A.R.S. §§ 28-101 and R17-5-601 apply to this Article unless the context otherwise requires.

Historical Note

New Section recodified from R17-4-801 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-702. Records Check; Technician Qualifications; IISP Self-Certification of Technician

- A. If the Director enters into an IISP's ignition interlock authorization agreement under A.R.S. § 28-1468, an IISP shall conduct an annual criminal records check and a certified driver's license record check on all employees, agents, or subcontractors listed on the IISP's application within 30 days prior to each individual's start date.
- B. An IISP shall self-certify and train a technician in the service area that the technician will provide.
- C. The qualifications for a technician are:
1. A technician shall be at least 18 years of age.
 2. A technician who is required to drive a motor vehicle on a highway in this state in the technician's capacity shall

have a valid Arizona driver license as required by A.R.S. § 28-3151, unless exempted under A.R.S. § 28-3152.

3. A technician shall have the necessary mechanical ability, training, and certification from the IISP required to perform installation, inspection, service, calibration, or removal of a CIID from a motor vehicle.
- D. A technician shall:
1. Maintain the confidentiality of any personal information, driver license information, or ignition interlock data or reports relating to a person;
 2. Ensure that a person does not observe the technician's actions relating to installation and removal of a CIID;
 3. Comply with the ignition interlock rules in 17 A.A.C. 5, Articles 6 and 7, and Arizona Revised Statutes Title 28, Chapter 4, Article 5; and
 4. Conduct installation, service, calibration, inspection, or removal of an ignition interlock device from a motor vehicle in accordance with industry standards.
- E. A technician is prohibited from using the global positioning system capabilities of a CIID to track the location of a person and shall not release location information gathered by the CIID.

Historical Note

New Section recodified from R17-4-805 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed; new Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-703. Repealed**Historical Note**

New Section recodified from R17-4-806 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). Section R17-5-703 renumbered from R17-5-610 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

Exhibit A. Repealed**Historical Note**

Exhibit A renumbered from R17-5-610, Exhibit A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Exhibit B. Repealed**Historical Note**

Exhibit B renumbered from R17-5-610, Exhibit B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-704. Repealed**Historical Note**

New Section recodified from R17-4-807 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final

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rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-705. Repealed**Historical Note**

New Section recodified from R17-4-808 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-706. Calibration Check; Requirements

- A. An IISP-certified technician shall inspect, maintain, and check each CIID for calibration accuracy and operational performance before the device is placed into, or returned to service.
- B. A person with a CIID installed on a motor vehicle is responsible for obtaining a calibration check of the CIID by the IISP's technician at the IISP's service center within every 77 to 90-day period after device installation, and every 77 to 90 days thereafter, during the person's ignition interlock period.
- C. An IISP-certified technician shall perform a calibration check at the IISP's service center at least once every 90 days after device installation, and at least every 90 days thereafter.
- D. The calibration check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:
 1. Accuracy standards as prescribed under R17-5-603:
 - a. The device shall be calibrated before placed into, or returned to service.
 - b. The calibration test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The manufacturer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The calibration test result shall verify the accuracy of the ignition interlock device according to the standards prescribed under R17-5-603; and
 2. Anticircumvention standards and operational features as prescribed under R17-5-603.
- E. The calibration test referenced under subsection (D) shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device, including the camera and its connection to the vehicle, shall be examined for evidence of tampering while it is still attached to the vehicle. An IISP shall document or photograph any evidence of tampering or circumvention and submit the documentation to the Department as required by these rules and A.R.S. Title 28, Chapter 4, Article 5.
- F. If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.
- G. At least once every 90 days, a technician shall perform a physical inspection of the ignition interlock device, including an anticircumvention check, while it is still attached to the vehicle.

- II. A technician shall perform a physical inspection of the ignition interlock device any time an early recall occurs.
- I. If at any time an individual device model fails to meet the provisions of this Section, the manufacturer, IISP, or IISP-certified technician, as appropriate, shall either:
 1. Repair, recalibrate, and retest the device model to ensure that it does meet all applicable standards; or
 2. Remove the device model from service.

Historical Note

New Section recodified from R17-4-501 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-707. Repealed**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-708. Repealed**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY**R17-5-801. Definitions**

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

"Arizona Mandatory Insurance Reporting System Guide for Insurance Companies" means the Department's guide that is available on the agency's website and provides technical information to a company about information transmission between the Department and the company.

"Company" means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department, as prescribed in R17-5-805.

"EDI" means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

"EDI reporting" means the computer-to-computer transmission of data from a company to the Department.

"Error return" means the computer-to-computer transmission, from the Department to a company, of all data reporting errors received during EDI reporting.

STATUTES

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.

28-1301. Definitions

In this chapter, unless the context otherwise requires:

1. "Certified ignition interlock device" means an ignition interlock device that is certified pursuant to article 5 of this chapter.
2. "Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:
 - (a) The bump start of a motor vehicle with a certified ignition interlock device.
 - (b) The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle.
 - (c) The introduction of an intentionally contaminated or a filtered breath sample.
 - (d) The intentional disruption or blocking of a digital image identification device.
 - (e) The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body.
 - (f) Operating a motor vehicle without a properly functioning certified ignition interlock device.
 - (g) Allowing a person other than the person who is required to maintain a functioning certified ignition interlock device pursuant to this chapter to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.
3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:
 - (a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
 - (b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.
 - (c) Is a school bus.
 - (d) Is a bus.
 - (e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code sections 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. "Education" means a program in which a person participates in at least sixteen hours of classroom instruction relating to alcohol or other drugs.
5. "Ignition interlock device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the national highway traffic safety administration specifications, that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start the motor vehicle by using its ignition system and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.
6. "Ignition interlock service provider" means a person who is an authorized representative of a manufacturer and who is under contract with the department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

7. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

8. "Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction or production of an ignition interlock device and that is certified by the department to offer ignition interlock devices for installation in motor vehicles in this state.

9. "Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

10. "Screening" means a preliminary interview and assessment of an offender to determine if the offender requires alcohol or other drug education or treatment.

11. "Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the certified ignition interlock device from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

12. "Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, repair, calibrate, service or remove certified ignition interlock devices.

13. "Treatment" means a program consisting of at least twenty hours of participation in a group setting dealing with alcohol or other drugs in addition to the sixteen hours of education.

28-1461. Use of certified ignition interlock devices; reporting

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402:

1. The person shall:

(a) Pay the costs for installation and maintenance of the certified ignition interlock device.

(b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.

(c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of calibration of the certified ignition interlock device to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege or issue a special ignition interlock restricted driver license until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

B. While a person maintains a functioning certified ignition interlock device in a vehicle pursuant to this chapter, the ignition interlock manufacturer shall electronically provide to the department in real time and in a form prescribed by the department the following information:

1. Any tampering or circumvention.

2. Any failure to provide proof of compliance or inspection of the certified ignition interlock device as prescribed in this section.

3. Any attempt to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the vehicle with any spirituous liquor in the person's body.

4. Each time that a person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

C. If the person is under eighteen years of age, the ignition interlock service provider, if requested by the person's parent or legal guardian, shall provide to the person's parent or legal guardian the information prescribed in subsection B of this section.

D. On request, the ignition interlock manufacturer shall provide the information prescribed in subsection B of this section to:

1. The department of health services authorized provider.

2. The probation department that is providing alcohol or other drug screening, education or treatment to the person.

3. The physician, psychologist or substance abuse counselor who is evaluating the person's ability to safely operate a motor vehicle following a revocation of the person's driving privilege as prescribed in section 28-3315, subsection D.

4. The court.

E. The department shall extend an ignition interlock restricted or limited driver license and the certified ignition interlock device period for six months if the department has reasonable grounds to believe that any of the following applies:

1. The person tampered with or circumvented the certified ignition interlock device.
 2. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.
 3. If the person is under twenty-one years of age, the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.
 4. The person failed to provide proof of compliance or inspection as prescribed in this section.
 5. The person attempts to operate the vehicle with an alcohol concentration of 0.08 or more during a six month extension pursuant to this subsection.
 6. The person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.
- F. If the special ignition interlock restricted license is extended pursuant to subsection E of this section, the limitations prescribed in sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the restrictive period of the license ends.
- G. The department shall make a notation on the driving record of a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section 28-1402 that states that the person shall not operate a motor vehicle unless it is equipped with a certified ignition interlock device. Unless the person is convicted of a second or subsequent violation of section 28-1381, 28-1382 or 28-1383, the notation may not include any mark, color change or other notation or indication on the person's physical driver license.
- H. Proof of compliance does not include a skipped or missed random sample if the motor vehicle's ignition is off at the time of the skipped or missed sample.

28-1462. Ignition interlock device certification and decertification; service provider bonds

- A. After consulting with the director of the department of public safety, the assistant director for the motor vehicle division of the department of transportation shall:
1. Certify ignition interlock devices.
 2. Publish a list of certified ignition interlock devices that includes information about the manufacturers of the devices and where the devices may be ordered.
 3. Make the list available to the courts and probation departments without charge.
 4. Establish standards and qualifications for technicians.
- B. The assistant director shall adopt rules prescribing the requirements for certification and decertification of an ignition interlock device. These rules shall include:
1. The procedure for certification of ignition interlock devices.
 2. Provisions to ensure the reliability of the ignition interlock device over the range of motor vehicle environments.
 3. Provisions to ensure that the ignition interlock device works accurately in an unsupervised environment.
 4. The procedure for decertification of an ignition interlock device for cause.
- C. The assistant director shall not certify an ignition interlock device unless all of the following are satisfied:
1. The device requires a deep-lung breath sample or another accurate measure of the concentration by weight of alcohol in the breath.
 2. The device is made by a manufacturer that is covered by product liability insurance in the amount of one million dollars per event and three million dollars in the aggregate.
 3. The manufacturer of the device indemnifies this state against any liability that may result from the use of the device.
 4. The device meets or exceeds the 2013 national highway traffic safety administration standards, including the ability to wirelessly transmit and receive information, take a digital image and include the global positioning system location of the device at the time of a requested test.
 5. The device is repaired or modified only by the manufacturer of the device.
 6. All of the device reporting that is required by sections 28-1461 and 28-1468 originates from the device manufacturer.
- D. The assistant director may adopt, in whole or in part, the guidelines, rules, regulations, studies or independent laboratory tests performed and relied on by other states or agencies or commissions of other states in the certification or approval of ignition interlock devices.
- E. Each ignition interlock service provider who installs a certified ignition interlock device shall submit to the department a bond in a form to be approved by the assistant director and in an amount of at least two hundred thousand dollars. The bond inures to the benefit of any person who is ordered or required to equip a motor vehicle

with an ignition interlock device pursuant to article 3 of this chapter or section 28-3319 and who suffers a loss because of either of the following:

1. Insolvency or discontinuance of business of the ignition interlock service provider who installed the device.
2. Failure of the ignition interlock service provider or agent or subcontractor of the ignition interlock service provider to comply with any provision of a contract that is required pursuant to section 28-1468 or any rule adopted pursuant to this section.

F. The assistant director shall adopt a warning label design to be affixed to each certified ignition interlock device on installation. The label shall contain a warning that a person tampering with, circumventing or otherwise misusing the ignition interlock device is guilty of a class 1 misdemeanor.

G. After consultation with the director of the department of public safety, the assistant director may include information the assistant director deems necessary in the notice prescribed in section 28-3318 regarding certified ignition interlock devices.

H. An ignition interlock service provider shall collect a fee for each certified ignition interlock device that is installed by the provider in an amount that is determined by the director. The ignition interlock service provider shall remit the collected fees to the department on a monthly basis and in a manner established by the department. The department shall deposit the fees in the ignition interlock device fund established by section 28-1469.

28-1463. Proof of compliance; suspension; hearings

A. If a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 does not submit proof of compliance to the department as prescribed in section 28-1461, the department shall suspend the person's driving privilege until proof of compliance is submitted to the department. Unless a different time period is specified pursuant to section 28-3319, subsection D, the department shall require use of the certified ignition interlock device for one year from the date the person submits proof of compliance as prescribed in section 28-1461. If a person does not request a hearing pursuant to subsection B of this section, the department shall immediately suspend the person's driver license.

B. A person whose driver license is suspended pursuant to this section may submit a written request for a hearing. The written request must be received by the department within fifteen days after the date of the order of suspension. On receipt of a request for a hearing, a hearing shall be held within thirty days.

C. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered driver license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision.

D. Hearings requested pursuant to this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the person was ordered or required to equip a motor vehicle with an ignition interlock device pursuant to article 3 or 3.1 of this chapter or section 28-3319.
2. Whether the person submitted proof of compliance or calibration pursuant to section 28-1461.

28-1464. Ignition interlock devices; violations; classification; definition

A. Except in cases of a substantial emergency, a person shall not knowingly rent, lease or lend a motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 unless the motor vehicle is equipped with a functioning certified ignition interlock device.

B. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 and who rents, leases or borrows a motor vehicle from another person shall notify the person who rents, leases or lends the motor vehicle to the person that the person has specific requirements for the operation of the motor vehicle and the nature of the requirements.

C. During any period when a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is required to operate only a motor vehicle that is equipped with a certified ignition interlock device, the person shall not request or permit any other person to breathe into the ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

D. A person shall not breathe into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402.

E. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

F. A person who is not an ignition interlock service provider or an agent or subcontractor of an ignition interlock service provider and who is not a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

G. Except in cases of substantial emergency, a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not operate a motor vehicle without a functioning certified ignition interlock device during the applicable time period.

H. If the ignition interlock device is removed from a vehicle by an ignition interlock service provider, the ignition interlock manufacturer shall electronically notify the department in a form prescribed by the department that the ignition interlock device has been removed from the vehicle.

I. If the person does not provide evidence to the department within seventy-two hours that the person has installed a functioning certified ignition interlock device in each vehicle operated by the person and has provided proof of installation to the department, the department shall suspend the special ignition interlock restricted driver license or privilege as prescribed in section 28-1463.

J. A person who is ordered by the court or required by the department pursuant to section 28-3319 to equip any motor vehicle the person operates with a certified ignition interlock device shall while under arrest submit to any test chosen by a law enforcement officer pursuant to section 28-1321, subsection A.

K. A person who violates this section is guilty of a class 1 misdemeanor. Additionally, if a person is convicted of violating subsection B, C, E or G of this section, the department shall extend the duration of the certified ignition interlock device requirement for not more than one year.

L. For the purposes of this section, "substantial emergency" means that a person other than the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is not reasonably available to drive in response to an emergency.

28-1465. Rulemaking; ignition interlock service providers; and manufacturers civil penalty

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for the administration and enforcement of this article, including a rule that permits the director to impose a civil penalty against a manufacturer of a certified ignition interlock device or an ignition interlock service provider who fails to properly report ignition interlock data to the director in the manner prescribed by the director. Any monies collected from civil penalties imposed for a failure to report ignition interlock data shall be deposited in the driving under the influence abatement fund established by section 28-1304.

28-1466. Display of certification; transfer prohibited

A certification issued pursuant to this article:

1. Shall be conspicuously displayed in the place of business for which it was obtained.
2. Is not transferable or subject to sale or reassignment.

28-1467. Ignition interlock service provider contracts; cancellation; notice

If the director cancels an ignition interlock service provider's contract, the director shall notify each person with an ignition interlock device from the ignition interlock service provider that the person has thirty days to obtain another ignition interlock service provider.

28-1468. Ignition interlock service provider application; denial; appeal; contract requirements; manufacturer reporting requirements; cease and desist order

A. An application for authorization of an ignition interlock service provider contract must be submitted to the director by the manufacturer in writing on a form prescribed and furnished by the director. The person shall include with the application all documents and fees prescribed by the director.

B. The application shall be verified and must contain:

1. The name and residence address of the applicant, the name and residence address of each partner if the applicant is a partnership or the name and residence address of each principal officer if the applicant is a corporation.
2. The applicant's principal place of business.
3. The location or planned location for each place of business at or from which the business is to be conducted.

4. Any other information the director requires.
- C. The director may approve an application for authorization of a contract if the director determines that the requirements of this article are met.
- D. The director may deny an application for authorization of a contract if any person included in the application has:
 1. Made a misrepresentation or misstatement in the application to conceal a matter that would cause the application to be denied.
 2. Been convicted of a class 1, 2, 3 or 4 felony or a crime of moral turpitude, breach of trust, fraud, theft or dishonesty in any jurisdiction or any foreign country within ten years before the date of the application.
 3. Been convicted of any criminal act, other than a crime described in paragraph 2 of this subsection, in any jurisdiction or a foreign country within five years before the date of the application.
 4. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.
- E. The director may deny an application for authorization of an ignition interlock service provider contract under this article and, if denied, shall notify the applicant in writing of the denial within twenty days after the denial and of the grounds for the denial if the director determines that any of the following applies:
 1. The applicant is not eligible for an ignition interlock service provider contract under this article.
 2. The application is not made in good faith.
 3. The application contains a material misrepresentation or misstatement.
 4. The applicant has not met the requirements of this chapter.
- F. An applicant whose application is denied may make a written request to the department for a hearing on the denial of the application within fifteen days after the notice of denial. If the applicant does not request a hearing within thirty days, the denial is final.
- G. If the applicant requests a hearing, the director shall provide written or electronic notice to the applicant to appear at a hearing to show cause why the denial of the applicant's application should not be upheld. After consideration of the evidence presented at the hearing, the director shall issue a written decision and order.
- H. If the application is denied, the applicant may appeal the decision pursuant to title 12, chapter 7, article 6.
 1. If the director authorizes an ignition interlock service provider's application for a contract, the ignition interlock service provider's contract with the department must meet or exceed the requirements in this section, be for a term of at least three years and include all of the following provisions and requirements:
 1. Require the ignition interlock service provider to maintain at least one service center in each county in this state.
 2. Ignition interlock devices must be effectively and efficiently installed, calibrated and removed.
 3. Ignition interlock devices must be serviced, inspected and monitored.
 4. The ignition interlock manufacturer must electronically transmit reports to the department in a format that is determined by the department and that includes any of the following:
 - (a) Driver activity.
 - (b) Bypass approval.
 - (c) Compliance.
 - (d) Client violations.
 - (e) Unique identifying numbers for each device.
 - (f) Unique employee numbers identifying the person who installed or removed an ignition interlock device.
 5. A detailed implementation plan that outlines the steps and the time frames necessary for the ignition interlock service provider to be fully operational.
 6. The ignition interlock service provider must collect and remit all applicable fees and taxes to the appropriate government entity.
 7. If the ignition interlock service provider is out of compliance, corrective actions that will be taken, including penalty provisions and liquidated damages.
 8. The ignition interlock device must have security protections, including each device having the capability to record each event and provide visual evidence of any actual or attempted tampering, alteration, bypass or circumvention.
 9. The ignition interlock service provider will process the transition and ensure that continuous monitoring occurs if an ignition interlock device client requires transition of services.
 10. The ignition interlock service provider will self-certify, complete background checks and train technicians in compliance with the rules adopted by the department.
 11. The ignition interlock service provider must ensure that each service center is adequately staffed and equipped to provide all ignition interlock device support services. Mobile service operations based at a service center are permitted, except that a tow truck may not be used for mobile service. A service center may not provide services for more than one ignition interlock service provider.
 12. The ignition interlock service provider must train clients on how to use the ignition interlock device.

13. A transition plan that will ensure continuous monitoring is achieved if the ignition interlock service provider leaves this state.
 14. Require the ignition interlock service provider to have and maintain insurance that is approved by the department.
 15. A procedure for progressive discipline of an employee, agent or subcontractor of an ignition interlock service provider who fails to comply with the requirements of this chapter or of the ignition interlock service provider contract.
 16. Require client information and financial records to be maintained at a commercial business location in this state that is not a residence and that has posted business hours where the department may access the records. On termination or expiration of the contract, the ignition interlock service provider must submit all client information to the department.
 17. The ignition interlock service provider may not charge a client to replace a defective ignition interlock device.
 18. The ignition interlock device must take a digital image identifying the client who is providing the breath sample and the digital image must include the date and time that the breath sample was provided.
 19. The ignition interlock service provider must comply with all county and municipal zoning regulations for commercial businesses and provide a corresponding business license to the department.
 20. The ignition interlock service provider must clearly post all client fees for the installation, removal and inspection of the certified ignition interlock device.
- J. If the director has reasonable cause to believe that a person who is a party to an ignition interlock service provider contract pursuant to this article is violating any provision of this chapter, the director shall immediately issue and mail a cease and desist order to the person's last known address.
- K. On receipt of the cease and desist order, the person shall immediately cease and desist, or cease and desist as provided in the contract between the department and the ignition interlock service provider, from further engaging in any activity that is not authorized pursuant to this chapter and that is specified in the cease and desist order.
- L. On failure of the person to comply with the cease and desist order, the director may conduct a hearing pursuant to this section.

28-1469. Ignition interlock device fund

- A. The ignition interlock device fund is established consisting of monies deposited pursuant to section 28-1462, subsection H. The department shall administer the fund. Monies in the fund must be used by the department for administering this article, including compliance measures, audits and investigating complaints that are related to ignition interlock devices and ignition interlock service providers.
- B. The monies in the fund are subject to legislative appropriation and are exempt from section 35-190 relating to lapsing of appropriations.

Senate Engrossed

**State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017**

**CHAPTER 331
SENATE BILL 1150**

AN ACT

AMENDING SECTIONS 28-1301, 28-1441, 28-1461, 28-1462, 28-1463, 28-1464, 28-1465, 28-1467, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 4, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-1468 AND 28-1469; AMENDING SECTION 28-4848, ARIZONA REVISED STATUTES; RELATING TO IGNITION INTERLOCK DEVICES

(Excerpt only)

Sec. 12. Exemption from rulemaking

For the purposes of this act, the department of transportation is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 13. Effective date

This act is effective from and after June 30, 2018.

Jane McVay

From: Stacy Guillen
Sent: Tuesday, June 13, 2017 4:37 PM
To: Jane McVay
Subject: FW: Request for Rulemaking - Ignition Interlock

From: Matt Clark [<mailto:MClark@az.gov>]
Sent: Tuesday, June 13, 2017 4:19 PM
To: Stacy Guillen
Subject: RE: Request for Rulemaking - Ignition Interlock

Stacey,

Your request is approved.

Thanks,
Matt

Jane McVay

From: Stacy Guillen
Sent: Monday, April 16, 2018 4:42 PM
To: Jane McVay; John Carlson
Subject: FW: Amended Request from Rulemaking Moratorium

From: Matt Clark [<mailto:mclark@az.gov>]
Sent: Monday, April 16, 2018 4:28 PM
To: Stacy Guillen
Subject: Re: Amended Request from Rulemaking Moratorium

Stacey,

Your request is approved.

Thanks,
Matt

Matthew Clark
Policy Advisor on Transportation and Municipal Government
Governor Doug Ducey
O: 602-542-1256
mclark@az.gov



On Mon, Apr 16, 2018 at 3:44 PM, Stacy Guillen <SGuillen@azdot.gov> wrote:

Matt,

On June 13, 2017, you approved ADOT's request for an exemption from the rulemaking moratorium for the purposes of implementing changes necessary due to the passage of SB 1150 from that year. In the process of making those changes, MVD's ignition interlock team requested that we include in the rulemaking package civil penalties for interlock manufacturers who fail to properly report ignition interlock data to MVD. The statute that allows ADOT to adopt such rules, A.R.S. § 28-1465, existed before SB 1150 and remained substantively unchanged after SB 1150's passage. These changes are integral to the operation of the entire program, as envisioned by SB 1150, but they are not necessarily a direct result of the legislation. As such, we would like to amend our request for exemption from the rulemaking moratorium to include adopting rules relating to civil penalties authorized by A.R.S. § 28-1465.

Please feel free to contact me at any time if you have questions regarding this matter.

Thank you,

Stacy

Stacy Guillen

Chief, External Affairs & Policy Development

Government Relations

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SGuillen@azdot.gov



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