BOARD OF PHYSICIAN ASSISTANTS (R-16-1201)
Title 4, Chapter 17, Article 2, Physician Assistant Licensure; Article 3, Duties of the Executive Director

Amend:	Table 1; R4-17-202; R4-17-203; R4-17-204; R4-17-205; R4-17-206
New Article:	Article 3
New Section:	R4-17-301; R4-17-302; R14-7-303; R4-17-304; R4-17-305; R4-17-306

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: E-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE: November 18, 2016

SUBJECT: **ARIZONA STATE BOARD OF PHYSICIAN ASSISTANTS (R-16-1201)**
Title 4, Chapter 17, Article 2, Physician Assistant Licensure; Article 3, Duties of the Executive Director

Amend:	Table 1; R4-17-202; R4-17-203; R4-17-204; R4-17-205; R4-17-206
New Article:	Article 3
New Section:	R4-17-301; R4-17-302; R14-7-303; R4-17-304; R4-17-305; R4-17-306

The purpose of the Arizona State Board of Physician Assistants (Board) is to "promote the safe and professional practice of health care tasks performed by physician assistants." Laws 2008, Ch. 14, § 3. This rulemaking seeks to make six new rules related to duties of the executive director while amending five rules and one table related to licensure of physician assistants.

Proposed Action

The Board indicates that this rulemaking is necessary due to 2015 statutory changes and the decision by the National Commission on Certification of Physician Assistants (NCCPA) to move to a 10-year renewal cycle of certification, rather a than six-year renewal cycle. The following is a non-exhaustive summary of the Board's actions:

- Table 1: The portion of the table related to license renewal is being made consistent with A.R.S. § 32-2523 by adding a 45-day substantive review time frame.
- Section 202: Changes promote consistency with the NCCPA's 10-year renewal cycle.
- Sections 203 and 206: Documentation relating to malpractice actions will be requested earlier in the application process. In addition, to comply with 2015 statutory changes, a physician assistant who registers under the Controlled Substances Act must now also register with the Board of Pharmacy and obtain access to the Controlled Substances

Prescription Monitoring Program Database. A number of clarifying changes are also being made to the rules.

- Sections 204 and 205: Because the Board is amending the rules to provide for biennial, rather than annual, license renewal, licensing and renewal fees, along with continuing education requirements, are being adjusted accordingly. In addition, the Board is clarifying its standards on granting requests for extensions on completing continuing education hours.
- Article 3: The six new rules memorialize the duties the Board has delegated to the executive director. The Board believes that placing the duties in rule enables the Board to operate in a more efficient manner on dismissal of complaints, referrals to formal hearing, non-disciplinary consent agreements, requests for inactive status and license cancellation, referrals to formal interview, and denials of licenses.

Exemption or Request and Approval for Exception from the Moratorium

The Board received exceptions from the moratorium on September 24, 2015 and July 25, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Board cites to A.R.S. § 32-2504(B) as general authority for the rules, under which it "may make and adopt rules necessary or proper for the administration of this chapter [Title 32, Chapter 25, Physician Assistants]." A.R.S. §§ 32-2505 [related to Board personnel], 32-2521 [related to qualifications for licensure], 32-2523 [related to license renewal], 32-2526 [related to fees], and 41-1072 [related to licensing time frames] provide specific authority.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are generally clear, concise, and understandable.

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

Yes. The Board indicates that it received no written comments about the rulemaking, and no one attended the oral proceeding held on October 12, 2016.

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

No. The Board indicates that only non-substantive changes were made between the proposed and final rules.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Board indicates that it did not review or rely on a study in its evaluation of or justification for this rulemaking.

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

No. The Board indicates that no federal laws are directly applicable to the rules.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

Yes. The Board indicates that the licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037, as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

No. The rules do not establish a new fee or contain a fee increase. Because the Board is amending the rules to provide for biennial, rather than annual, license renewal, the licensing and renewal fees are being adjusted accordingly.

9. Conclusion

The Board requests a 60-day delayed effective date for the rules. This analyst recommends approval of the rules.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: E-1**

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

FROM: GRRC Economic Team

DATE: November 18, 2016

SUBJECT: **ARIZONA STATE BOARD OF PHYSICIAN ASSISTANTS (R-16-1201)**
Title 4, Chapter 17, Article 2, Physician Assistant Licensure; Article 3, Duties of the Executive Director

Amend:	Table 1; R4-17-202; R4-17-203; R4-17-204; R4-17-205; R4-17-206
New Article:	Article 3
New Section:	R4-17-301; R4-17-302; R14-7-303; R4-17-304; R4-17-305; R4-17-306

I have reviewed the economic, small business, and consumer impact statement (EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist comments:

The Board is amending R4-17-202 through R4-17-206 and R4-17-301 through R4-17-306. The Board states that the changes will correspond to those presented in a five-year-review approved by the Council on June 2, 2015. Additional changes were made because of Laws 2015, Chapter 84, Laws 2015, Chapter 46, and the decision by the National Commission on Certification of Physician Assistants (NCCPA) to move from a 6-year to a 10-year renewal cycle for certification.

In total, as of August 2016, there were 2,790 licensed Physician Assistants in Arizona. During the last year, there were 306 applicants for licensure. In the last year, no applicant who received a request for more information took more than 90 days to respond. This leads the Board to conclude that the shortened time frame in which an applicant has to respond to a request for more information would affect few, if any applicants.

1. **Costs and Benefits for:**

a. The implementing agency:

The Board notes that the move from annual to biannual license renewal will help staff manage work flow and process renewal applications more efficiently. Staff will receive and process renewal applications throughout the year rather than all at once. The Board also states that it will benefit from directing tasks to the Executive Director. These changes will have minimal cost to implement.

b. Political subdivisions:

The Board indicates that this rulemaking will not directly affect political subdivisions.

c. Businesses:

Applicants and licensees will be affected by, bear the cost of, and directly benefit from the rulemaking. However, the Board notes that the costs and benefits from biannual license renewal and registration with the Board of Pharmacy are the result of statutory changes rather than this rulemaking. Further, updating the rules to be consistent with NCCPA's 10-year certification cycle reduces a potential burden on licensees.

d. Small businesses:

The impact of these rules is no different for Physician Assistants working in small businesses than in businesses generally.

e. Consumers directly affected by the rulemaking:

These rules do not directly affect consumers.

2. Do the probable benefits outweigh the probable costs?

The Board states that the benefits of this rulemaking outweigh the probable costs, as the minimal economic impact on applicants and licensees is outweighed by benefits related to government efficiency and public safety.

3. Analysis of methods to reduce the small business impact:

The Board indicates that it is not feasible to reduce the impact on small businesses since statute and federal law apply to all Physician Assistants equally.

4. The probable effect on state revenues:

The Board indicates that there will be no effect on state revenue.

5. Analysis of any less intrusive or less costly alternative methods:

The Board notes that these rules are the least intrusive and least costly method of achieving the regulatory goal. If the rules were inconsistent with statute and federal law, there would be added confusion for applicants and licensees. The Board also notes that it would not achieve the benefits from having certain tasks delegated by the Board to the Executive Director.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

The Board does not indicate any analysis that compares the rules' impact on the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

No empirical or quantitative data were referenced by the Board in the EIS.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D) (1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.

Arizona Medical Board
9545 E. Doubletree Ranch Road, Scottsdale AZ 85258 • website: www.azmd.gov
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Governor

Douglas A. Ducey

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Executive Director

Patricia E. McSorley

October 17, 2016

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

Re: A.A.C. Title 4. Professions and Occupations
Chapter 17. Arizona Regulatory Board of Physician Assistants

Dear Ms. Ong:

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

A. Close of record date: The rulemaking record was closed on October 12, 2016, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on June 2, 2015.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses that the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

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

Sincerely,

Patricia McSorley

Patricia McSorley
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
Table 1	Amend
R4-17-202	Amend
R4-17-203	Amend
R4-17-204	Amend
R4-17-205	Amend
R4-17-206	Amend
Article 3	New Article
R4-17-301	New Section
R4-17-302	New Section
R4-17-303	New Section
R4-17-304	New Section
R4-17-305	New Section
R4-17-306	New Section

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. § 32-2504(B)

Implementing statute: A.R.S. §§ 32-2505, 32-2521, 32-2523, 32-2526, and 41-1072

3. The effective date for the rules:

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 22 A.A.R. 2217, August 19, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 2310, September 2, 2016

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

Name: Patricia McSorley, Executive Director

Address: Arizona Regulatory Board of Physician Assistants
9545 E Doubletree Ranch Road
Scottsdale, AZ 85258

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azpa.gov

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

The rules are being amended in response to four significant factors: A five-year-review report approved by the Council on June 2, 2015; Laws 2015, Chapter 84; Laws 2015, Chapter 46; and the decision by the National Commission on Certification of Physician Assistants to move to a 10- rather than six-year renewal cycle of certification. In this rulemaking, the Board:

- Consistent with Laws 2015, Chapter 84, amends the rules to provide for biennial license renewal and adjusts the continuing education and renewal fees accordingly;
- Amends R4-17-202 to be consistent with the 10-year renewal of certification required by NCCPA;
- Amends R4-17-203 to request documentation relating to malpractice actions earlier in the application process;
- Amends R4-17-204 and R4-17-206 to ensure provisions are consistent with the Americans with Disabilities Act;
- Consistent with Laws 2015, Chapter 46, amends R4-17-203 and R4-17-206 regarding the responsibility of a physician assistant who registers under the Controlled Substances Act to

register also with the Board of Pharmacy and obtain access to the Controlled Substances Prescription Monitoring Program Database; and

- Makes new Sections memorializing the duties the Board has delegated to the executive director.
- Amends the table associated with R4-17-102 to make the time frame regarding license renewal consistent with A.R.S. § 32-2523(C). The Board also reduced the time for an applicant to response to a request for additional information during the substantive review time frame.

An exemption from Executive Order 2015-01 was provided for part of this rulemaking by Christina Corieri, Policy Advisor for Health and Human Services in the Governor's office in an e-mail dated September 24, 2015. Ms. Corieri provided an exemption to EO2016-03 for an additional part of this rulemaking in an e-mail dated July 25, 2016.

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

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

The Board determined this rulemaking will have minimal economic impact on applicants and licensees because it simply makes the rules consistent with recent statutory changes, the Americans with Disabilities Act, and recent changes made by the NCCPA, which is a national organization that certifies Physician Assistants. Placing in rule the duties the Board delegated to the executive director enables the Board to operate in a more efficient and cost effective manner while providing quality service to applicants and licensees.

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

Minor changes in word organization and punctuation were made to make the rules more clear, concise, and understandable. No substantive changes were made between the proposed and final rulemaking.

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

The Board received no written comments regarding the rulemaking. No one attended an oral proceeding on October 12, 2016.

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

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

The licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

Numerous federal laws apply to the provision of health care. However, no federal law is directly applicable to the subject of this rulemaking.

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

No analysis was submitted.

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

None

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. ~~Time-frames~~ Time Frames

ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

Section

R4-17-202. Examination

R4-17-203. Regular License Application

R4-17-204. Fees and Charges

R4-17-205. Continuing Medical Education; Request for Extension of Time

R4-17-206. License Renewal

ARTICLE 3. ~~REPEALED~~ DUTIES OF THE EXECUTIVE DIRECTOR

Section

R4-17-301. ~~Repealed~~ Dismissal of Complaint

R4-17-302. ~~Repealed~~ Referral to Formal Hearing

R4-17-303. ~~Repealed~~ Non-disciplinary Consent Agreement

R4-17-304. ~~Repealed~~ Request for Inactive Status and License Cancellation

R4-17-305. ~~Repealed~~ Referral to Formal Interview

R4-17-306. Denial of License

ARTICLE 1. GENERAL PROVISIONS

Table 1. ~~Time frames~~ Time Frames (in days)

Type of License	Overall ~~Time-frame~~ Time Frame	Administrative Review ~~Time-frame~~ Time Frame	Time to Respond to Deficiency Notice	Substantive Review ~~Time-frame~~ Time Frame	Time to Respond to Request for Additional Information
Regular License including schedule II or schedule III controlled substances approval R4-17-203	120	30	365	90	~~270~~ 90
License Renewal R4-17-206	~~30~~ 75	30	~~Not later than Sept. 30 of each year~~ 60	~~Not Applica Ble~~ 45	~~Not Applicable~~ 60

ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

R4-17-202. Examination

~~**A.**~~ An applicant for a regular license as a physician assistant shall pass the PANCE or PANRE and be certified by the NCCPA at the time of application for licensure.

~~**B.** An applicant for a regular license who has not passed the PANCE within six years preceding the date of the application shall submit documentation that shows the applicant passed the PANRE within six years preceding the date of the application.~~

R4-17-203. Regular License Application

A. An applicant for a regular license shall submit a completed application to the Board that includes:

1. The applicant's:
   a. First, last, and middle name;
   b. Every other name used by the applicant;
   c. Social Security number;
   d. ~~Practice address and telephone number~~ Office, mailing, e-mail, and home addresses;
   e. ~~Mailing address, if different from the practice address~~ Office, mobile, and home telephone numbers; and
   f. ~~Home address and telephone number; and~~

~~g.~~ Birth date and ~~city~~ state or country of birth;

2. The name and address of the approved program completed by the applicant and the date of completion;
3. The name of each state or province in which the applicant has ever been certified, registered, or licensed as a physician assistant, including the certificate, registration, or license number, and current status;
4. Whether the applicant has practiced as a physician assistant since graduation from a physician assistant program or for 10 continuous years before the date the application was submitted to the Board and if not, an explanation;
5. A questionnaire that includes answers to the following:
   a. Whether the applicant has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
   b. Whether the applicant has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
   c. Whether the applicant has ever resigned or been requested to resign, been suspended or expelled from, been placed on probation, or been fined while enrolled in an approved program in a medical school or a postsecondary educational program, and if so, an explanation;
   d. Whether, while attending an approved program, the applicant has ever had any action taken against the applicant by ~~an~~ the approved program, resigned, or been asked to leave the approved program for any amount of time, and if so, an explanation;
   e. Whether the applicant has ever surrendered a health professional license, and if so, an explanation;
   f. Whether the applicant has ever had a health professional license suspended or revoked, or whether any other disciplinary action has ever been taken against a health professional license held by the licensee, and if so, an explanation;
   g. Whether the applicant is currently under investigation by any health profession regulatory authority, ~~healthcare~~ health care association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
   h. Whether the applicant has ever had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
   i. Whether the applicant has ever had a federal or state regulatory authority take any action against the applicant's authority to prescribe, dispense, or administer controlled substances

including revocation, suspension, or denial, or whether the applicant ever surrendered ~~such~~ the authority in lieu of any of these actions, and if so, an explanation;

j. Whether the applicant has ever been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;

k. Whether the applicant has ever been charged with or convicted of a violation of any federal or state drug statute, rule, or regulation, regardless of whether a sentence was or was not imposed, and if so, an explanation;

l. Whether the applicant~~, within the last 10 years from the date of the application,~~ has been named as a defendant in a malpractice matter currently pending or that resulted in ~~had~~ a judgment or ~~a~~ settlement entered against the applicant ~~in a medical malpractice suit~~, and if so, an explanation;

m. Whether the applicant has ever been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;

n. Whether the applicant has ever been involuntarily terminated from a health professional position, resigned, or been asked to leave the health care position, and if so, an explanation;

o. Whether the applicant has ever been convicted of insurance fraud or received a sanction, including limitation, suspension, or removal from practice, imposed by any state or the federal government, and if so, an explanation; and

p. Whether the applicant, within the ~~last~~ three years before the date of the application, has completed 45 hours in pharmacology or clinical management of drug therapy or is certified by a national commission on the certification of physician assistants or its successor;

6. A confidential questionnaire that includes answers to the following:

a. ~~Whether the applicant, within the last five years before the date of the application, has been diagnosed with or treated for bi-polar disorder, schizophrenia, paranoia, or any other psychotic disorder, and if so, an explanation;~~ Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;

b. ~~Whether the applicant is currently being treated by a health professional or, within five years from the date of the application, has been treated by a health professional for substance use disorder or participated in a rehabilitation program for a substance use disorder, and if so, an explanation that includes:~~ If the answer to subsection (A)(6)(a) is yes:

i. ~~The name of each health professional or health care institution that addressed the substance use disorder and a discharge summary that includes progress made by the applicant; or~~ A detailed description of the use, disorder, or condition; and

ii. ~~A copy of the confidential agreement or order issued by a health professional or health care institution, if applicable; and~~ An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and

c. ~~Whether the applicant currently has any disease or condition, including a behavioral health illness or condition, substance use disorder, physical disease or condition that interferes with the applicant's ability to perform health care tasks authorized by A.R.S. § 32-2531 and if so, an explanation;~~ A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable;

7. Consistent with the Board's statutory authority, ~~such~~ other information ~~as~~ the Board may ~~require~~ deem necessary to ~~fully~~ evaluate the applicant fully; and

8. A sworn statement that complies with A.R.S. § 32-2522(C).

B. In addition to the requirements in subsection (A), an applicant shall submit the following to the Board:

1. Documentation of citizenship or alien status that conforms to A.R.S. § 41-1080;

2. Documentation of a legal name change if the applicant's legal name is different from that shown on the document submitted in accordance with subsection (B)(1);

3. A form provided by the Board and completed by the applicant that lists all current or past employment with health professionals or health care institutions within five years before the date of application or since graduation from a physician assistant program, if less than five years, including each health professional's or health care institution's name, address, and dates of employment;

4. ~~If the applicant has more than one malpractice settlement or judgment against the applicant within 10 years from the date of the application, a form provided by the Board for each malpractice settlement or judgment against the applicant that includes:~~ Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this

subsection may submit a written request for a waiver of the requirement. The applicant shall include the following information in a request for waiver:

a. ~~The applicant's name;~~ The document for which waiver is requested;

b. ~~A description of the event that led to the malpractice settlement or judgment including:~~ Detailed description of efforts made by the applicant to provide the required document; and

~~i. The patient's name, age, and sex;~~

~~ii. The date of occurrence;~~

~~iii. Location of occurrence; and~~

~~iv. A detailed narrative of the event;~~

c. ~~The amount of the settlement or judgment;~~ Reason the applicant's inability to provide the required document is due to no fault of the applicant; and

~~d. The date the settlement was entered into or judgment was made;~~

~~e. The amount of the settlement or judgment attributed to the applicant; and~~

~~f. Whether any state medical board has investigated the matter; and~~

5. The fee required in R4-17-204.

C. In addition to the requirements in subsections (A) and (B), an applicant shall have the following directly submitted to the Board:

1. A copy of the applicant's certificate of successful completion of the ~~NCCPA~~ PANCE or PANRE ~~examination~~ and the applicant's examination score provided by the NCCPA;
2. An approved program form provided by the Board, completed and signed by the director or administrator of the approved program that granted the applicant a physician assistant degree, that includes the:
   a. Applicant's full name,
   b. Type of degree earned by the applicant,
   c. Name of the physician assistant program completed by the applicant,
   d. Starting and ending dates, and
   e. Date the applicant's degree was granted.

D. ~~When the Board issues~~ The Board's issuance of a regular license to an applicant~~, the Board is~~ also ~~approving~~ approves the applicant to issue prescriptions ~~or~~ and dispense or issue schedule II or schedule III controlled substances subject to the limits and requirements specified in A.R.S. § 32-2532.

R4-17-204. Fees and Charges

A. ~~The~~ As expressly authorized under A.R.S. § 32-2526(A), the Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. License application - $125.00;
2. Regular license - $~~185.00~~ 370.00, prorated for each month remaining in the ~~annual~~ biennial period;
3. Regular license renewal - $~~185.00~~ 370.00 if the renewal application is postmarked no later than ~~July 1~~ the applicant's birthdate; and
4. Penalty for late renewal - $100.00~~;~~.

B. As expressly authorized under A.R.S. § 32-2526(B), the Board establishes the following charges for providing the services listed:

~~5.~~1. Duplicate license - $25.00;

~~6.~~2. Copies of Board documents - $1.00 for first three pages, $.25 for each additional page;

~~7.~~3. Medical Directory (CD-ROM) - $30.00;

~~8.~~4. Data Disk - $100.00; and

~~9.~~5. License verification - $10.00.

R4-17-205. Continuing Medical Education; Request for Extension of Time

A. Under A.R.S. § 32-2523(A), renewal of a license is conditioned on the licensee completing 40 hours of category I continuing medical education during each biennial license period.

B. During a licensee's first biennial license period, the licensee may complete a pro-rated number of continuing medical education hours established by the Board.

~~**A.**~~**C.** A licensee who is unable to complete ~~20~~ the required hours of continuing medical education for any of the reasons in A.R.S. § 32-2523(E) may submit a written request to the Board for an extension no later than 30 days before expiration of the license that contains:

1. The name, address, and telephone number of the licensee;
2. The reason for the request;
3. The number of continuing medical education hours completed during the biennial license period;

~~3.~~4. The ~~date by~~ dates on which the remaining hours of continuing medical education ~~will~~ are scheduled to be completed; and

~~4.~~5. The signature of the licensee.

~~**B.**~~**D.** The Board shall send a written notice of approval ~~or denial~~ of the extension ~~request~~ within seven days from the date of receipt of the request if the Board determines:

1. The extension is needed for a reason specified in A.R.S. § 32-2523(E),
2. The remaining hours of continuing medical education are scheduled to be completed within 30 days, and
3. The extension is in the best interest of the state.

R4-17-206. License Renewal

A. To renew a license, a licensee shall submit a completed application to the Board that includes:

1. An application form that contains the licensee's:
   a. First, ~~and~~ last, ~~names~~ and middle ~~initial~~ names;
   b. Arizona license number;
   c. Office, mailing, e-mail, and home addresses;
   d. Office, mobile, and home ~~phone~~ telephone numbers;
2. A questionnaire that includes answers to the following since the last renewal date:
   a. Whether the licensee has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
   b. Whether the licensee has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
   c. Whether the licensee has voluntarily surrendered a health care professional license, and if so, an explanation;
   d. Whether the licensee has had a health professional license suspended or revoked, or whether any other disciplinary action has been taken against a health professional license held by the licensee, and if so, an explanation;
   ~~e. Whether the licensee is currently under investigation by any health profession regulatory authority, healthcare association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;~~
   ~~f.~~e. Whether the licensee has had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
   ~~g.~~f. Whether the licensee has had a federal or state regulatory authority take any action against the license's authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant surrendered ~~such~~ the authority in lieu of any of these actions, and if so, an explanation;
   ~~h.~~g. Whether the licensee has been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or an alcohol- or

drug-related offense in any state, or has been pardoned or had a record expunged or vacated, and if so, an explanation;

~~i.~~h. Whether the licensee has been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;

~~j.~~i. Whether the licensee has been involuntarily terminated from a health professional position with any city, county, state, or federal government, and if so, an explanation;

~~k.~~j. Whether the licensee has been convicted of insurance fraud or a state or the federal government has sanctioned or taken any action against the licensee, such as suspension or removal from practice, and if so, an explanation;

3. Consistent with the Board's statutory authority, ~~such~~ other information ~~as~~ the Board may ~~require~~ deem necessary to ~~fully~~ evaluate the licensee fully;
4. A dated and sworn statement by the licensee verifying that during the past ~~state fiscal year~~ biennial license period, the licensee completed ~~a minimum of~~ ~~20~~ at least 40 hours of Category I continuing medical education as required by A.R.S. § 32-2523;
5. The fee required in R4-17-204; ~~and~~
6. A confidential questionnaire that includes answers to the following:
   a. ~~Whether the licensee, since the last renewal date, has been diagnosed with or treated for bi-polar disorder, schizophrenia, paranoia, or any other psychotic disorder, and if so, an explanation;~~ Whether the applicant has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;
   b. ~~Whether the licensee is currently being treated or has been treated since the last renewal date for substance use disorder or participated in a rehabilitation program, and if so, an explanation that includes:~~ If the answer to subsection (A)(6)(a) is yes:
      i. ~~The name of each health professional or health care institution that addressed the substance use disorder and a discharge summary that includes progress; or~~ A detailed description of the use, disorder, or condition; and
      ii. ~~A copy of the confidential agreement or order issued by a health professional or health care institution, if applicable; and~~ An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and

c. ~~Whether the licensee currently has any disease or condition including a behavioral health illness or condition, substance abuse disorder, physical disease or condition that interferes with the licensee's ability to perform health care tasks authorized by A.R.S. § 32-2531 and if so, an explanation.~~ A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable; and

7. If the document submitted under R4-17-203(B)(1) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law.

B. ~~The~~ Under A.R.S. §32-2523(A), the Board ~~may~~ shall randomly select ~~a number of statements of completion of continuing education~~ at least 10 percent of renewal applications submitted by licensees who are not currently certified by a national certification organization to verify ~~the accuracy of the statements and the acceptability of the Category I continuing medical education attended. Physician assistants whose statements have been selected shall submit any additional information requested by the Board to assist in the verification~~ compliance with the continuing medical education requirement specified in R4-17-205(A). If selected, a licensee shall submit to the Board documents that verify compliance with the continuing medical education requirement.

ARTICLE 3. ~~REPEALED~~ DUTIES OF THE EXECUTIVE DIRECTOR

R4-17-301. ~~Repealed~~ Dismissal of Complaint

A. The executive director, with concurrence of the investigative staff, shall dismiss a complaint if review shows the complaint is without merit and dismissal is appropriate.

B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of physician assistants about whom complaints were dismissed since the preceding Board meeting.

R4-17-302. ~~Repealed~~ Referral to Formal Hearing

A. The executive director may refer a case directly to a formal hearing if the investigative staff, medical consultant, and lead Board member concur after review of the case that a formal hearing is appropriate.

B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the physician assistants whose cases were referred to formal hearing since the preceding Board meeting and indicate whether each case was referred because it involves revocation, suspension, out-of-state disciplinary action, or complexity.

R4-17-303. ~~Repealed~~ Non-disciplinary Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-2505(C)(23) with a physician assistant to limit the physician assistant's practice or rehabilitate the physician assistant if there is evidence the physician assistant is mentally or physically unable to engage in the practice of medicine safely and the investigative staff, medical consultant, and lead Board member concur after review of the case that a consent agreement is appropriate.

R4-17-304. ~~Repealed~~ Request for Inactive Status and License Cancellation

A. If a physician assistant requests inactive status or license cancellation, meets the requirements of A.R.S. §§ 32-2525 or 32-2528, and is not participating in the program defined under A.R.S. § 32-2552(E), the executive director shall grant the request.

B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

R4-17-305. ~~Repealed~~ Referral to Formal Interview

The executive director shall refer a case to a formal interview on a future Board meeting agenda if the investigative staff, lead Board member, and in cases involving quality of care, the medical consultant, concur after review of the case that a formal interview is appropriate.

R4-17-306. Denial of License

A. The executive director shall deny a license to an applicant if the executive director, in consultation with the investigative staff and medical consultant concur after review of the application, that the applicant does not meet the statutory requirements for licensure.

B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the physician assistants whose applications were denied since the preceding Board meeting.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

1. Identification of the rulemaking:

The rules are being amended in response to four significant factors: A five-year-review report approved by the Council on June 2, 2015; Laws 2015, Chapter 84; Laws 2015, Chapter 46; and the decision by the National Commission on Certification of Physician Assistants to move to a 10- rather than six-year renewal cycle of certification. In this rulemaking, the Board:

- Consistent with Laws 2015, Chapter 84, amends the rules to provide for biennial license renewal and adjusts the continuing education and renewal fees accordingly;
- Amends R4-17-202 to be consistent with the 10-year renewal of certification required by NCCPA;
- Amends R4-17-203 to request documentation relating to malpractice actions earlier in the application process;
- Amends R4-17-204 and R4-17-206 to ensure provisions are consistent with the Americans with Disabilities Act;
- Consistent with Laws 2015, Chapter 46, amends R4-17-203 and R4-17-206 regarding the responsibility of a physician assistant who registers under the Controlled Substances Act to register also with the Board of Pharmacy and obtain access to the Controlled Substances Prescription Monitoring Program Database; and
- Makes new Sections memorializing the duties the Board has delegated to the executive director.
- Amends the table associated with R4-17-102 to make the time frame regarding license renewal consistent with A.R.S. § 32-2523(C). The Board also reduced the time for an applicant to respond to a request for additional information during the substantive review time frame.

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

Until this rulemaking is complete, the Board's rules will be inconsistent with statute and provisions of the Americans with Disabilities Act. The rules will also be inconsistent with

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

the National Commission on Certification of Physician Assistants, the organization from which licensees obtain national certification. Finally, the benefits that accrue to applicants, licensees, and staff from delegation of certain tasks to the Executive Director will not occur. All of the changes in this rulemaking are designed to make government more responsive to the needs of the public.

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:

Acting in a manner that is inconsistent with state or federal law is not good government. Insisting that certain tasks be performed by the Board rather than the Executive Director is unnecessarily burdensome for applicants, licensees, and staff.

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

When the rulemaking is complete, the Board's rules will be consistent with state and federal law and the benefits from having the Executive Director perform certain tasks will be achieved.

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

The rulemaking will have minimal economic impact on applicants and licensees because it simply makes the rules consistent with recent statutory changes, the Americans with Disabilities Act, and recent changes made by the NCCPA, which is a national organization that certifies Physician Assistants. Placing in rule the duties the Board delegated to the executive director enables the Board to operate in a more efficient and cost effective manner while providing quality service to applicants and licensees.

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: Patricia McSorley, Executive Director

Address: Arizona Regulatory Board of Physician Assistants
9545 E Doubletree Ranch Road
Scottsdale, AZ 85258

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azpa.gov

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

Applicants and licensees will be affected by, bear the costs of, and directly benefit from the rulemaking. However, the effects and benefits from biennial license renewal and registering with the Board of Pharmacy are the result of statutory changes rather than this rulemaking. Making the rules consistent with NCCPA's 10-year certification cycle reduces a potential burden on licensees.

As of August 2016, there were 2,790 licensed Physician Assistants in Arizona. During the last year, there were 306 applicants for licensure. The Board believes the shortened time frame to respond to a request for additional information during the substantive review time frame will affect few, if any applicants. Most applicants want to move the licensure process as quickly as possible. Indeed, during the last year, no applicant who received a request for additional information took more than 90 days to respond to the request.

The Board and its staff will also be affected by, bear the costs of, and directly benefit from the rulemaking. The move to biennial rather than annual license renewal will help staff manage work flow and process renewal applications more efficiently. Staff will receive and process renewal applications throughout the year rather than all at once. Annual renewal created a four-month bottleneck in work flow.

Both the Board and its staff and applicants and licensees will benefit from the efficiencies that result from having certain tasks delegated to the Executive Director.

The Board incurred minimal cost to complete this rulemaking and will incur additional minimal cost to implement it.

During the last year, the Board collected $481,177 in fees from applicant and licensees. The Board does not receive an appropriation specific to regulation of Physician Assistants. The current appropriation for both the Medical Board and the ARBPA is $6,463,600. All Board staff work with licensure and regulation of both physicians and Physician Assistants. The combined boards currently have 49.5 filled FTEs.

5. Cost-benefit analysis:

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

The Board is the only state agency directly affected by the rulemaking. The effects on the Board are summarized in item 4. The Board determined no additional full-time employees would be required to implement the rulemaking.

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:

Physician Assistants are the only businesses directly affected by the rulemaking. Effects on Physician Assistants are summarized in item 4.

6. Impact on private and public employment:

The Board believes the rulemaking will have no impact on private or public employment.

7. Impact on small businesses[2]:

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

Physician Assistants are the only businesses subject to the rulemaking.

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

The Board expects the following changes to have minimal cost for compliance:

- Requiring documentation relating to malpractice actions earlier in the application process; and
- Shortening the time frame for responding to a request for additional information during the substantive review time frame;

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

Because all Physician Assistants are small businesses, it is not possible to reduce the impact on small businesses and enable the Board to perform its licensure and regulatory responsibilities efficiently and effectively.

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

No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

The Board could have not completed the rulemaking. However, this would result in rules that are inconsistent with statute and federal law, which is apt to cause confusion for both applicants and licensees. It would also not achieve the benefits from having certain tasks delegated by the Board to the Executive Director.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

(Authority: A.R.S. § 32-2504)

Editor's Note: The name of the Joint Board on the Regulation of Physician's [sic] Assistants was changed to the Arizona Regulatory Board of Physician Assistants by Laws 2002, Ch. 277, § 7, effective August 22, 2002 (Supp. 03-2).

Laws 1984, Ch. 102, changed the name of the Joint Board of Medical Examiners and Osteopathic Examiners in Medicine and Surgery to Joint Board on the Regulation of Physician's Assistants.

Chapter 17 consisting of Article 1, Section R4-17-101; Article 2, Sections R4-17-201 through R4-17-204; Article 3, Sections R4-17-301 through R4-17-304; Article 4, Sections R4-17-401 and R4-17-402 adopted effective July 8, 1986.

Former Chapter 17 consisting of Article 1, Section R4-17-01; Article 2, Sections R4-17-02 through R4-17-06; Article 3, Sections R4-17-07 through R4-17-12; Article 4, Sections R4-17-13 through R4-17-17; Article 5, Sections R4-17-18 through R4-17-22; and Article 6, Section R4-17-23 repealed effective July 8, 1985.

ARTICLE 1. GENERAL PROVISIONS

Section
R4-17-101. Definitions
R4-17-102. Time-frames for Licenses and Approvals
Table 1. Time-frames

ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

Section
R4-17-201. Repealed
R4-17-202. Examination
R4-17-203. Regular License Application
R4-17-204. Fees
R4-17-205. Continuing Medical Education
R4-17-206. License Renewal
R4-17-207. Denial of License or Extension to Complete Continuing Medical Education
R4-17-208. Expired

ARTICLE 3. REPEALED

Section
R4-17-301. Repealed
R4-17-302. Repealed
R4-17-303. Repealed
R4-17-304. Repealed
R4-17-305. Repealed

ARTICLE 4. REGULATION

Section
R4-17-401. Expired
R4-17-402. Repealed
R4-17-403. Rehearing or Review

ARTICLE 1. GENERAL PROVISIONS

R4-17-101. Definitions

For the purposes of A.R.S. Title 32, Chapter 25 and this Chapter:

1. "Ability to perform health care tasks authorized by A.R.S. § 32-2531" means:
   a. The cognitive capacity to make clinical diagnoses and exercise medical judgments and to learn and keep abreast of medical developments through the completion of continuing medical education,
   b. The ability to communicate medical judgments and medical information to patients and other professionals, and
   c. The physical capability to perform the health care tasks authorized by A.R.S. § 32-2531.
2. "Applicant" means an individual seeking a regular license or renewal license.
3. "Category I" means a designation given to a continuing medical education activity provided by an institution or organization that has been accredited for continuing medical education by the:
   a. Accreditation Council for Continuing Medical Education,
   b. American Medical Association,
   c. American Academy of Physician Assistants,
   d. American Osteopathic Association,
   e. Accreditation Council for Continuing Medical Education,
   f. Accreditation Review Commission on Education for Physician Assistants, or
   g. Commission on the Accreditation of Allied Health Education Programs.
4. "Controlled Substance" means the same as in A.R.S. § 32-1901.
5. "Dispense" means the same as in A.R.S. § 32-1901.
6. "Drug" means the same as in A.R.S. § 32-1901.
7. "Health care institution" means the same as in A.R.S. § 36-401.
8. "Health professional" means the same as in A.R.S. § 32-3201 or its equivalent in another state.
9. "Health profession regulatory authority" means a state or federal entity that issues and regulates health professional licenses.
10. "NCCPA" means the National Commission on the Certification of Physician Assistants.
11. "PANCE" means the Physician Assistant National Certifying Examination.
12. "PANRE" means the Physicians Assistants National Recertification Examination.
13. "Prescribe" means to issue:
    a. A signed, written order to a pharmacist for drugs or medical devices; or
    b. An order transmitted to a pharmacist by word of mouth, telephone, or other means of communication.
14. "Privileges" means the authority granted by a health care institution to a physician or physician assistant to practice medicine at the health care institution.
15. "Service" means personal delivery or mailing by certified mail to a physician assistant, supervising physician, or applicant affected by a decision of the Board at the physician assistant's, supervising physician's, or applicant's last known residence or place of business.
16. "State fiscal year" means from July 1 of one calendar year to June 30 of the next calendar year.
17. "Substance use disorder" means the maladaptive pattern of the use of a drug, alcohol, or chemical leading to effects that are detrimental to an individual's physical or mental health.

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-102. Time-frames for Licenses and Approvals

A. The overall time-frame described in A.R.S. § 41-1072(2) for a regular license or renewal license is set forth in Table 1.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a regular license or renewal license is set forth in Table 1 and begins on the date the Board receives an application.

1. If the application is not administratively complete, the Board shall send a deficiency notice to the applicant.
   a. The deficiency notice shall state each deficiency and the information needed to complete the application.
   b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Board the missing information specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
   c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.
2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) for a regular license or renewal license is set forth in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the request until the Board receives the information.
2. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1.
3. The Board shall issue a written notice of denial of a license or license renewal if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter for licensure or license renewal.
4. If the applicant meets all of the substantive criteria required by statute and this Chapter for a license or license renewal, the Board shall issue the license or license renewal to the applicant.

D. In computing any period of time prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays, and holidays. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the date of mailing.

Historical Note
Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

Table 1. Time-frames (in days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Regular License including schedule II or schedule III controlled substances approval R4-17-203	120	30	365	90	270
License Renewal R4-17-206	30	30	Not later than Sept. 30 of each year	Not applicable	Not applicable

Historical Note
Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

R4-17-201. Repealed

Historical Note

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-201 renumbered to R4-17-202; new Section adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-202. Examination

A. An applicant for a regular license as a physician assistant shall pass the PANCE or PANRE.

B. An applicant for a regular license who has not passed the PANCE within six years preceding the date of the application shall submit documentation that shows the applicant passed the PANRE within six years preceding the date of the application.

Historical Note

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section R4-17-202 renumbered from R4-17-201 and amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-203. Regular License Application

A. An applicant for a regular license shall submit a completed application to the Board that includes:

1. The applicant's:
   a. First, last, and middle name;
   b. Every other name used by the applicant;
   c. Social Security number;
   d. Practice address and telephone number;
   e. Mailing address, if different from the practice address;
   f. Home address and telephone number; and
   g. Birth date and city or country of birth;
2. The name and address of the approved program completed by the applicant and the date of completion;
3. The name of each state or province in which the applicant has ever been certified, registered, or licensed as a physician assistant, including the certificate, registration, or license number, and current status;
4. Whether the applicant has practiced as a physician assistant since graduation from a physician assistant program or for 10 continuous years before the date the application was submitted to the Board and if not, an explanation;
5. A questionnaire that includes answers to the following:
   a. Whether the applicant has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
   b. Whether the applicant has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
   c. Whether the applicant has ever resigned or been requested to resign, been suspended or expelled from, been placed on probation, or been fined while enrolled in an approved program in a medical school or a postsecondary educational program, and if so, an explanation;
   d. Whether, while attending an approved program, the applicant has ever had any action taken against the applicant by an approved program, resigned, or been asked to leave the approved program for any amount of time, and if so, an explanation;
   e. Whether the applicant has ever surrendered a health professional license, and if so, an explanation;
   f. Whether the applicant has ever had a health professional license suspended or revoked, or whether any other disciplinary action has ever been taken against a health professional license held by the licensee, and if so, an explanation;
   g. Whether the applicant is currently under investigation by any health profession regulatory authority, healthcare association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
   h. Whether the applicant has ever had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
   i. Whether the applicant has ever had a federal or state authority take any action against the applicant's authority to prescribe, dispense, or administer controlled substances including revocation, suspension, denial, or whether the applicant ever surrendered such authority in lieu of any of these actions, and if so, an explanation;
   j. Whether the applicant has ever been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;
   k. Whether the applicant has ever been charged with or convicted of a violation of any federal or state drug statute, rule, or regulation, regardless of whether a sentence was or was not imposed, and if so, an explanation;
   l. Whether the applicant, within the last 10 years from the date of the application, has had a judgment or a settlement entered against the applicant in a medical malpractice suit, and if so, an explanation;
   m. Whether the applicant has ever been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
   n. Whether the applicant has ever been involuntarily terminated from a health professional position, resigned, or been asked to leave the health care position, and if so, an explanation;
   o. Whether the applicant has ever been convicted of insurance fraud or received a sanction, including limitation, suspension, or removal from practice, imposed by any state or the federal government, and if so, an explanation; and
   p. Whether the applicant, within the last three years before the date of the application, has completed 45 hours in pharmacology or clinical management of drug therapy or is certified by a national commission on the certification of physician assistants or its successor;
6. A confidential questionnaire that includes answers to the following:
   a. Whether the applicant, within the last five years before the date of the application, has been diagnosed with or treated for bi-polar disorder, schizophrenia, paranoia, or any other psychotic disorder, and if so, an explanation;
   b. Whether the applicant is currently being treated by a health professional or, within five years from the date of the application, has been treated by a health professional for substance use disorder or partici-

pated in a rehabilitation program for a substance use disorder, and if so, an explanation that includes:
i. The name of each health professional or health care institution that addressed the substance use disorder and a discharge summary that includes progress made by the applicant; or
ii. A copy of the confidential agreement or order issued by a health professional or health care institution, if applicable; and
c. Whether the applicant currently has any disease or condition, including a behavioral health illness or condition, substance use disorder, physical disease or condition that interferes with the applicant's ability to perform health care tasks authorized by A.R.S. § 32-2531 and if so, an explanation;
7. Consistent with the Board's statutory authority, such other information as the Board may require to fully evaluate the applicant; and
8. A sworn statement that complies with A.R.S. § 32-2522(C).

B. In addition to the requirements in subsection (A), an applicant shall submit the following to the Board:
1. Documentation of citizenship or alien status that conforms to A.R.S. § 41-1080;
2. Documentation of a legal name change if the applicant's legal name is different from that shown on the document submitted in accordance with subsection (B)(1);
3. A form provided by the Board and completed by the applicant that lists all current or past employment with health professionals or health care institutions within five years before the date of application or since graduation from a physician assistant program, if less than five years, including each health professional's or health care institution's name, address, and dates of employment;
4. If the applicant has more than one malpractice settlement or judgment against the applicant within 10 years from the date of the application, a form provided by the Board for each malpractice settlement or judgment against the applicant that includes:
a. The applicant's name;
b. A description of the event that led to the malpractice settlement or judgment including:
i. The patient's name, age, and sex;
ii. The date of occurrence;
iii. Location of occurrence; and
iv. A detailed narrative of the event;
c. The amount of the settlement or judgment;
d. The date the settlement was entered into or judgment was made;
e. The amount of the settlement or judgment attributed to the applicant; and
f. Whether any state medical board has investigated the matter; and
5. The fee required in R4-17-204.

C. In addition to the requirements in subsections (A) and (B), an applicant shall have the following directly submitted to the Board:
1. A copy of the applicant's certificate of successful completion of the NCCPA examination and the applicant's examination score provided by the NCCPA;
2. An approved program form provided by the Board, completed and signed by the director or administrator of the approved program that granted the applicant a physician assistant degree, that includes the:
a. Applicant's full name,
b. Type of degree earned by the applicant,
c. Name of the physician assistant program completed by the applicant,
d. Starting and ending dates, and
e. Date the applicant's degree was granted.

D. When the Board issues a regular license to an applicant, the Board is also approving the applicant to issue prescriptions or dispense or issue schedule II or schedule III controlled substances.

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-204. Fees

The Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:
1. License application - $125.00;
2. Regular license - $185.00, prorated for each month remaining in the annual period;
3. Regular license renewal - $185.00 if application is postmarked no later than July 1;
4. Penalty for late renewal - $100.00;
5. Duplicate license - $25.00;
6. Copies of Board documents - $1.00 for first three pages, $.25 for each additional page;
7. Medical Directory (CD-ROM) - $30.00;
8. Data Disk - $100.00; and
9. License verification - $10.00.

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section adopted effective April 22, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-205. Continuing Medical Education

A. A licensee who is unable to complete 20 hours of continuing medical education for any of the reasons in A.R.S. § 32-2523(E) may submit a written request to the Board for an extension no later than 30 days before expiration of the license that contains:
1. The name, address, and telephone number of the licensee;
2. The reason for the request;
3. The date by which the continuing medical education will be completed; and
4. The signature of the licensee.

B. The Board shall send a written notice of approval or denial of the extension request within seven days from the date of receipt of the request.

Historical Note
Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-206. License Renewal

A. To renew a license, a licensee shall submit a completed application to the Board that includes:
1. An application form that contains the licensee's:
a. First and last names and middle initial;
b. Arizona license number;
c. Office, mailing, e-mail, and home addresses;
d. Office, mobile, and home phone numbers;
2. A questionnaire that includes answers to the following since the last renewal date:

a. Whether the licensee has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
b. Whether the licensee has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
c. Whether the licensee has voluntarily surrendered a health care professional license, and if so, an explanation;
d. Whether the licensee has had a health professional license suspended or revoked, or whether any other disciplinary action has been taken against a health professional license held by the licensee, and if so, an explanation;
e. Whether the licensee is currently under investigation by any health profession regulatory authority, healthcare association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
f. Whether the licensee has had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
g. Whether the licensee has had a federal or state authority take any action against the license's authority to prescribe, dispense, or administer controlled substances including revocation, suspension, denial, or whether the applicant surrendered such authority in lieu of any of these actions, and if so, an explanation;
h. Whether the licensee has been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;
i. Whether the licensee has been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
j. Whether the licensee has been involuntarily terminated from a health professional position with any city, county, state or federal government, and if so, an explanation;
k. Whether the licensee has been convicted of insurance fraud or a state or the federal government has sanctioned or taken any action against the licensee, such as suspension or removal from practice, and if so, an explanation;

3. Consistent with the Board's statutory authority, such other information as the Board may require to fully evaluate the licensee;
4. A dated and sworn statement by the licensee verifying that during the past state fiscal year the licensee completed a minimum of 20 hours of Category I continuing medical education required by A.R.S. § 32-2523;
5. The fee required in R4-17-204; and
6. A confidential questionnaire that includes answers to the following:
   a. Whether the licensee, since the last renewal date, has been diagnosed with or treated for bi-polar disorder, schizophrenia, paranoia, or any other psychotic disorder, and if so, an explanation;
   b. Whether the licensee is currently being treated or has been treated since the last renewal date for substance use disorder or participated in a rehabilitation program, and if so, an explanation that includes:
      i. The name of each health professional or health care institution that addressed the substance use disorder and a discharge summary that includes progress; or
      ii. A copy of the confidential agreement or order issued by a health professional or health care institution, if applicable; and
   c. Whether the licensee currently has any disease or condition including a behavioral health illness or condition, substance abuse disorder, physical disease or condition that interferes with the licensee's ability to perform health care tasks authorized by A.R.S. § 32-2531 and if so, an explanation.

B. The Board may randomly select a number of statements of completion of continuing education to verify the accuracy of the statements and the acceptability of the Category I continuing medical education attended. Physician assistants whose statements have been selected shall submit any additional information requested by the Board to assist in the verification.

Historical Note
Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-207. Denial of License or Extension to Complete Continuing Education
An applicant for a license who is denied the license or a physician assistant who is denied an extension to complete continuing medical education may request a hearing to contest the matter by filing a written notice with the Board within 30 days of receipt of notice of the Board's action. A hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and Article 10.

Historical Note
Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-208. Expired

Historical Note
Adopted effective April 22, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 1569, effective March 31, 2005 (Supp. 05-2).

ARTICLE 3. REPEALED

R4-17-301. Repealed

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-301 renumbered to R4-17-302; new Section R4-17-301 adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-302. Repealed

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section renumbered from R4-17-301 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-303. Repealed

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section renumbered to R4-17-304; new Section R4-17-303 adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-304. Repealed

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-304 renumbered to R4-17-305; new Section R4-17-304 renumbered from R4-17-303 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-305. Repealed

Historical Note
New Section R4-17-305 renumbered from R4-17-304 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

ARTICLE 4. REGULATION

R4-17-401. Expired

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-401 renumbered to R4-17-402; new Section R4-17-401 adopted effective April 22, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 1569, effective March 31, 2005 (Supp. 05-2).

R4-17-402. Repealed

Historical Note
Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-402 renumbered to R4-17-403; new Section R4-17-402 renumbered from R4-17-401 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

R4-17-403. Rehearing or Review

A. Except as provided in subsection (B), a party who is aggrieved by a decision issued by the Board may file with the Board, no later than 30 days after service of the decision, a written request for rehearing or review of the decision, specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known home or business address or five days after the decision is mailed by certified mail to the party or the party's attorney.

B. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for rehearing or review. If the Board issues the decision as a final decision, without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.

C. A party filing a request for rehearing or review may amend the request at any time before it is ruled upon by the Board. Another party may file a response within 15 days after the date the request or amended request for rehearing is filed. The Board may require a party to file supplemental memoranda explaining the issues raised in the request or response and may permit oral argument.

D. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the requesting party's rights:
1. Irregularity in the Board's or administrative law judge's administrative proceedings or any order or abuse of discretion that deprived the party of a fair hearing;
2. Misconduct of the Board, administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence, or other errors of law that occurred at the hearing;
7. The decision is the result of passion or prejudice; or
8. The decision or findings of fact are not justified by the evidence or are contrary to law.

E. The Board may affirm or modify a decision or grant rehearing or review on all or part of the issues for any of the reasons set forth in subsection (D). An order granting a rehearing or review shall specify each ground for the rehearing or review.

F. No later than 30 days after a decision is issued by the Board, the Board on its own initiative may order a rehearing or review for any reason in subsection (D).

G. When a request for rehearing or review is based on affidavits, a party shall serve the affidavits with the request. The opposing party may, within 10 days after service, serve opposing affidavits. The Board may extend the time for serving opposing affidavits for no more than 20 days for good cause shown or by written stipulation by the parties. The Board may permit reply affidavits.

Historical Note
New Section R4-17-403 renumbered from R4-17-402 and amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.
2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:
(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.
5. "Board" means the Arizona regulatory board of physician assistants.
6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.
7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.
8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.
9. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.
10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.
11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.
12. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.
13. "Physician assistant" means a person who is licensed pursuant to this chapter and who practices medicine with physician supervision.
14. "Regular license" means a valid and existing license issued pursuant to section 32-2521 to perform health care tasks.
15. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.
16. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant and who assumes legal responsibility for health care tasks performed by the physician assistant.

17. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.
18. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:
(a) Violation of any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.
(b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.
(c) Performing health care tasks that have not been delegated by the supervising physician.
(d) Habitual intemperance in the use of alcohol or habitual substance abuse.
(e) Signing a blank, undated or predated prescription form.
(f) Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.
(j) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
(k) Violation of a formal order, probation or stipulation issued by the board.
(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.
(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.
(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.
(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.
(p) Failing or refusing to maintain adequate records on a patient.
(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.
(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.
(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
(t) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.
(u) 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.
(v) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(w) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.
(x) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.
(y) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.
(z) Failing to furnish legally requested information to the board or its investigator in a timely manner.
(aa) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.
(bb) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.
(cc) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.
(dd) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.
(ee) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.
(ff) Allowing the use of the licensee's name in any way to enhance or permit the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.
(gg) False, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.
(hh) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathy within a group working together.
(ii) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.
(jj) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.
(kk) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:
(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.
(ii) Emergency medical situations as defined in section 41-1831.
(iii) Prescriptions written to prepare a patient for a medical examination.
(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.
(ll) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or,

immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:
(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.
(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
(mm) Performing health care tasks under a false or assumed name in this state.

32-2502. Arizona regulatory board of physician assistants; membership; appointment; terms; immunity
A. The Arizona regulatory board of physician assistants is established consisting of the following members:
1. Five physician assistants who hold a current regular license pursuant to this chapter. The governor may appoint these members from a list of qualified candidates submitted by the Arizona state association of physician assistants. The governor may seek additional input and nominations before the governor makes the physician assistant appointments.
2. Two public members who are appointed by the governor.
3. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 17 of this title, one of whom supervises a physician assistant at the time of appointment, and who are appointed by the governor.
4. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 13 of this title, one of whom supervises a physician assistant at the time of appointment, and who are appointed by the governor.
B. The term of office of members of the board is four years to begin and end on July 1.
C. Each board member is eligible for appointment to not more than two full terms, except that the term of office for a member appointed to fill a vacancy that is not caused by the expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each board member may continue to hold office until the appointment and qualification of that member's successor. However, the governor may remove a member after notice and a hearing, on a finding of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. That member's term ends when the finding is made.
D. A board member's term automatically ends:
1. On written resignation submitted to the board chairperson or to the governor.
2. If the member is absent from this state for more than six months during a one-year period.
3. If the member fails to attend three consecutive regular board meetings.
4. Five years after retirement from active practice.
E. Board members are immune from civil liability for all good faith actions they take pursuant to this chapter.

32-2503. Organization; meetings; compensation
A. The board shall annually elect a chairperson and vice-chairperson from among its members.
B. The board shall hold a regular meeting at least quarterly on a date and at a time and place it designates. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other as the chairperson determines are necessary to carry out the functions of the board. The board shall hold a special meeting on any day that the chairperson determines is necessary to carry out the functions of the board. The vice-chairperson may call regular meetings and special meetings if the chairperson is not available.
C. Members of the board are eligible to receive compensation in the amount of two hundred dollars for each day of actual service in the business of the board and for all expenses necessarily and properly incurred in attending board meetings.

32-2504. Powers and duties; subcommittees

A. The board shall:

1. As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.

2. License and regulate physician assistants pursuant to this chapter.

3. Order and evaluate physical, psychological, psychiatric and competency testing of licensees and applicants the board determines is necessary to enforce this chapter.

4. Review the credentials and the abilities of applicants for licensure whose professional records or physical or mental capabilities may not meet the requirements of this chapter.

5. Initiate investigations and determine on its own motion if a licensee has engaged in unprofessional conduct or is or may be incompetent or mentally or physically unable to safely perform health care tasks.

6. Establish fees and penalties pursuant to section 32-2526.

7. Develop and recommend standards governing the profession.

8. Engage in the full exchange of information with the licensing and disciplinary boards and professional associations of other states and jurisdictions of the United States and foreign countries and a statewide association for physician assistants.

9. Direct the preparation and circulation of educational material the board determines is helpful and proper for its licensees.

10. Discipline and rehabilitate physician assistants pursuant to this chapter.

11. Certify physician assistants for thirty-day prescription privileges for schedule II or schedule III controlled substances if the physician assistant:

(a) Within the preceding three years of application, completed forty-five hours in pharmacology or clinical management of drug therapy or at the time of application is certified by a national commission on the certification of physician assistants or its successor.

(b) Met any other requirement established by board rule.

B. The board may make and adopt rules necessary or proper for the administration of this chapter.

C. The chairperson may establish subcommittees consisting of board members and define their duties as the chairperson deems necessary to carry out the functions of the board.

D. Board employees, including the executive director, temporary personnel and professional medical investigators, are immune from civil liability for good faith actions they take to enforce this chapter.

E. In performing its duties pursuant to subsection A of this section, the board may receive and review staff reports on complaints, malpractice cases and all investigations.

F. The chairperson and vice-chairperson of the Arizona regulatory board of physician assistants are members of the committee on executive director selection and retention established by section 32-1403, subsection G, which is responsible for the appointment of the executive director pursuant to section 32-1405.

32-2505. Personnel; consultants; compensation

A. The executive director employed by the Arizona medical board is the executive director of the Arizona regulatory board of physician assistants. The staff of the Arizona medical board shall carry out the administrative responsibilities of the Arizona regulatory board of physician assistants.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the physician assistant practice act for consideration by the legislature.

4. Appoint and employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.
5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.
6. Manage the board's offices.
7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.
8. Collect all monies due and payable to the board.
9. Pay all bills for authorized expenditures of the board and its staff.
10. Prepare an annual budget.
11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.
12. Initiate an investigation if evidence appears to demonstrate that a physician assistant may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice as a physician assistant.
13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.
14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.
15. Enter into contracts to procure goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.
16. Execute board directives.
17. Represent the board in matters with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.
18. Enter into stipulated agreements on behalf of the board with persons under the jurisdiction of the board for the treatment, rehabilitation or monitoring of chemical substance abuse or misuse.
19. Review all complaints filed pursuant to section 32-2551. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit.
20. If delegated by the board, directly refer cases to a formal hearing.
21. If delegated by the board, close cases resolved through mediation.
22. If delegated by the board, issue advisory letters.
23. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.
24. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to this chapter.
25. If delegated by the board, refer cases to the board for a formal interview.
26. Perform all other administrative, licensing or regulatory duties required by the board.
D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.
E. A person who is aggrieved by an action taken by the executive director may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery, or if mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-2506. Arizona medical board fund

A. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.
B. Monies deposited in the fund pursuant to this section are subject to section 35-143.01.

32-2507. Licensee profiles; civil penalty
A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile shall contain the following information:
1. A description of any conviction of a felony or a misdemeanor involving moral turpitude within the last five years. For the purposes of this paragraph, a licensee is deemed to be convicted of a crime if the licensee pled guilty or was found guilty by a court of competent jurisdiction.
2. A description of any felony charges or misdemeanor charges involving moral turpitude within the last five years to which the licensee pled no contest.
3. The number of pending complaints and final board disciplinary and nondisciplinary actions within the last five years. Information concerning pending complaints shall contain the following statement:
Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit and are dismissed.
4. All medical malpractice court judgments and all medical malpractice awards or settlements in which a payment is made to a complaining party within the last five years. Information concerning malpractice actions shall contain the following statement:
The settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician assistant. A payment in settlement of a medical malpractice action does not create a presumption that medical malpractice occurred.
5. The name and location of the licensee's training and the date of graduation.
6. The licensee's primary practice location.
B. Each licensee shall submit the information required pursuant to subsection A of this section as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1, 2, 3 and 4 of this section. The board shall update the internet website information after receipt of the renewal application pursuant to section 32-2523.
C. The board shall provide each licensee with a copy of the licensee's profile and give the licensee reasonable time to correct the profile before it is available to the public.
D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

32-2521. Qualifications
A. An applicant for licensure shall:
1. Have graduated from a physician assistants educational program approved by the board.
2. Pass a certifying examination approved by the board.
3. Be physically and mentally able to safely perform health care tasks as a physician assistant.
4. Have 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. This paragraph does not prevent the board from considering the application of an applicant who was the

subject of disciplinary action in another jurisdiction if the applicant's act or conduct was subsequently corrected, monitored and resolved to the satisfaction of that jurisdiction's regulatory board.
5. Not have had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Not be currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.
7. Not have surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the application of an applicant who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the applicant's license.
8. Have submitted verification of all hospital affiliations and employment for the five years preceding application. Each hospital must verify the applicant's affiliation or employment on the hospital's official letterhead or the electronic equivalent.
B. The board shall require an applicant to have all credentials submitted from the primary source where the document originated, either electronically or by hard copy, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board.
C. The board may make investigations it deems necessary to advise itself with respect to the qualifications of the applicant, including physical examinations, mental evaluations, written competency examinations or any combination of these examinations and evaluations.
D. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, before issuing a license the board must determine to its satisfaction that the act or conduct has been corrected, monitored and 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.
E. If another jurisdiction has taken disciplinary action against an applicant, before issuing a license the board must determine to its satisfaction that the cause for the action was corrected and the matter was resolved. If the other jurisdiction has not resolved the matter, before issuing a license the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
F. The board may delegate to the executive director the authority to deny licenses to applicants who do not meet the requirements of this section.

32-2522. Applications; interview; withdrawal
A. Each applicant shall file a verified completed application in the form required and supplied by the board that is accompanied by the prescribed application fee.
B. The application shall be designed to require the submission of evidence, credentials and other proof necessary to satisfy the board that the applicant qualifies for licensure.
C. The application shall contain the oath of the applicant that:
1. All information contained in the application and evidence submitted with it are true and correct.
2. The credentials submitted were not procured by fraud or misrepresentation or any mistake of which the applicant is aware.
3. The applicant is the lawful holder of the credentials.
D. All applications submitted to the board and any attendant evidence, credentials or other proof submitted with an application are the property of the board and part of the permanent record of the board and shall not be returned to an applicant.

E. After the board has received a completed application the board either shall grant or deny a license to the applicant. If an applicant has submitted an incomplete application, the board shall promptly notify an applicant, in writing, of the deficiencies, if any, in the application that prevent it from being a completed application.
F. The board or its representatives may interview an applicant to determine whether the application is sufficient.
G. Applications are considered withdrawn on any of the following conditions:
1. Written request of the applicant.
2. Failure of the applicant to appear for an interview with the board unless good cause is shown.
3. Failure to submit a completed application within one year from the date of the mailing by the board of a statement to the applicant of the deficiencies in the application pursuant to subsection E of this section.
H. On request of an applicant who disagrees with the statement of deficiency, the board shall grant a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.
I. The board may deny a license to an applicant who does not meet the requirements of this article.
J. If an applicant does not meet the requirements of section 32-2521, subsection A, paragraph 3, the board may issue a license subject to any of the following probationary conditions:
1. Restrict the licensee's practice.
2. Require the licensee to continue medical or psychiatric treatment.
3. Require the licensee to participate in a specified rehabilitation program.
4. Require the licensee to abstain from alcohol and other drugs.
K. If the board offers a probationary license to an applicant pursuant to subsection J of this section, it shall notify the applicant in writing of the following:
1. The applicant's specific deficiencies.
2. The probationary period.
3. The applicant's right to reject the terms of probation.
4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application.

32-2523. Licensure; renewal; continuing education; audit; penalty fee; expiration
(L15, Ch. 84, sec. 3. Eff. 1/1/16)
A. Except as provided in section 32-4301, each holder of a regular license shall renew the license every other year on or before the licensee's birthday by paying the prescribed renewal fee and supplying the board with information it deems necessary, including proof of having completed, before the renewal date, forty hours of category I continuing medical education approved by the American academy of physician assistants, the American medical association, the American osteopathic association or any other accrediting organization acceptable to the board. The board shall verify continuing medical education compliance and shall randomly audit at least ten percent of physician assistants who are renewing their license within the calendar year and who do not hold a current national certification from a national certification organization for physician assistants that is approved by the board.
B. Except as provided in section 32-4301, a holder of a regular license who fails to renew the license within thirty days after the licensee's birthday shall pay a penalty fee as set forth in rule for late renewal.
C. Except as provided in section 32-4301, if a holder of a regular license fails to renew the license within ninety days after the licensee's birthday, the license automatically expires. It is unlawful for a person to perform health care tasks of a physician assistant after the license expires.
D. A person whose license expires may reapply for licensure pursuant to this chapter.
E. If a licensee does not meet the requirements of subsection A of this section because of that person's illness, religious missionary activity or residence in a foreign country or any other extenuating

circumstance, the board may grant an extension of the deadline if it receives a written request to do so from the licensee that details the reasons for this request.

32-2524. Exemption from licensure

This chapter does not require licensure of:

1. A student who is enrolled in a physician assistant education program approved by the board.
2. A physician assistant who is an employee of the United States government and who works on land or in facilities owned or operated by the United States government.
3. A physician assistant who is a member of the armed forces of the United States and who is on official orders or performing official duties as outlined in the appropriate regulation of that branch of military service.

32-2525. Cancellation of license

A. A person who holds an active regular license as a physician assistant, who is not presently under investigation by the board as the result of a complaint or information received by it, and against whom the board has not commenced any disciplinary proceedings may request and the board shall grant cancellation of the license.

B. The board may accept the request to cancel the active regular license of a physician assistant who has been charged with a violation of this chapter or rules adopted pursuant to this chapter if the physician assistant admits the charges and stipulates this admission for the record.

32-2526. Fees

A. By a vote at its annual fall meeting, the board shall establish nonrefundable fees and penalties that do not exceed the following:

1. Processing an application for an active license, four hundred dollars.
2. Issuing an active license, four hundred dollars.
3. Annual renewal of a regular license, four hundred dollars.
4. Penalty fee for late renewal of a regular license, three hundred fifty dollars.
5. Issuance of a duplicate license, twenty-five dollars.
6. Verification of a license, ten dollars.
7. Copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.
8. The sale of computerized tapes or diskettes that do not require programming, one hundred dollars.
9. Services not required to be provided by this chapter, but that the board deems appropriate to carry out the intent and purpose of this chapter, a fee of not to exceed the actual cost of providing the services.

Notwithstanding section 32-2506, the board shall deposit, pursuant to sections 35-146 and 35-147, all of the monies collected under this paragraph in the Arizona medical board fund established by section 32-1406.

B. Notwithstanding subsection A of this section, on written request the board may return the license renewal fee for good cause shown.

C. The board may collect from a drawer of a dishonored check, draft, order or note an amount allowed pursuant to section 44-6852.

32-2527. Change of address; penalty

A. A person holding an active license as a physician assistant in this state shall inform the board in writing within thirty days of that person's current residence address, office address and telephone number

and of each change in residence and office address or telephone number that occurs. A residential address is not available to the public unless it is the only address of record.
B. The board may assess its costs incurred in locating a physician assistant who fails to comply with subsection A of this section within thirty days after the date of change. The board may also assess a penalty of not to exceed one hundred dollars against the physician assistant. Notwithstanding section 32-2506, monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona medical board fund established by section 32-1406.

32-2528. Inactive license; application; prohibited activities
A. A person who holds a regular license pursuant to this chapter may request an inactive license from the board if both of the following are true:
1. The licensee is not under investigation by the board.
2. The board has not begun disciplinary proceedings against the licensee.
B. The board may grant an inactive license and shall waive the annual renewal fee and requirements for continuing medical education if the person certifies total retirement from the performance of health care tasks in this state, any jurisdiction of the United States and any foreign country and is current on all fees required by this chapter.
C. An inactive licensee shall not perform health care tasks.
D. The board may convert an inactive license to a regular license on payment of the annual renewal fee and presentation of evidence to the board that the holder possesses the medical knowledge and the physical and mental ability to safely engage in the performance of health care tasks. The board may require any combination of physical examination, psychiatric or psychological evaluation, oral competency examination or a board qualified written examination or interview it believes necessary to assist it in determining the ability of a physician assistant who holds an inactive license to return to regular licensure.

32-2531. Physician assistant scope of practice; health care tasks; supervising physician duties; civil penalty
A. A supervising physician may delegate health care tasks to a physician assistant.
B. A physician assistant shall not perform surgical abortions as defined in section 36-2151.
C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.
D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.
E. The physician assistant may pronounce death and, if delegated, may authenticate by the physician assistant's signature any form that may be authenticated by a physician's signature.
F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.
G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions. These tasks may include:
1. Obtaining patient histories.
2. Performing physical examinations.
3. Ordering and performing diagnostic and therapeutic procedures.
4. Formulating a diagnostic impression.
5. Developing and implementing a treatment plan.

6. Monitoring the effectiveness of therapeutic interventions.
7. Assisting in surgery.
8. Offering counseling and education to meet patient needs.
9. Making appropriate referrals.
10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) and prescription-only medications.
11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.
12. Performing minor surgery as defined in section 32-2501.
13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.
H. The supervising physician shall:
1. Meet the requirements established by the board for supervising a physician assistant.
2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.
3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.
4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.
I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.
J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.
K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.
L. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed fifty dollars for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising physician may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice
A. Except as provided in subsection F of this section, a physician assistant shall not prescribe, dispense or administer:
1. A schedule II or schedule III controlled substance as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without delegation by the supervising physician, board approval and drug enforcement administration registration.
2. A schedule IV or schedule V controlled substance as defined in the federal controlled substances act of 1970 without drug enforcement administration registration and delegation by the supervising physician.
3. Prescription-only medication without delegation by the supervising physician.

4. Prescription medication intended to perform or induce an abortion.
B. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the supervising physician. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own drug enforcement administration registration number.
C. Unless certified for thirty day prescription privileges pursuant to section 32-2504, subsection A, a physician assistant shall not prescribe a schedule II or schedule III controlled substance for a period exceeding seventy-two hours. For each schedule IV or schedule V controlled substance, a physician assistant may not prescribe the controlled substance more than five times in a six month period for each patient.
D. A prescription for a schedule II or III controlled substance is not refillable without the written consent of the supervising physician.
E. Prescription-only drugs shall not be dispensed, prescribed or refillable for a period exceeding one year.
F. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed thirty-four days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain.
G. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be:
1. Prepackaged in a unit-of-use package by the supervising physician or a pharmacist acting on a written order of the supervising physician.
2. Labeled to show the name of the supervising physician and physician assistant.
H. A physician assistant shall not obtain a drug from any source other than the supervising physician or a pharmacist acting on a written order of the supervising physician. A physician assistant may receive manufacturers' samples if allowed to do so by the supervising physician.
I. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances he administers or dispenses.
J. The board shall advise the state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.
K. The state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

32-2533. Supervising physician; responsibilities
A. A supervising physician is responsible for all aspects of the performance of a physician assistant, whether or not the supervising physician actually pays the physician assistant a salary. The supervising physician is responsible for supervising the physician assistant and ensuring that the health care tasks performed by a physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician.
B. Each physician-physician assistant team must ensure that:
1. The physician assistant's scope of practice is identified.
2. The delegation of medical tasks is appropriate to the physician assistant's level of competence.
3. The relationship of, and access to, the supervising physician is defined.
4. A process for evaluation of the physician assistant's performance is established.
C. A supervising physician shall not supervise more than four physician assistants who work at the same time.
D. A supervising physician shall develop a system for recordation and review of all instances in which the physician assistant prescribes schedule II or schedule III controlled substances.

32-2534. Initiation of practice
A physician assistant may not perform health care tasks until the physician assistant has completed and signed a written agreement with a supervising physician pursuant to section 32-2531, subsection H, paragraph 4.

32-2535. Emergency medical care; supervision
A. Notwithstanding the requirements of this article, in response to a natural disaster, accident or other emergency, a physician assistant who is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer may provide medical care at any location and with or without supervision.
B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is not required to comply with the requirements of this article relating to supervising physicians.

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty
A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. If the board begins an investigation pursuant to this section, it may require the physician assistant to promptly provide the name and address of the physician assistant's supervising physician or physicians. The board or the executive director shall notify the physician assistant and the supervising physician of the content of the reported information in writing within one hundred twenty days of its receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.
B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations including investigational interviews between representatives of the board and the physician assistant and the supervising physician as it deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.
C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.
D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the physician assistant's license, it may take the following actions:
1. Dismiss if, in the opinion of the board, the complaint is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the licensee to complete designated continuing medical education courses.
E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the physician assistant at a formal interview it may enter into a consent agreement with the physician assistant to limit or restrict the physician assistant's practice or to rehabilitate the physician assistant, protect the public and ensure the physician assistant's ability to safely practice. The board may also require the physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense.
F. The board shall not disclose the name of the person who provided the information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.
G. If, after completing its investigation, the board believes that the information is or may be true and that the information may be of sufficient seriousness to merit direct action against the physician assistant's license, it may request a formal interview with the physician assistant and the supervising physician. If the physician assistant refuses the invitation for a formal interview, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. The board shall notify the physician assistant in writing of the time, date and place of the formal interview at least twenty days before the interview. The notice shall include the right to be represented by counsel and shall fully set forth the conduct or matters to be discussed.
H. After the formal interview, the board may take the following actions:
1. Dismiss if, in the opinion of the board, the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Enter into a stipulation with the physician assistant to restrict or limit the physician assistant's practice or medical activities or to rehabilitate, retrain or assess the physician assistant, in order to protect the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.
4. File a letter of reprimand.
5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.
6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:
(a) Restrictions on the health care tasks the physician assistant may perform.
(b) Temporary suspension for not to exceed twelve months.
(c) Restitution of patient fees.
(d) Education or rehabilitation at the licensee's own expense.
7. Require the licensee to complete designated continuing medical education courses.
I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, it shall immediately initiate formal proceedings for the suspension or revocation of the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.
J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure,

probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate for the protection of the public health and safety.
K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than three hundred dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.
L. An advisory letter is a public document and may be used in future disciplinary actions against a physician assistant.
M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.
N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.
O. If during the course of an investigation the Arizona regulatory board of physician assistants determines that a criminal violation may have occurred involving the performance of health care tasks, it shall provide evidence of the violation to the appropriate criminal justice agency.
P. The board may accept the surrender of an active license from a person who admits in writing to any of the following:
1. Being unable to safely engage in the practice of medicine.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.
Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

32-2552. Right to examine and copy evidence; subpoena authority; right to counsel; confidentiality of records
A. In connection with an investigation conducted by the board on its own motion or as the result of information received pursuant to section 32-2551, subsection A, the board or its duly authorized agent or employee at all reasonable times shall have access to, for the purpose of examination, and the right to copy any documents, reports, records or other physical evidence of any person being investigated or the reports, the records and any other documents maintained by and in the possession of any hospital, clinic, physician's office, physician assistant's office, laboratory, pharmacy, health care institution as defined in section 36-401 or other public or private agency if the documents, reports, records or evidence relate to a physician assistant's medical competence, unprofessional conduct or mental or physical ability to safely engage in the physician assistant's approved health care tasks.
B. For the purpose of all investigations and proceedings conducted by the board:
1. On its own motion or on application of a person involved in an investigation, the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production of documents or any other physical evidence for examination or copying if the evidence relates to the medical incompetence, unprofessional conduct or mental or physical ability of a physician assistant to safely perform health care tasks. Within five days after service of a subpoena requiring the production of evidence in the person's possession or under the person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall do so if it believes that the evidence required does not relate to violations of this chapter, is not relevant to the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence requested.
2. A person appearing before the board may be represented by counsel.
3. A board member or agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.
4. On application by the board or by the person subpoenaed, the superior court has jurisdiction to issue an order to do either of the following:

(a) Require a person to appear before the board or its authorized agent to produce evidence relating to the investigation.
(b) Revoke, limit or modify a subpoena if the court determines that the evidence does not relate to a violation of this chapter, is not relevant to the hearing or investigation or does not describe with sufficient particularity the physical evidence requested.
C. The following items are not available to the public:
1. Patient records, including clinical records, medical reports and laboratory statements and reports.
2. Files, films, reports or oral statements relating to diagnostic findings or treatment of patients.
3. Any information from which a patient or the patient's family might be identified.
4. Information received and records kept by the board in its investigations.
D. This section and any other provision of law that makes communications between a physician or a physician assistant and the physician assistant's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.
E. Hospital records, medical staff records, medical staff review committee records, testimony concerning those records and proceedings related to the creation of those records are not available to the public, shall be kept confidential by the board and are subject to the same provisions of law concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, medical staffs and medical staff review committees.

32-2553. Judicial review
Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-2554. Violation; classification
A. A person who does any of the following is guilty of a class 6 felony:
1. Performs a health care task if that person is not licensed pursuant to this chapter or is not exempt from licensure pursuant to this chapter.
2. Secures a license to perform health care tasks by fraud or deceit.
3. Impersonates a member of the board.
B. A person who is not licensed pursuant to this chapter shall not use the designation "P.A.", "P.A.-C." or "Physician assistant" or use any other words, initials or symbols in a way that leads the public to believe that the person is licensed pursuant to this chapter. A person who violates this subsection is guilty of a class 2 misdemeanor.

32-2555. Injunctions
A. The superior court may issue an injunction to enjoin:
1. A person who is not licensed pursuant to this chapter or who is not exempt from licensure pursuant to this chapter from performing health care tasks.
2. A physician assistant from performing health care tasks if the court determines that the licensee will or may cause irreparable damage to the public health and safety before the board has an opportunity to act pursuant to section 32-2551.
3. An act proscribed in section 32-2554, subsection B.
B. In a petition for an injunction pursuant to subsection A, paragraph 1 of this section, it is sufficient for the petitioner to charge that the respondent on a day certain in a named county engaged in the performance of health care tasks without being licensed or exempt from licensure pursuant to this chapter. It is not necessary for the petitioner to show damage or injury.

C. In a petition for an injunction pursuant to subsection A, paragraph 2 of this section, the petitioner shall specify the facts regarding the licensee's threat to the public health and safety.
D. The board shall file the petition in the superior court in Maricopa county or in the county where the respondent resides or is found.

32-2556. Human immunodeficiency virus; disclosure; immunity; definition
A. It is not an act of unprofessional conduct for a licensee to report to the department of health services the name of a patient's spouse, sex partner or person with whom the patient has shared hypodermic needles or syringes if the licensee knows that the patient tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before reporting this information to the department of health services the licensee shall ask the patient to release this information voluntarily.
B. It is not an act of unprofessional conduct for a licensee who knows or who has reason to believe that a significant exposure has occurred between a patient who tests positive for the human immunodeficiency virus and a health care worker or a public safety employee to inform the worker or employee of the exposure. Before disclosing this information the licensee shall ask the patient to disclose this information voluntarily. If the patient does not agree to do this the licensee may disclose the information in a manner that does not identify the patient.
C. This section does not impose a duty to disclose information. A licensee is not subject to civil or criminal liability for either disclosing or not disclosing information.
D. If a licensee decides to make a disclosure pursuant to this section the licensee may request the department of health services to make the disclosure on the licensee's behalf.
E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of the human immunodeficiency virus.

32-2557. Disciplinary action; reciprocity
A. The board shall initiate an investigation pursuant to section 32-2551 if a professional regulatory board in another jurisdiction in the United States has taken disciplinary action against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a professional regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

32-2558. Reinstatement of revoked license
A. On written application the board may issue a new license to a physician assistant whose license was previously revoked by the board if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the revocation. In making its decision the board shall determine:
1. That the applicant has not engaged in any conduct during the revocation period that would have constituted a basis for revocation pursuant to section 32-2551.
2. If a criminal conviction was a basis of the revocation, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person shall not submit an application for reinstatement less than two years after the date of revocation.

C. The board shall vacate its previous order to revoke a license if that revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The physician assistant may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement shall comply with all initial licensing requirements prescribed by this chapter.

E-2

BOARD OF DENTAL EXAMINERS (R-16-1202)
Title 4, Chapter 11, Article 4, Fees

Amend: R4-11-401; R4-11-402; R4-11-405; R4-11-406
New Section: R4-11-403

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: E-2**

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

FROM: Chris Kleminich, Staff Attorney

DATE: November 18, 2016

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS (R-16-1202)**
Title 4, Chapter 11, Article 4, Fees

Amend: R4-11-401; R4-11-402; R4-11-405; R4-11-406
New Section: R4-11-403

The purpose of the Arizona State Board of Dental Examiners (Board) is to "promote the safe and professional practice of dentistry in this state." Laws 2015, Ch. 315, § 19. This rulemaking, related to fees, seeks to amend four rules and make one new rule.

Proposed Action

The Board indicates that this rulemaking is necessary to comply with A.R.S. § 41-1008, related to the establishment and collection of fees. The following is a non-exhaustive summary of the Board's actions:

- To streamline the existing rules, clarifying and formatting changes are being made.
- Fees are being placed in rule that the Board is statutorily authorized to collect, and has been collecting, for:
  - Initial or renewal license of a dentist (A.R.S. § 32-1236),
  - Dental hygienists (A.R.S. § 32-1287),
  - Denturists (A.R.S. § 32-1297.06),
  - Registration as a business entity offering dental services (A.R.S. § 32-1213), and
  - Late renewal by a business entity (A.R.S. § 32-1213(D)).
- To reduce the regulatory burden on licensees, the Board is:
  - Reducing, by 15 percent, the amount collected for license renewal,
  - Reducing, from $300 to $25, the amount collected for a permit to administer general anesthesia or semiconscious, conscious, or oral sedation at multiple locations,

- Extending, from three years to five years, the term of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation, and
- Eliminating a convenience fee for payments by credit card.

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from the moratorium on June 24, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Board cites to A.R.S. § 32-1207 as general authority for the rules. A.R.S. § 32-1207(A)(1), in relevant part, requires the Board to "[a]dopt rules not inconsistent with this chapter [Title 32, Chapter 11, Dentistry] for the regulation of its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities…."

As specific authority, the Board cites to A.R.S. §§ 32-1213(B)(4), (C), and (D) [related to business entity registration], 32-1232(A) and (B) [related to qualifications of applicants for licensure], 32-1236(C), (D), and (F) [related to licensure requirements], 32-1240(B) [related to licensure by credential fees], 32-1262(G) [related to duplicate licenses], 32-1284(A) [related to applicants for licensure as dental hygienists], 32-1287(A), (C), (D), and (F) [related to dental hygienist licensure requirements], 32-1292.01(B) [related to dental hygienist licensure by credential fees], 32-1297.04 [related to fees for examinations in jurisprudence and replacement or duplicate certificates], 32-1297.06 [related to denturist certification], and 32-1299.23 [related to mobile dental facilities and portable dental units].

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are generally clear, concise, and understandable.

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

Yes. The Board indicates that it received no written comments about the rulemaking, and no one attended the oral proceeding held on October 12, 2016.

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

No. The Board indicates that only non-substantive changes were made between the proposed and final rules.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Board indicates that it did not review or rely on a study in its evaluation of or justification for this rulemaking.

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

No. The Board indicates that no federal laws are directly applicable to the rules.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

Yes. The Board indicates that the licenses it issues are general permits consistent with A.R.S. § 41-1037, as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

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

As noted above, the Board is placing fees in rule that it is statutorily authorized to collect, and has been collecting, for initial or renewal licenses of dentists, dental hygienists, denturists, registration as a business entity offering dental services, and late renewal by a business entity. In addition, to reduce the regulatory burden on licensees, the Board is reducing the amounts collected for license renewal and the amounts collected for permits to administer general anesthesia or semiconscious, conscious, or oral sedation at multiple locations. The Board is also extending the term of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation, and is eliminating a convenience fee for payments by credit card.

9. Conclusion

The Board requests a 60-day delayed effective date for the rules. This analyst recommends approval of the rules.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: E-2**

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

FROM: GRRC Economic Team

DATE: November 18, 2016

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS (R-16-1202)**
Title 4, Chapter 11, Article 4, Fees

Amend: R4-11-401; R4-11-402; R4-11-405; R4-11-406
New Section: R4-11-403

I have reviewed the economic, small business, and consumer impact statement (EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist comments:

The Board is proposing these rule changes to comply with A.R.S. § 41-1008, which requires agencies to follow a specified procedure when establishing or increasing a fee. In the amended rules, the Board is assigning fees under its jurisdiction for initial or renewal of licenses for the following: dentists, dental hygienists, denturist, and registration as a business entity offering dental services. The Board clarifies in the Notice of Rulemaking that the proposed fee structure is already in statute, and updating the rules to reflect this will help applicants and licensees with compliance requirements.

The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 12 denturists. It also registers 337 business entities that provide dental services. Specifically, the Board mentions that 13% of licensed dentists obtain an anesthesia or sedation permit. If these dentists have multiple locations, they will save money from the reduction in fee for multiple sites. The Board also states that they collected $3,369 in credit card convenience fees last year.

1. **Costs and Benefits for:**

a. The implementing agency:

While the amount of money taken in by the Board will decrease, the Board indicates that it will benefit from being able to reduce their fund balance and the amount contributed to the general fund.

b. Political subdivisions:

The Board does not indicate that this rulemaking will directly affect political subdivisions.

c. Businesses:

Dentists, dental hygienists, denturists, and business entities providing dental services are businesses subject to the rulemaking. According to the Board, these applicants will directly benefit from this rulemaking, as the 15% reduction in renewal fees will provide a positive economic benefit to licensees.

d. Small businesses:

Many of the Board's licensees are small businesses, and the economic impact on these licensees will be the same as those working in businesses generally.

e. Consumers directly affected by the rulemaking:

These rules do not directly affect consumers.

2. Do the probable benefits outweigh the probable costs?

Most of the impacts from this rulemaking are derived from statute rather than unique rule changes. This rule change will benefit the Board and businesses, while the costs of this rule change will be minimal.

3. Analysis of methods to reduce the small business impact:

The Board indicates that it is not feasible to reduce the impact on small businesses since many dental offices could be considered small businesses. The impact of these rules on small businesses come from statutory authority.

4. The probable effect on state revenues:

The Board indicates that the reduction in renewal fees and permit costs for additional location permits to administer general anesthesia or sedation, extending the term of a permit for the same permit, and no longer collecting a convenience fee for using a credit card will lead to a reduction in the amount the Board collects. The Board expects the reduction to the general fund will be $20,100 in the first year.

5. Analysis of any less intrusive or less costly alternative methods:

The Board notes that these rules are the least intrusive and least costly method of achieving the regulatory goal. The Board did not consider any alternatives.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rules' impact on the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

No empirical or quantitative data were submitted for use in the Notice of Rulemaking or EIS.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.

ARIZONA STATE BOARD OF DENTAL EXAMINERS

4205 North 7th Avenue, Suite 300 • Phoenix, Arizona 85013

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www.dentalboard.az.gov

RECEIVED
OCT 17 2016
GRRC

October 17, 2016

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

Re: A.A.C. Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners

Dear Ms. Ong:

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

A. Close of record date: The rulemaking record was closed on October 12, 2016, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report scheduled for approval by the Council on November 1, 2016.

C. New fee: The rulemaking establishes initial and renewal licensing fees for dentists, dental hygienists, and denturists. These fees are expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06. The rulemaking also establishes a fee for late renewal by a business entity (A.R.S. § 32-1213(D)).

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses that the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

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

Sincerely,

Elaine Hugunin
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-11-401	Amend
R4-11-402	Amend
R4-11-403	New Section
R4-11-405	Amend
R4-11-406	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. §§ 32-1207(A)(1) and (12), 32-1207(B)(3)(C), and 32-1207(E) and (F)

Implementing statute: A.R.S. §§ 32-1213(B)(4), (C), and (D), 32-1232(A) and (B), 32-1236(C), (D), and (F), 32-1240(B), 32-1262(G), 32-1284(A), 32-1287(A), (C), (D), and (F), 32-1292.01(B), 32-1297.04, 32-1297.06, and 32-1299.23

3. The effective date for the rules:

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 22 A.A.R. 2056, August 5, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 2307, September 2, 2016

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

Name: Elaine Hugunin, Executive Director
Address: State Board of Dental Examiners
4205 N. 7th Ave., Suite 300
Phoenix, AZ 85013
Telephone: (602) 542-4493
Fax: (602) 242-1445
E-mail: elaine.hugunin@azdentalboard.us
Website: www.dentalboard.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:

A.R.S. § 41-1008(D) requires an agency to comply with the provisions of the Administrative Procedure Act when establishing or increasing a fee. The Board is placing in rule the fees it is expressly authorized to collect for an initial or renewal license of a dentist (A.R.S. § 32-1236), dental hygienist (A.R.S. § 32-1287), and denturist (A.R.S. § 32-1297.06) and registration as a business entity offering dental services (A.R.S. § 32-1213). The Board is also placing in rule the fee for late renewal by a business entity (A.R.S. § 32-1213(D)).

The Board's statutes establish some fees the Board is authorized to collect. In the interest of assisting applicants and licensees comply with statute, the Board is placing those fees in rule. The fees established in statute are:

- Jurisprudence examination fee for dentists (A.R.S.§ 32-1232(B))
- Jurisprudence examination fee for dental hygienists (A.R.S. § 32-1984(A))
- License by credential for dentists (A.R.S. § 32-1240(B))
- License by credential for dental hygienists (A.R.S. § 32-1292.01(B))
- Reinstate penalty for dentists (A.R.S. §32-1236(D))
- Reinstate penalty for dental hygienists (A.R.S. §32-1287(D))
- Reinstate penalty fee for denturists (A.R.S. §32-1297.06(D))

To reduce the balance in the Dental Board fund (A.R.S. § 32-1212), the Board is reducing by 15 percent the amount collected to renew a license and reducing the amount collected for a permit to administer general anesthesia or semiconscious, conscious, or oral sedation at multiple locations. The Board is also extending the term of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation from three to five years. The Board is also no longer collecting a convenience fee for taking payments by credit card.

An exemption from EO2015-03 was provided by Christina Corieri, Policy Advisor for Health and Human Services in the Governor's Office, in an e-mail dated June 24, 2016.

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

   The Board did not review or rely on a study in its evaluation of or justification for a rule in 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:**

   Because the Board has been collecting the licensing fees being placed in rule, the economic impact on applicants and licensees will be minimal. The 15 percent reduction in renewal fees, the reduction from $300 to $25 per additional location for using a permit to administer general anesthesia or semiconscious, conscious, or oral sedation at multiple locations, extending the term of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation, and no longer collecting a convenience fee for use of a credit card will have a positive economic benefit for licensees. These reductions will reduce the balance the Board carries in its fund and will reduce the amount the Board contributes to the general fund.

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

    No changes were made between the proposed and final rules.

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

    No comments were received regarding the rulemaking. No one attended the oral proceeding on October 12, 2016.

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

    None

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

The licenses for which fees are being placed in Article 4 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

The rules are not more stringent that federal law because no federal law is directly applicable to the fees charged by the Board.

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

No analysis was submitted

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

None

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal ~~Fees~~ Fee

R4-11-402. Business Entity Fees

R4-11-403. ~~Repealed~~ Licensing Fees

R4-11-405. ~~Other Fees~~ Charges for Board Services

R4-11-406. ~~Fees for~~ Anesthesia and Sedation ~~Permits~~ Permit Fees

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal ~~Fees~~ Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

~~**A.** Dentist. Retired or disabled licensure renewal: $15.00.~~

~~**B.** Dental Hygienist. Retired or disabled licensure renewal: $15.00.~~

R4-11-402. Business Entity Fees

~~**A.** Under A.R.S. § 32-1213(B)(3), the fee for a~~ As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services:

1. Initial triennial registration ~~is $100 per year~~, $300 per location~~.~~ ;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

~~**B.** The civil penalty fee for failure to notify the Board of a change in either business entity name, address, telephone number, location of any office, or licensee responsible for dental services within 30 days after the change is $50. The civil penalty fee increases to $100 if a business entity fails to notify the Board of the change within 60 days.~~

R4-11-403. ~~Repealed~~ Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
   a. Dentists: $300;
   b. Dental Hygienists: $100; and
   c. Denturists: $250.
2. Licensure by credential fee:

a. Dentists: $2,000; and

b. Dental Hygienists: $1,000.

3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).

4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:

a. Failure after 10 days: $50; and

b. Failure after 30 days: $100.

R4-11-405. ~~Other Fees~~ Charges for Board Services

The Board shall charge the following for the services provided:

~~**A.**~~ 1. Duplicate license: ~~$25.00.~~ $25;

~~**B.**~~ 2. Duplicate certificate: ~~$25.00.~~ $25;

~~**C.**~~ 3. License verification:

~~1.~~ a. For licensee: ~~$25.00.~~ $25; and

~~2.~~ b. For non-licensee: ~~$5.00.~~ $5;

~~**D.**~~ 4. Copy of ~~tape~~ audio recording: ~~$10.00.~~ $10;

~~**E.**~~ 5. Photocopies (per page): ~~$0.25.~~ $.25;

~~**F.**~~ 6. Mailing lists:

~~1.~~a. Dentists:

~~a.~~i. In-state licensees - paper or labels: ~~$150.00.~~ $150;

~~b.~~ii. All licensees - paper or labels: ~~$175.00.~~ $175; and

~~c.~~iii. ~~Computer disk~~ Mailing list in digital format: ~~$100.00~~ $100;

~~2.~~b. Dental hygienists:

~~a.~~i. In-state licensees - paper or labels: ~~$150.00.~~ $150;

~~b.~~ii. All licensees - paper or labels: ~~$175.00.~~$175; and

~~c.~~iii. ~~Computer disk~~ Mailing list in digital format: ~~$100.00.~~ $100; and

~~3.~~c. Denturists: All certificate holders - paper, ~~or~~ labels, or digital format: ~~$5.00.~~ $5; and

~~**G.**~~ 7. Board meeting agendas and minutes (mailed directly to consumer):

~~1.~~a. Agendas and minutes ~~(annual fee)~~: ~~$75.00.~~ $75 for 12 months;

~~2.~~b. Agendas only ~~(annual fee)~~: ~~$25.00.~~ $25 for 12 months; and

~~3.~~c. Minutes only ~~(annual fee)~~: ~~$50.00~~ $50 for 12 months.

R4-11-406. ~~Fees for~~ Anesthesia and Sedation ~~Permits~~ Permit Fees

A. ~~Under A.R.S. § 32-1207(D), the fee for a~~ As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit ~~to administer general anesthesia and semi-conscious sedation or a~~ fee: $300 plus $25 for each additional location;
2. Section 1302 ~~or~~ permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit ~~to administer conscious or oral conscious sedation~~ fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: ~~is~~ $300 ~~per location~~ plus $25 for each additional location.

B. Upon successful completion of ~~the~~ an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, ~~or~~ 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every ~~third~~ fifth year.

C. ~~The renewal fee for each~~ Permit renewal fees:

1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302~~, or~~ permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit ~~is~~ renewal fee: $300 ~~per location.~~ plus $25 for each additional location; and
4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

A.R.S. § 41-1008(D) requires an agency to comply with the provisions of the Administrative Procedure Act when establishing or increasing a fee. The Board is placing in rule the fees it is expressly authorized to collect for an initial or renewal license of a dentist (A.R.S. § 1236), dental hygienist (A.R.S. § 32-1287), and denturist (A.R.S. § 32-1297.06) and registration as a business entity offering dental services (A.R.S. § 32-1213). The Board is also placing in rule the fee for late renewal by a business entity (A.R.S. § 32-1213(D)).

The Board's statutes establish some fees the Board is authorized to collect. In the interest of assisting applicants and licensees to comply with statute, the Board is placing those fees in rule. The fees established in statute are:

- Jurisprudence examination fee for dentists (A.R.S.§ 32-1232(B))
- Jurisprudence examination fee for dental hygienists (A.R.S. § 32-1984(A))
- License by credential for dentists (A.R.S. § 32-1240(B))
- License by credential for dental hygienists (A.R.S. § 32-1292.01(B))
- Reinstate penalty for dentists (A.R.S. §32-1236)D))
- Reinstate penalty for dental hygienists (A.R.S. §32-1287(D))
- Reinstate penalty fee for denturists (A.R.S. §32-1297.06(D))

To reduce the balance in the Dental Board fund (A.R.S. § 32-1212), the Board is reducing by 15 percent the amount collected to renew a license and reducing the amount collected for use of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation at multiple locations. The Board is also extending the term of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation from three to five years. The Board is also no longer collecting a convenience fee for taking payments by credit card.

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

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

Until this rulemaking is completed, the Board will be in violation of statute that requires it to establish licensing fees in rule. Also, the amount of fees collected will continue to impose an unnecessary burden on applicants and licensees because the amounts are more than is necessary to support the licensing and regulatory activities of the Board.

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

It is not good government to operate contrary to statute and to impose an unnecessary burden on applicants and licensees.

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

When the rulemaking is completed, the Board's rules will comply with A.R.S. § 41-1008(D) and the amount of fees collected will not exceed the amount required to support the licensing and regulatory activities of the Board.

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

Because the Board has been collecting the licensing fees being placed in rule, the economic impact on applicants and licensees will be minimal. The 15 percent reduction in renewal fees, the reduction from $300 to $25 per additional location for using a permit to administer general anesthesia or semiconscious, conscious, or oral sedation at multiple locations, extending the term of a permit to administer general anesthesia or semiconscious, conscious, or oral sedation, and no longer collecting a convenience fee for use of a credit card will have a positive economic benefit for licensees. These reductions will reduce the balance the Board carries in its fund and will reduce the amount the Board contributes to the general fund.

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: Elaine Hugunin, Executive Director
Address: State Board of Dental Examiners
4205 N. 7th Ave, Suite 300
Phoenix, AZ 85013
Telephone: (602) 542-4493
Fax: (602) 242-1445
E-mail: elaine.hugunin@azdentalboard.us
Website: www.dentalboard.az.gov

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

Applicants and licensees (including permit holders and registrants) will be directly affected by and benefit from this rulemaking. The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 12 denturists. It also registers 337 business entities that provide dental services. The 15 percent reduction in renewal fees will provide a positive economic benefit to all these individuals and entities. There are currently 104 retired or disabled dentists and 39 retired or disabled dental hygienists.

Approximately 13 percent of licensed dentists obtain an anesthesia or sedation permit. Generally they obtain only one of the four permits offered. If one of these dentists uses the permit at multiple locations, the dentist will have important savings from the reduction in per-location cost and extension of permit term made in this rulemaking.

During the last year, 239 applicants for licensure as a dentist and 274 for licensure as a dental hygienist took the jurisprudence examination. Applications for licensure by credential were received from 127 dentists and 41 dental hygienists.

Last year the Board collected $17,220 in penalties for reinstating a license or failing to provide timely notice of a change in contact information. The Board also collected $3,369 in convenience fees. After this rulemaking is completed, those who pay their fees by credit card will no longer have to pay a convenience fee. The Board collected $1,871,006 in licensing fees and was appropriated $1,215,500. The Board's current fund balance is $5,110,453. The Board anticipates the reduction in fees and increase in term of a permit will cost approximately $201,000 during the first year. The reduction in subsequent years depends on changes in the number of licensees and permit holders.

The Board, which currently has 11 FTEs, will be directly affected by and benefit from this rulemaking. It incurred the cost of the rulemaking and will incur the cost of implementing the amended rules. The Board will also experience a reduction in its fund balance.

5. Cost-benefit analysis:

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

The Board is the only state agency directly affected by the rulemaking. The Board will not require any new full-time employees to implement or enforce the amended rules.

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:
Dentists, dental hygienists, denturists, and business entities providing dental services are businesses directly affected by the rulemaking. Their effects are discussed in item 4.

6. Impact on private and public employment:
The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses[2]:

a. Identification of the small business subject to the rulemaking:
Dentists, dental hygienists, denturists, and business entities providing dental services are businesses subject to the rulemaking. Many of these are small businesses.

b. Administrative and other costs required for compliance with the rulemaking:
The rulemaking requires that applicants and licensees pay a fee for the licensing services provided by the Board.

c. Description of methods that may be used to reduce the impact on small businesses:
The Board reduced the impact on retired or disabled dentists and dental hygienists by having a reduced fee for license renewal. The Board also reduced costs for applicants and licensees by reducing the amount charged for renewal, reducing the per-location cost for anesthesia or sedation permits, extending the term of anesthesia and sedation permits, and eliminating the convenience fee charged for use of a credit card. Because most applicants and licensees are small businesses, it is not possible to further reduce the impact on small businesses and continue to enable the Board to fulfill its statutory responsibilities.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:
As a result of the reduced renewal fees and per-location fees for anesthesia and sedation permits and the extended term for anesthesia and sedation permits, the amount collected by

the Board will be reduced. Based on the Board's estimate, this reduction is expected to be $20,100 during the first year.

10. Less intrusive or less costly alternative methods considered:

    No less intrusive or less costly alternative was considered. The thrust of this rulemaking is to reduce costs for all applicants and licensees.

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

(Authority: A.R.S. § 32-1203 et seq.)

All former rules renumbered, new Article 11 added (Supp. 81-4).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R4-11-101, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 1, consisting of Sections R4-11-101 through R4-11-103, renumbered to Article 2, Sections R4-11-201 through R4-11-203; Sections R4-11-104 and R4-11-105 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-101. Definitions
R4-11-102. Renumbered
R4-11-103. Renumbered
R4-11-104. Repealed
R4-11-105. Repealed

ARTICLE 2. LICENSURE BY CREDENTIAL

New Article 2, consisting of Sections R4-11-201 through R4-11-205, made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

Article 2, consisting of Sections R4-11-201 through R4-11-203, expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2).

Article 2, consisting of Sections R4-11-201 through R4-11-203, renumbered from Article 1, Sections R4-11-101 through R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 2, consisting of Sections R4-11-201 and R4-11-203, renumbered to Article 3, Sections R4-11-301 and R4-11-302; Sections R4-11-202 and R4-11-204 through R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-201. Clinical Examination; Requirements
R4-11-202. Dental Licensure by Credential; Application
R4-11-203. Dental Hygienist Licensure by Credential; Application
R4-11-204. Dental Assistant Radiography Certification by Credential
R4-11-205. Application for Dental Assistant Radiography Certification by Credential
R4-11-206. Repealed
R4-11-207. Repealed
R4-11-208. Repealed
R4-11-209. Repealed
R4-11-210. Repealed
R4-11-211. Repealed
R4-11-212. Repealed
R4-11-213. Repealed
R4-11-214. Repealed
R4-11-215. Repealed
R4-11-216. Repealed

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

Article 3, consisting of Sections R4-11-301 and R4-11-302, renumbered from Article 2, Sections R4-11-201 and R4-11-203 and amended; new Sections R4-11-303 through R4-11-305 adopted, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 3, consisting of Sections R4-11-301 through R4-11-304, repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-301. Application
R4-11-302. Determination of Successful Completion of Licensure Examination
R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, and Business Entity Registrations
R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates
R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Semi-conscious Sedation Permits, Conscious Sedation Permits, and Oral Conscious Sedation Permits

ARTICLE 4. FEES

Article 4, consisting of Sections R4-11-401 through R4-11-407, renumbered from Article 9, Sections R4-11-901 through R4-11-906 and R4-11-909, amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 4, consisting of Sections R4-11-401 through R4-11-403 and R4-11-408, renumbered to Article 6, Sections R4-11-601 through R4-11-603, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-401. Retired or Disabled Licensure Fees
R4-11-402. Business Entity Fees
R4-11-403. Repealed
R4-11-404. Repealed
R4-11-405. Other Fees
R4-11-406. Fees for Anesthesia and Sedation Permits

ARTICLE 5. DENTISTS

Article 5, consisting of Section R4-11-501, renumbered from Article 11, Section R4-11-1102, amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 5, consisting of Section R4-11-502 and R4-11-504, renumbered to Article 7, Sections R4-11-701 and R4-11-702; Sections R4-11-501 and R4-11-503 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-501. Dentist of Record
R4-11-502. Affiliated Practice

ARTICLE 6. DENTAL HYGIENISTS

Article 6, consisting of Sections R4-11-601 through R4-11-603, renumbered from Article 4, Sections R4-11-402, R4-11-403, and R4-11-408 and amended; Sections R4-11-604 through R4-11-608 adopted, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 6, consisting of Sections R4-11-602 and R4-11-603, renumbered to Article 10, Sections R4-11-1001 and R4-11-1002, and Section R4-11-601 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-601. Duties and Qualifications
R4-11-602. Care of Homebound Patients
R4-11-603. Limitation on Number Supervised
R4-11-604. Selection Committee and Process
R4-11-605. Dental Hygiene Committee
R4-11-606. Candidate Qualifications and Submissions
R4-11-607 Duties of the Dental Hygiene Committee
R4-11-608. Dental Hygiene Consultants
R4-11-609. Affiliated Practice

ARTICLE 7. DENTAL ASSISTANTS

Article 7, consisting of Sections R4-11-701 and R4-11-702, renumbered from Article 5, Sections R4-11-502 and R4-11-504, and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 7, consisting of Section R4-11-701, renumbered to Article 5, Section R4-11-502, and Sections R4-11-702 through R4-11-710 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision
R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision
R4-11-703. Repealed
R4-11-704. Repealed
R4-11-705. Repealed
R4-11-706. Repealed
R4-11-707. Repealed
R4-11-708. Repealed
R4-11-709. Repealed
R4-11-710. Repealed

ARTICLE 8. DENTURISTS

Article 8, consisting of Sections R4-11-801 and R4-11-802, renumbered from Article 12, Sections R4-11-1201 and R4-11-1202, and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 8, consisting of Sections R4-11-802 through R4-11-806, renumbered to Article 13, Sections R4-11-1301 through R4-11-1305, and Section R4-11-801 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-801. Denturist Consultants
R4-11-802. Curriculum

ARTICLE 9. RESTRICTED PERMITS

Article 9, consisting of Sections R4-11-901 through R4-11-905, renumbered from Article 10, Sections R4-11-1001 through R4-11-1005 and amended; Section R4-11-906 adopted, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 9, consisting of Sections R4-11-901 through R4-11-906 and R4-11-909, renumbered to Article 4, Sections R4-11-401 through R4-11-407, and Sections R4-11-907 and R4-11-908 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-901. Application for Restricted Permit
R4-11-902. Issuance of a Restricted Permit
R4-11-903. Recognition of a Charitable Dental Clinic Organization
R4-11-904. Determination of Minimum Rate
R4-11-905. Restricted Permit Denial
R4-11-906. Fully Retired or Permanently Disabled Licensees or Certificate Holders Providing Charitable Services

ARTICLE 10. DENTAL TECHNICIANS

Article 10, consisting of Sections R4-11-1001 and R4-11-1002, renumbered from Article 6, Section R4-11-602 and R4-11-603, amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 10, consisting of Sections R4-11-1001 through R4-11-1005, renumbered to Article 9, Sections R4-11-901 through R4-11-905, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-1001. Duties of Dental Laboratory Technician
R4-11-1002. Dental Technician Laboratory Work Orders
R4-11-1003. Renumbered
R4-11-1004. Renumbered
R4-11-1005. Renumbered
R4-11-1006. Repealed

ARTICLE 11. ADVERTISING

Article 11, consisting of Section R4-11-1101, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 11, consisting of Section R4-11-1102, renumbered to Article 5, Section R4-11-501, and Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-1101. Advertising
R4-11-1102. Advertising as a Recognized Specialist

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

Article 12, consisting of Sections R4-11-1201 through R4-11-1207, renumbered from Article 14, Sections R4-11-1402 through R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 12, consisting of Sections R4-11-1201 and R4-11-1202, renumbered to Article 8, Sections R4-11-801 and R4-11-802, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-1201. Continuing Dental Education
R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements
R4-11-1203. Dentists and Dental Consultants
R4-11-1204. Dental Hygienists
R4-11-1205. Denturists
R4-11-1206. Restricted Permit Holders - Dental
R4-11-1207. Restricted Permit Holders - Dental Hygiene
R4-11-1208. Retired Licensees or Certificate Holders
R4-11-1209. Types of Courses

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

Article 13, consisting of Sections R4-11-1301 through R4-11-1305, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section

R4-11-1301. General Anesthesia and Deep Sedation
R4-11-1302. Parenteral Sedation
R4-11-1303. Oral Sedation
R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)
R4-11-1305. Reports of Adverse Occurrences
R4-11-1306. Education; Continued Competency
R4-11-1307. Renewal of Permit

ARTICLE 14. DISPENSING DRUGS AND DEVICES

Article 14, consisting of Sections R4-11-1401 through R4-11-1406, made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

Article 14 consisting of Sections R4-11-1401 through R4-11-1406, repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

Article 14, consisting of Sections R4-11-1401 through R4-11-1406, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 14, consisting of Sections R4-11-1402 through R4-11-1408, renumbered to Article 12, Sections R4-11-1201 through R4-11-1207 and Sections R4-11-1401 and R4-11-1409 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 14, consisting of R4-11-1401 through R4-11-1409, adopted effective July 21, 1995 (Supp. 95-3).

Section
R4-11-1401. Prescribing
R4-11-1402. Labeling and Dispensing
R4-11-1403. Storage and Packaging
R4-11-1404. Recordkeeping
R4-11-1405. Compliance
R4-11-1406. Dispensing for Profit Registration and Renewal

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

Article 15, consisting of Sections R4-11-1501 through R4-11-1504, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-1501. Ex-parte Communication
R4-11-1502. Dental Consultant Qualifications
R4-11-1503. Initial Complaint Review
R4-11-1504. Postponement of Formal Interview

ARTICLE 16. EXPIRED

Article 16, consisting of Section R4-11-1601 expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008 (Supp. 08-3).

Article 16, consisting of Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-1601. Expired

ARTICLE 17. REHEARING OR REVIEW

Article 17, consisting of Section R4-11-1701, renumbered from Article 7, Section R4-11-701, and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Section
R4-11-1701. Procedure

ARTICLE 18. BUSINESS ENTITIES

Article 18, consisting of Sections R4-11-1801 and R4-11-1802, made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

Section
R4-11-1801. Application
R4-11-1802. Display of Registration

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

"Application" means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a recognized continuing dental education program.

"Deep sedation" is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.

"Documentation of attendance" means documents that contain the following information:

Name of sponsoring entity;
Course title;
Number of credit hours;
Name of speaker; and
Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;
Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
Articles other than food intended to affect the structure of any function of the human body; or
Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

"Licensee" means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Moderate sedation" is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide (N2O/O2) used as an inhalation analgesic.

"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular

epithelium and limited in its depth by the epithelial attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polish" means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only drug" does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4,

1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

New Article 2, consisting of Sections R4-11-201 through R4-11-205, made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-201. Clinical Examination; Requirements

A. The Board shall:

1. Consider an application for licensure at the next scheduled Board meeting after the application is administratively complete.
2. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), ensure that the applicant has passed the clinical examination of another state or a regional testing agency that maintains a standard of licensure determined by the Board to be substantially equivalent to that of Arizona based on review of any one of the following forms of evidence that are satisfactory to the Board:
   a. Certified documentation, sent directly from another state or a regional testing agency, that shows the clinical examination or multiple examinations the applicant passed are Board-approved and administered by the state or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations, total score for each examination, name of any separately-scored component of the examination, and separate scores for each component;
   b. Certified documentation sent directly from another state dental board that shows the applicant passed that state's clinical examination before that state's participation in a regional examination. The certified documentation shall contain the name of the applicant, date of examination or examinations, total score for each examination, name of any separately-scored component of the examination, and separate scores for each component; or
   c. A detailed report prepared by a Board-recognized organization capable of assessing whether a clinical examination submitted maintains all of the following clinical examination elements in Arizona's standard of licensure:
      i. The purposes, interpretations, and uses of the clinical examination are clearly stated in order to make appropriate pass or fail decisions.
      ii. The knowledge, skills, and abilities that are important in the clinical practice of dentistry or dental hygiene are identified.
      iii. Examination specifications provide a detailed description of the content of the examination and specify the scorable tasks that are used to evaluate each discipline. The specifications should include scoring weights associated with each content area.
      iv. Policies and procedures are defined and published to standardize examination administration. This administrative protocol addresses legal issues and fair testing practices.
      v. The state or testing agency provides candidates with clear and comprehensive information about the examination program, including application requirements, examination content, performance expectations, reporting of results, and an appeals process.
      vi. Policies for examiner selection and retention are defined and published.
      vii. An examiner-training program is established and implemented. The program introduces examiners to appropriate applications of the agency's evaluation criteria and assesses their ability to apply the criteria. The methodology of examiner standardization and its results are documented.
      viii. Post-examination analyses are routinely conducted. Reliability and other factors affecting validity are investigated.
      ix. A program is developed and implemented for ongoing evaluation of examiner ratings. The examining agency provides examiners with feedback on their individual rating performance. Policies and procedures are defined for remediation or discontinuance of examiners based on analyses of their performance.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303. The applicant is exempt from complying with R4-11-301(A)(4).

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(2).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable regional testing agency to the Board that contains the name of applicant, date of examination or examinations, total score for each examination, name of any separately-scored component of the examination, and separate scores for each component.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(2).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:
1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A)shall:
1. Comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article; and
2. Not be the subject of final or pending disciplinary action in any state, territory, or district of the United States or have resigned or surrendered a license while under investigation by or while disciplinary action was pending before any professional licensing agency.

B. The Board shall:
1, Suspend an application for licensure by credential if disciplinary action by a dental regulatory agency against the applicant is currently pending in another jurisdiction, and
2. Not issue or deny licensure by credential to the applicant until the matter is resolved.

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(2).

D. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable regional testing agency to the Board that contains the name of applicant, date of examination or examinations, total score for each examination, name of any separately-scored component of the examination, and separate scores for each component.

E. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(2).

F. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

G. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (F) shall:
1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

H. A licensee's failure to comply with the requirements in R4-11-203(G) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as

Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another jurisdiction of the United States that required successful completion of written and clinical dental radiography examinations or a single dental radiography examination with written and clinical components.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:
1. A sworn statement of the applicant's eligibility, and
2. A letter of endorsement that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note
Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation on a form provided by the Board:
1. A sworn statement of the applicant's qualifications for the license or certificate;
2. A photograph of the applicant that is no more than six months old;
3. An official, sealed transcript sent directly from the applicant's dental, dental hygiene, or denturist school to the Board;
4. Except for a dental consultant license applicant, proof of successfully completing a clinical examination by submitting:
   a. If applying for licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
   or
   b. If applying for licensure by credential, certified documentation sent directly from the applicable testing agency or state to the Board containing the name of the applicant, date of examination or examinations, total score for each examination, name of any separately-scored component of the examination, and scores for each component;
5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license verification from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
8. If the applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than six months old;
9. If the applicant has never been licensed to practice in any jurisdiction or has been practicing for less than six months, a letter of endorsement from the dental, dental hygiene, or denturist school from which the applicant graduated that confirms the applicant's graduation;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.

B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma,
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
3. Written verification of the applicant's work history, and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination.

Historical Note
Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-302. Determination of Successful Completion of Licensure Examination

To determine the minimum passing grade in all examinations conducted by the Board:
1. The Board may require a composite average of 75% for successful completion of the examination; or
2. The Board may use a performance rating of 0 to 6 to evaluate each procedure performed and require a specific point total to achieve successful completion.
3. The Board shall vote, at least 30 days before the examination, to determine which scoring system is to be used. For the percentage system the Board shall also determine the relative values of the individual procedures tested. For the proficiency evaluation the Board shall determine the minimum point total required to successfully complete the examination.

Historical Note
Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, and Business Entity Registrations

A. The Board office shall complete an administrative completeness review within 24 days of the date of receipt of an application for a license, certificate, permit, or registration.
1. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, or business entity registration, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 45 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates

A. Within 14 calendar days of receiving an application from an applicant for a dental assistant certificate, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The Board or its designee shall deny certification if an applicant fails the clinical or written portions of the Dental Assisting National Board examination.

G. The notice of denial shall inform the applicant of the following:
1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and

4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

H. The following time-frames apply for certificate applications governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

I. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Semi-conscious Sedation Permits, Conscious Sedation Permits, and Oral Conscious Sedation Permits

A. The Board office shall complete an administrative completeness review within 24 days from the date of receipt of an application for a permit
1. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and semi-conscious sedation permit, conscious sedation permit, or oral conscious sedation permit the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 60 days. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Fees

A. Dentist. Retired or disabled licensure renewal: $15.00.

B. Dental Hygienist. Retired or disabled licensure renewal: $15.00.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-402. Business Entity Fees

A. Under A.R.S. § 32-1213(B)(3), the fee for a Business Entity registration is $100 per year, per location.

B. The civil penalty fee for failure to notify the Board of a change in either business entity name, address, telephone number, location of any office, or licensee responsible for dental services within 30 days after the change is $50. The civil penalty fee increases to $100 if a business entity fails to notify the Board of the change within 60 days.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-403. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-404. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Other Fees

A. Duplicate license: $25.00.
B. Duplicate certificate: $25.00.
C. License verification:
1. For licensee: $25.00.
2. For non-licensee: $5.00.

D. Copy of tape recording: $10.00.
E. Photocopies (per page): $0.25.
F. Mailing lists:
1. Dentists:
   a. In-state - paper or labels: $150.00.
   b. All licensees - paper or labels: $175.00.
   c. Computer disk: $100.00
2. Dental hygienists:
   a. In-state - paper or labels: $150.00.
   b. All licensees - paper or labels: $175.00.
   c. Computer disk: $100.00.
3. Denturists: All certificate holders - paper or labels: $5.00.

G. Board meeting agendas and minutes (mailed directly to consumer):
1. Agendas and minutes (annual fee): $75.00.
2. Agendas only (annual fee): $25.00.
3. Minutes only (annual fee): $50.00.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-406. Fees for Anesthesia and Sedation Permits

A. Under A.R.S. § 32-1207(D), the fee for a Section 1301 permit to administer general anesthesia and semi-conscious sedation or a Section 1302 or Section 1303 permit to administer conscious or oral conscious sedation is $300 per location.
B. Upon successful completion of the initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, or 1303 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every third year.
C. The renewal fee for each Section 1301, 1302, or 1303 permit is $300 per location.

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3).

R4-11-407. Renumbered

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.

C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.

D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.

E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist;
2. The hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:
1. Review of head and neck anatomy;
2. Pharmacology of anesthetic and analgesic agents;
3. Medical - dental history considerations;
4. Emergency procedures;
5. Selection of appropriate armamentarium and agents;
6. Nitrous oxide administration;
7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
   a. Posterior superior alveolar injection,
   b. Middle superior alveolar injection,

c. Anterior superior alveolar injection,
d. Nasopalatine injection,
e. Greater - palatine injection,
f. Inferior alveolar nerve injection,
g. Lingual injection,
h. Mental injection,
i. Long buccal injections, and
j. Nitrous oxide analgesia.

D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.

E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist's successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:
1. A review of oral histology,
2. Inflammation and pathogenesis of a periodontal pocket,
3. Patient assessment,
4. Dental hygiene treatment planning,
5. Advanced root planing and debridement,
6. Subgingival curettage,
7. Suturing,
8. Wound repair and new attachment, and
9. Clinical experience in each of the following:
   a. Root planing,
   b. Subgingival curettage, and
   c. Suturing.

F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist's license.

G. A dental hygienist shall not perform an irreversible procedure.

H. To qualify to use emerging scientific technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:
1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:
1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5

A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:
1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:
1. Act as Western Regional Examining Board (WREB) examiners for the clinical portion of the dental hygiene examination;
2. Act as Western Regional Examining Board (WREB) examiners for the local anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including clinical evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289, a dental hygienist shall:
1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education that consists of the following subject areas:
   a. A minimum of four hours in medical emergencies; and
   b. A minimum of eight hours in at least two of the following areas:
      i. Pediatric or other special health care needs,
      ii. Preventative dentistry, or
      iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1289(E) and (F) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.

E. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

F. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:
1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;

2. Cleanse the supragingival surface of the tooth in preparation for:
   a. The placement of bands, crowns, and restorations;
   b. Dental dam application;
   c. Acid etch procedures; and
   d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision
A dental assistant shall not perform the following procedures or functions:
1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Denturist Consultants

A. The Board shall not appoint a denturist to assist and advise the Board regarding complaints and disciplinary actions concerning denturists unless the denturist meets the requirements of R4-11-1502.

B. The Board shall appoint denturist consultants as designees of the Board to participate in each denturist certification examination as specified in A.R.S. § 32-1297.02.

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-802. Curriculum
In addition to the requirements in A.R.S. § 32-1297(A), the 60 hours of a program in denture technology may include the following subjects: partial denture techniques, cardiopulmonary resuscitation, x-ray interpretation, jurisprudence, and practice management.

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-803. Renumbered

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note
Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note
Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:
1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
4. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-902. Issuance of a Restricted Permit
Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:
1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;

3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11-902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11-903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11-904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Restricted Permit Denial

If an applicant for a restricted permit or the dental clinic or organization with whom the applicant has a pending contract refuses or fails to furnish information requested by the Board with the result that the Board is unable to perform its duties under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall not issue a restricted permit to the applicant.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11-905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-906. Fully Retired or Permanently Disabled Licensees or Certificate Holders Providing Charitable Services

A licensee or certificate holder who is fully retired or permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11-406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Duties of Dental Laboratory Technician

A dental technician may, pursuant to a written work order of a dentist, construct, alter, repair, reline, reproduce, or duplicate any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11-1001 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1001 renumbered to R4-11-901, new Section R4-11-1001 renumbered from R4-11-602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1002. Dental Technician Laboratory Work Orders

A. A dentist shall retain a copy of a dental technician laboratory work order for at least two years from date of issuance.

B. A dental laboratory technician shall retain an original laboratory work order for at least one year from date of issuance.

C. A dentist and a dental laboratory technician shall permit the Board to inspect upon demand, the original and the duplicate of all work orders.

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11-1002 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1002 renumbered to R4-11-902, new Section R4-11-1002 renumbered from R4-11-603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1003. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11-1003 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11-1004 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1005 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising
A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

Historical Note
Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on "Management of Craniomandibular Disorders" and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist limits the dentist's practice exclusively to one or more specialty area that are:
1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):
1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:
1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
   a. Has established examination requirements and standards,
   b. Appraised an applicant's qualifications,
   c. Administered comprehensive examinations, and
   d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note
Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:
1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:
1. A current cardiopulmonary resuscitation (CPR) healthcare provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A licensee or certificate holder shall include an affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee's or certificate holder's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A licensee or certificate holder shall submit a written request for an extension before the June 30 deadline. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.

E. The Board shall:
1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 days from the date the licensee or certificate holder received notice of the audit by certified mail.

H. If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:
1. At least 42 credit hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, parenteral sedation, or oral sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;

2. No more than 18 credit hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in chemical dependency, which may include tobacco cessation;
4. At least three credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:
1. At least 31 credit hours in any of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 14 credit hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three credit hours in infectious diseases or infectious disease control; and
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.

B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1205. Denturists

Denturists shall complete 36 credit hours of recognized continuing dental education in each renewal period as follows:
1. At least 21 credit hours in any of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour in chemical dependency, which may include tobacco cessation;
4. At least two credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental restricted permit holder shall comply with the following requirements:
1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the restricted permit holder submits the renewal application.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
   a. At least 12 credit hours in one or more of the subjects enumerated in R4-11-1203(1);
   b. No more than six credit hours in one or more of the subjects enumerated in R4-11-1203(2);
   c. At least one credit hour in the subjects enumerated in R4-11-1203(3);
   d. At least one credit hour in the subjects enumerated in R4-11-1203(4).
   e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
   f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:
1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18

credit hours of recognized continuing dental education yearly.

2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the restricted permit holder submits the renewal application.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
   a. At least 9 credit hours in one or more of the subjects enumerated in R4-11-1204(1);
   b. No more than three credit hours in one or more of the subjects enumerated in R4-11-1204(2);
   c. At least one credit hour in the subjects enumerated in R4-11-1204(3);
   d. At least two credit hours in the subjects enumerated in R4-11-1204(4) and
   e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1208. Retired Licensees or Certificate Holders

A retired licensee or certificate holder shall:

1. Except for the number of credit hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
   a. Dentist - 27 credit hours of which no less than three credit hours shall be for CPR;
   b. Dental hygienist - 21 credit hours of which no less than three credit hours shall be for CPR; and
   c. Denturist - 9 credit hours of which no less than three credit hours shall be for CPR.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1209. Types of Courses

A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
   a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
   b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
   c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
   d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental hygiene, or denturist association;
   e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
      i. Only once for materials presented;
      ii. Only if the date of publication or original presentation was during the applicable renewal period; and
      iii. One credit hour for each hour of preparation, writing, and presentation; or
   f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists and Dental Hygienists, no more than 24 hours;
2. Denturists, no more than 12 hours;
3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
4. Retired Denturists, no more than three hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering general anesthesia, or deep sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;

ii. Home and office addresses and telephone numbers;
iii. Limitations of practice;
iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental oxygen;
      vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or deep sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions:

1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
   b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia or deep sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications; or
   b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of general anesthesia or deep sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;

e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
b. Compliance with subsection (B)(2)(b).

E. A Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia and deep sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

F. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 permit holder shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.

H. The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.
1. A Section 1301 permit holder may also administer parenteral sedation.
2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
a. General information about the applicant such as:

i. Name;
ii. Home and office addresses and telephone numbers;
iii. Limitations of practice;
iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):
      i. Emergency drugs;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or automated external defibrillator (AED); and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
      ii. Is present during the parenteral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions:

1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty (60) didactic hours of basic parenteral sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
   b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.

1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications, or
   b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:

a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
   b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1303. Oral Sedation

A. Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.
1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.
2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:
   a. The administered dose is within the Food and Drug Administration's (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored home use;
      i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
      ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA maximum recommended dose on the date of treatment; and
   b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.

B. To obtain or renew a Section 1303 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation:
   a. Contains the following properly operating equipment and supplies during the provision of sedation:
      i. Emergency drugs;
      ii. Cardiac defibrillator or automated external defibrillator (AED);
      iii. Positive pressure oxygen and supplemental oxygen;
      iv. Stethoscope;
      v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      vi. Pulse oximeter;
      vii. Blood pressure monitoring device; and
      viii. Auxiliary lighting; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
      ii. Is present during the oral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation within the last three years before submitting the permit application; or
2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
   b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
3. Provide proof of participation in 30 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
   a. Training in basic oral sedation,
   b. Pharmacology,
   c. Physical evaluation,
   d. Management of medical emergencies,
   e. The importance of and techniques for maintaining proper documentation, and
   f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.
1. The onsite evaluation team shall consist of:
   a. For initial applications, two dentists who are Board members, or Board designees.
   b. For renewal applications, one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   c. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
   d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the oral sedation record; and
   e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.

4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is administered by a Section 1303 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to dental offices or dental clinics to provide oral sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of oral sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place and in appropriate condition at the dental office or dental clinic where oral sedation is provided, and
   b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 permit holder shall keep an oral sedation record for each oral sedation procedure that:
1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
   b. Pre-operative and post-operative blood pressure;
   c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
   d. List of all medications given, including dosage and time intervals;
   e. Patient's weight;
   f. Consent form;
   g. Special notes, such as, nothing by mouth or last intake of food or water; and
   h. Time of discharge and status, including name of escort; and
2. May include the following entries:
   a. Pre-operative and post-operative electrocardiograph report; and
   b. Intra-operative blood pressures.

F. The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.

G. The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
   a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. PALS in a practice treating pediatric patients;
   c. A recognized continuing education course in advanced airway management;
3. The Section 1303 permit holder ensures that:
   a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
   b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
   c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
   d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1303 renumbered to R4-11-1304; new Section R4-11-1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist

has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental continuous flow oxygen;
      vi. Suction equipment, including endotrachael, tonsillar or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
3. Hold a valid license to practice dentistry in this state; and
4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
   c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation; or
   b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1304 renumbered to R4-11-1305; new Section R4-11-1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1305 renumbered to R4-11-1306; new Section R4-11-1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
1. The program shall include instruction in the following subject areas:
   a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
   b. Physiological and psychological risks for the use of various modalities of pain control;
   c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
   d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
   e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
   a. Be the same for all dentists, whether general practitioners or specialists; and
   b. Include each subject area listed in subsection (A)(1).
3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. General anesthesia,
   b. Parenteral sedation,
   c. Physical evaluation,
   d. Medical emergencies,
   e. Monitoring and use of monitoring equipment, or
   f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management;
3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. Oral sedation,
   b. Physical evaluation,
   c. Medical emergencies,
   d. Monitoring and use of monitoring equipment, or
   e. Pharmacology of oral sedation drugs and non-drug substances; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   c. Pediatric advanced life support (PALS);
   d. A recognized continuing education course in advanced airway management; and
3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.

B. To renew a Section 1304 permit, the permit holder shall:
1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.

C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.

D. The Board may stagger due dates for renewal applications.

Historical Note
Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
1. Date of issuance;
2. Name and address of the patient to whom the prescription is issued;
3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
4. Name and address of the dentist prescribing the drug; and
5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
2. The serial number;
3. The date the drug or device is dispensed;
4. The patient's name;
5. Name, strength, and quantity of drug or name and quantity of device dispensed;
6. The name of the drug or device manufacturer or distributor;
7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
   a. A patient's allergies,
   b. Incompatibilities with a patient's currently-taken medications,
   c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
   d. The frequency of refills;
2. Verify that the dosage is within proper limits;
3. Interpret the prescription order;
4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:
1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
   a. File Schedule II drug orders separately from all other prescription orders;
   b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
   c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:
1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
3. Shall maintain the inventory for three years from the inventory date;
4. May use one inventory book for all controlled substances;
5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
2. For controlled substance theft or loss, complete a DEA 106 form; and
3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.

B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:
1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4-11-1406 renumbered to R4-11-1205, new Section R4-11-1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final

rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication
A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note
New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications
A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:
1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note
New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review
A. The Board's procedures for complaint notification are:
1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
   a. A formal interview is scheduled,
   b. The complaint is tabled,
   c. A postponement or continuance is granted, and
   d. A subpoena, notice, or order is issued.
2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:
1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
   a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
   b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note
New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview
A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note
New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note
New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure
A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued

by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity’s receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
2. "Board" means the state board of dental examiners.
3. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
4. "Dental assistant" means any person who acts as an assistant to a dentist or a dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
5. "Dental hygienist" means any person licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
6. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
7. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
8. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related non-fluoroscopic diagnostic imaging modalities.
9. "Dentistry", "dentist" and "dental" means the general practice of dentistry and all specialties or restricted practices of dentistry.
10. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.
11. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
(b) Imposition of restrictions on the scope of practice.
(c) Imposition of peer review and professional education requirements.
(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

12. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:
(a) Charges for services not rendered.
(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.
(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.
(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.
(e) Any statement that is material to the claim and that the licensee knows is false or misleading.
(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.
(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.
13. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
14. "Licensed" means licensed pursuant to this chapter.
15. "Place of practice" means each physical location at which a person licensed pursuant to this chapter performs services subject to this chapter.
16. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.
17. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.
18. "Recognized dental school" means a dental school accredited by the American dental association commission on dental accreditation.
19. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.
20. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

21. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentional betrayal of a professional confidence or intentional violation of a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.
2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.
4. Gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Refusal, revocation or suspension of a license or any other disciplinary action taken against a dentist by, or the voluntary surrender of a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.
14. Any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. The following advertising practices:
(a) The publication or circulation, directly or indirectly, of any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
(b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, denturist or dental hygienist is or may be:
(a) Professionally incompetent.
(b) Engaging in unprofessional conduct.
(c) Impaired by drugs or alcohol.
(d) Mentally or physically unable to safely engage in the activities of a dentist, denturist or dental hygienist pursuant to this chapter.
29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

32-1202. Scope of practice; practice of dentistry
For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues, including the removal of stains, discolorations and concretions.

32-1203. State board of dental examiners; qualifications of members; terms
A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
B. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
C. A board member shall not serve more than two consecutive terms.
D. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office
The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff
A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.
B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.
C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.
D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board
Members of the board are entitled to receive compensation in the amount of two hundred fifty dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules not inconsistent with this chapter for the regulation of its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to section 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, or dental hygienist in consultation with a dentist, may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that shall remain available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools and dental hygiene schools in order to be classified as recognized dental schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to those it determines are eligible for licensure pursuant to this chapter.
8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.
9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.
10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.
11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.
12. Collect and disburse monies.
13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.
14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.
B. The board may:
1. Sue and be sued.
2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within its jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.
3. Adopt rules:
(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.
(b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.
(c) Prescribing requirements for obtaining licenses for disabled or retired licensees, including the triennial license renewal fee.
4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as it deems necessary.
5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.
6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.
C. The executive director or the executive director's designee may:
1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.
2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.
3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.
5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.
6. Refer cases to the board for a formal interview.
7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.
E. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to assure compliance.
F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.
G. This section does not prohibit the board from conducting its authorized duties in a public meeting.
H. For the purposes of this section, "record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty
In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence
A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report
A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:
1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.
7. Any other matters that the board wishes to include in the report or that the governor requires.
B. On request of the governor the board shall submit a supplemental report.

32-1211. Limitation of expenditures
The board shall not make expenditures exceeding ninety per cent of the total revenue of the board, and no part of the expenses, charges or expenditures of the dental board shall become a charge against any fund of the state.

32-1212. Dental board fund
A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.
B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.
C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions
A. A business entity may not offer dental services pursuant to this chapter unless:
1. The entity is registered with the board pursuant to this section.
2. The services are conducted by a licensee pursuant to this chapter.
B. The business entity must file a registration application on a form provided by the board. The application must include:
1. A description of the entity's services offered to the public.
2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
3. The names and addresses of the officers and directors of the business entity.
4. A registration fee prescribed by the board in rule.
C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.
2. In the officers or directors of the business entity.
3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.
F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:
1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
2. Disposing of unclaimed dental records.
3. The timely response to requests by patients for copies of their records.
G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.
H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:
1. Refuse to issue a registration.
2. Suspend or revoke a registration.
3. Impose a civil penalty of not more than two thousand dollars for each violation.
4. Enter a decree of censure.
5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.
6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.
I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.
J. This section does not apply to:
1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.
2. Any of the following entities licensed under title 20:
(a) A service corporation.
(b) An insurer authorized to transact disability insurance.
(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
(d) A health care services organization that does not provide directly for dental services.
3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29, chapter 4, article 11.
4. A facility regulated by the federal government or a state, district or territory of the United States.
5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year from the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
1. Owned by a dentist who is licensed pursuant to this chapter.
2. Regulated by the federal government or a state, district or territory of the United States.
L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:
1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.
2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.
M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.
N. No individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year from the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty per cent.

32-1231. Persons not required to be licensed
This chapter does not prohibit:
1. A dentist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's or dental hygienist's official capacity, within the scope of that person's authority, on persons enlisted in, directly connected with or under the immediate control of some branch of service of the United States.
2. An intern or student of dentistry or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental hygiene school or hospital under supervision of a dentist.
3. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

4. A clinician not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.
5. The state director of dental public health from performing the director's administrative duties as prescribed by law.
6. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.
7. A dentist or dental hygienist who is not practicing on the public at large from practicing in a recognized dental school or a recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card
A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.
B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:
1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements
An applicant for licensure shall have passed all of the following:
1. The written national dental board examinations.
2. The western regional examining board examination within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia, but is not currently licensed to practice dentistry in Arizona.
2. Is of good moral character.
3. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
4. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Meets the applicable requirements of section 32-1232.
7. Meets the requirements of section 32-1233, paragraphs 1 and 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.
8. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section shall not be deemed to require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license; application for previously denied license

A. On written application the board may issue a new license or certificate to a dentist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant

demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:
1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.
2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.
4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.
B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.
C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.
D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.
E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.
F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled licensees; penalties
A. Except as provided in section 32-4301, a license expires on June 30 of every third year. On or before June 30 of every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than six hundred fifty dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a licensee in disabled or retired status.
B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a

written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30.
C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.
D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.
E. Each licensee must provide to the board in writing both of the following:
1. A primary mailing address.
2. The address for each place of practice.
F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days of opening the additional place or places of practice. The board shall impose a penalty of fifty dollars for failure to notify the board.
G. A licensee who is fully retired and a licensee who is permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.
H. A licensee applying for retired or disabled status shall:
1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.
2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.
3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.
I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit
A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:
1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses

the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.
2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.
3. Has been actively engaged in one or more of the following for three years immediately preceding the application:
(a) The practice of dentistry.
(b) An approved dental residency training program.
(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.
4. Is competent and proficient to practice dentistry.
5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit
A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit
A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:
1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:
(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.
(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.
(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee
A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency and either:
1. The other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

(a) A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.
(b) An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.
2. The applicant has acquired a certificate or other evidence of successful completion of a board approved examination not more than five years before submitting an application for licensure pursuant to this chapter.
B. The applicant shall pay a licensure by credential fee of two thousand dollars.

32-1241. Training permits; qualified military health professionals
A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.
B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:
1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.
2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.
3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.
4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.
C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.
D. The qualified military health professional may not practice outside of the professional's scope of practice.
E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional

must submit a written statement from the United States department of defense asking the board for continuation of the training permit.
F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

32-1261. Practicing without license; classification
Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:
1. Practices dentistry or any branch of dentistry as described in section 32-1202.
2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.
3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee
A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.
B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.
C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.
D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.
E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.
F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.
G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.
H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person licensed under this chapter for any of the following reasons:
1. Unprofessional conduct, as defined in section 32-1201.01.
2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.
3. Physical or mental incompetence to practice pursuant to this chapter.
4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.
5. Dental incompetence, as defined in section 32-1201.
B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.
C. The board may take disciplinary action against a business entity registered pursuant to this chapter for unethical conduct.
D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:
1. Failing to report in writing to the board any evidence that a dentist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, denturist or dental hygienist.
2. Falsely reporting to the board that a dentist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, denturist or dental hygienist.
3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.
4. Knowingly filing with the board any application, renewal or other document that contains false information.
5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.
6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:
(a) The board or its employees or agents.
(b) An authorized federal or state official.
7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.
8. Failing to provide patient records pursuant to section 32-1264.
9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
10. Engaging in repeated irregularities in billing.
11. Engaging in the following advertising practices:

(a) The publication or circulation, directly or indirectly, of any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.
(b) Advertising in any manner that tends to deceive or defraud the public.
12. Failing to comply with a board subpoena in a timely manner.
13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.
14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.
15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification
A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:
1. Revocation of license to practice.
2. Suspension of license to practice.
3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.
4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.
5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
6. Imposition of a requirement for restitution of fees to the aggrieved party.
7. Imposition of restrictions on the scope of practice.
8. Imposition of peer review and professional education requirements.
9. Imposition of community service.
B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.
D. Notwithstanding section 32-3214, subsection B, beginning September 1, 2015, all disciplinary and nondisciplinary actions or orders issued by the board against a licensee or certificate holder shall be posted to that licensee or certificate holder's profile on the board's website.
E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the board acts to modify any dentist's prescription writing privileges, it shall immediately notify the state board of pharmacy of the modification.
G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.
H. A licensee or certificate holder shall respond in writing to the board within twenty days after notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions
A. The board on its motion, or the executive director if delegated by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on a complaint if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter occurred more than six years before the complaint is received by the board. The six-year time limitation does not apply to medical malpractice settlements or judgments. At the request of the complainant, the board shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.
B. The board or its designees shall conduct necessary investigations, including interviews between representatives of the board and the licensee with respect to any information obtained by or filed with the board under subsection A of this section. The results of the investigation conducted by a designee shall be forwarded to the board for its review.
C. If, based on the information it receives under subsection A of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of the respondent's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.
D. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board.
E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is insufficient to merit disciplinary action against the licensee, the board may take any of the following actions:
1. Dismiss the complaint.
2. Issue a nondisciplinary letter of concern to the licensee.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
4. Assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars if the complaint involves a licensee's failure to respond to a board subpoena.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is sufficient to merit disciplinary action against the licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.
G. If, after completing a formal interview, the board finds that the information provided under subsection A of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:
1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4 Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.
H. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.
I. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.
J. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.
K. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.
L. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.
M. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:
1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

N. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.
O. If a licensee currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:
1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.
2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.
P. A licensee who files a complaint pursuant to subsection O of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.
Q. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection O of this section.
R. For the purposes of this section:
1. "License" includes a certificate issued pursuant to this chapter.
2. "Licensee" means a dentist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Executive director; complaints; termination; review
A. If delegated by the board, the executive director, with the concurrence of the board's investigative staff, may terminate a complaint if the investigative staff's review indicates the complaint is without merit and that termination is appropriate.
B. The executive director may not terminate a complaint if a court has entered a medical malpractice judgment against a person licensed under this chapter.
C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director terminated pursuant to subsection A since the preceding board meeting.
D. A person who is aggrieved by an action taken by the executive director pursuant to subsection A may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1264. Maintenance of records
A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnosis, evaluation and treatment of each patient of record. A licensee or certificate holder shall maintain records

stored or produced electronically in retrievable paper form. These records shall include:
1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.
B. Records are available for review and for treatment purposes to the dentist, dental hygienist or denturist providing care.
C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board as part of an investigation process.
D. Within fifteen business days of a patient's written request, that patient's dentist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.
E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:
1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.
2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter
Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations
The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification
A person is guilty of a class 5 felony who:
1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.
2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.
4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof
A. A person is guilty of a class 2 misdemeanor who:
1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.
2. Fails to obey a summons or other order regularly and properly issued by the board.
3. Violates any provision of this chapter for which the penalty is not specifically prescribed.
B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief
A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.
B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification
A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:
1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.
B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information
A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.
B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

32-1281. Practicing as dental hygienist; supervision requirements; definitions
A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.
B. A licensed dental hygienist may perform the following:
1. Prophylaxis.
2. Scaling.
3. Closed subgingival curettage.
4. Root planing.
5. Administering local anesthetics and nitrous oxide.
6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.
7. Periodontal screening or assessment.
8. Recording of clinical findings.
9. Compiling case histories.
10. Exposing and processing dental radiographs.
11. All functions authorized and deemed appropriate for dental assistants.
12. Those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.
C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:
1. Apply preventive and therapeutic agents, used in relation to dental hygiene procedures, to the hard and soft tissues.
2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on the use of the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.
D. Except as provided in subsections E and G of this section, a dental hygienist shall practice under the general supervision of a dentist licensed pursuant to this chapter.
E. Dental hygienists shall practice under the direct supervision of a dentist licensed pursuant to this chapter when performing the following procedures and after completing a course of study recognized by the board:
1. Administering local anesthetics. A dental hygienist may administer local anesthetics to a patient of record under general supervision if all of the following are true:
(a) The patient is at least eighteen years of age.
(b) The patient has been examined by a dentist licensed pursuant to this chapter within the previous twelve months.
(c) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.
(d) The supervising dentist who performed the examination has approved the patient for the administration of local anesthetics by a dental hygienist under general supervision and documented this approval in the patient's record.
2. Administering nitrous oxide analgesia.
F. A dental hygienist may perform dental hygiene procedures in the following settings:
1. On a patient of record of a dentist within that dentist's office.
2. Except as prescribed in section 32-1289, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.
G. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.
H. For the purposes of this article:
1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment.
2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.
3. "General supervision" means that the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.
4. "Screening" means the determination of an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement
A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues
The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application
A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall be of good moral character, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of one hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.
C. The board may deny an application for licensure or an application for license renewal if the applicant:
1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements
An applicant for licensure shall have passed all of the following:
1. The national dental hygiene board examination.
2. A clinical examination that is completed within five years preceding filing the application and that is either of the following:
(a) The western regional examining board examination.

(b) An examination administered by another state or testing agency that is substantially equivalent to the requirements of this state, as determined by the board. For the purposes of this subdivision, a clinical examination administered by another state or testing agency is deemed to meet the requirements of this subdivision if the clinical examination satisfies the requirements of section 32-1292.01, subsection A, paragraph 1.
3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning
Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled licensees
A. Except as provided in section 32-4301, a license expires on June 30 of every third year. On or before June 30 of every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than three hundred twenty-five dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired or disabled hygienist.
B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30 of the expiration year.
C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent registrations shall be conducted pursuant to this section.
D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-

year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.
E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.
F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who is permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification
It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school
A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.
B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition
A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship for the delivery of dental hygiene services.
B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section for the delivery of dental hygiene services in an affiliated practice relationship:
1. Hold an active license pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Meet one of the following:
(a) Have held an active license as a dental hygienist for at least five years and be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.
(b) Hold a bachelor's degree in dental hygiene, have held an active license for at least three years and be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years preceding the affiliated practice relationship.
C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and shall include at least the following:
1. An identification of the affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

2. An identification of the services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.
D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:
1. Patients who have been assessed by the dental hygienist shall be directed to the affiliated dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated dentist may make any necessary referrals to other dentists.
2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.
3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months of the initial treatment by the dental hygienist.
4. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.
5. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.
E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:
1. A health care organization or facility.
2. A long-term care facility.
3. A public health agency or institution.
4. A public or private school authority.
5. A government-sponsored program.
6. A private nonprofit or charitable organization.
7. A social service organization or program.
F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting not listed in subsection E of this section.
G. Each dentist in an affiliated practice relationship shall:
1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated dental hygienist during the business hours of the affiliated practice dental hygienist.
2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the dental hygienist in each affiliated practice setting in which the dental hygienist performs dental hygiene services under the affiliated practice relationship.
3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.
4. Not permit the provision of dental hygiene services by more than three affiliated practice dental hygienists at any one time.

H. Each affiliated dental hygienist, when practicing under an affiliated practice relationship:
1. May perform only those duties within the terms of the affiliated practice relationship.
2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated dentist.
3. Is responsible and liable for all services rendered by the dental hygienist under the affiliated practice relationship.
I. The dental hygienist and the affiliated dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental hygienist and the affiliated dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the contract termination date.
J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may perform all dental hygiene procedures authorized by this chapter except for any diagnostic procedures that are required to be performed by a dentist. Procedures identified in section 32-1281, subsection B, paragraphs 4 and 5 are subject to the conditions prescribed in section 32-1281, subsection E, paragraph 1.
K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:
1. Additional continuing education requirements that must be satisfied by a dental hygienist.
2. Additional standards and conditions that may apply to affiliated practice relationships.
3. Compliance with the dental practice act and rules adopted by the board.
L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure
After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties
A. A dental assistant may expose radiographs for dental diagnostic purposes under the general supervision of a dentist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.
B. A dental assistant may polish the natural and restored surfaces of the teeth under the general supervision of a dentist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions on successful completion of a board-approved expanded function dental assistant training program completed at an institution accredited by the commission on dental accreditation of the American dental association and on successful completion of an examination in dental assistant expanded functions that is approved by the board.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.
3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.
D. The board may deny an application for a restricted permit if the applicant:
1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.
3. Knowingly made a false statement in the application.
4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.
F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee
A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency and either:
1. The other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:
(a) A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.
(b) An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.
2. The applicant has acquired a certificate or other evidence of successful completion of a board-approved examination not more than five years before submitting an application for licensure pursuant to this chapter.
B. The applicant shall pay a licensure by credential fee of one thousand dollars.

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.
B. A person is deemed to be practicing denture technology who:
1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.
2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.
C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.
D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association
A. A denturist may practice only in the office of a licensed dentist, denominated as such.
B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.
C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.
D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.
E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.
G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties
A. In addition to other powers and duties prescribed by this chapter, the board shall:
1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.
2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.
3. Investigate charges of misconduct on the part of certified denturists.
4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.
B. The board may:
1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.
2. Hire consultants to assist the board in the performance of its duties.
C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant
A. To be eligible for certification to practice denture technology an applicant shall:
1. Be of good moral character.
2. Hold a high school diploma or its equivalent.
3. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.
4. Pass a board approved examination.
B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension
A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
B. The board may deny an application for certification or for certification renewal if the applicant:
1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.
2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.
4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination
An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees
The board shall establish and collect fees, not to exceed the following amounts:
1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues
The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties
A. Except as provided in section 32-4301, a certification expires on June 30 of every third year. On or before June 30 of every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than three hundred dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a disabled or retired status.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires on August 30 of the expiration year.
C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent certifications shall be conducted pursuant to this section.
D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.
E. Each certificate holder must provide to the board in writing both of the following:
1. A primary mailing address.
2. The address for each place of practice.
F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days of opening an additional place of practice.
G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a fifty dollar penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure
A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.
B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting

pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.
C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction
A. An injunction shall issue to enjoin the practice of denture technology by any of the following:
1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.
3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.
B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.
C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification
A person is guilty of a class 2 misdemeanor who:
1. Not licensed as a dentist, practices denture technology without certification as provided by this article.
2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.
3. Fails to obey a summons or other order regularly and properly issued by the board.
4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

32-1298. Dispensing of drugs and devices; conditions; definition
A. A dentist may dispense drugs and devices kept by the dentist if:
1. All drugs are dispensed in packages labeled with the following information:
(a) The dispensing dentist's name, address and telephone number.
(b) The date the drug is dispensed.
(c) The patient's name.
(d) The name and strength of the drug, directions for its use and any cautionary statements.
2. The dispensing dentist enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.
B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.
C. Prior to dispensing a drug pursuant to this section the patient shall be given a written prescription on which appears the following statement in bold type:
"This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."
D. A dentist shall dispense for profit only to his own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. In this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.
E. This section shall be enforced by the board which shall establish rules regarding labeling, record keeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to assure compliance with this section and applicable rules.
F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement
A. The board may establish a confidential program for the treatment and rehabilitation of dentists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.
B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:
1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Periodic reports to the board regarding each dentist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.
D. A dentist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.
E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:
1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

32-1299.21. Definitions
In this article, unless the context otherwise requires:
1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions
A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.
B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:
1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the

board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.
9. Maintain a written or electronic record detailing each location where services are provided, including:
(a) The street address of the service location.
(b) The dates of each session.
(c) The number of patients served.
(d) The types of dental services provided and the quantity of each service provided.
10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.
11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.
B. A mobile dental facility or portable dental unit must:
1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.
2. Have ready access to an adequate supply of potable water.
C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients
A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.
B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.
C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:
1. Pertinent contact information as required by this section.
2. The name of the dentist or dental hygienist, or both, who provided services.
3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.
4. If necessary, referral information to another dentist as required by this article.
D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-16-1203)
Title 9, Chapter 22, Article 7, Standards for Payments

New Section: R9-22-712.90

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: E-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE: November 18, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-16-1203)**
Title 9, Chapter 22, Article 7, Standards for Payments

New Section: R9-22-712.90

The Arizona Health Care Cost Containment System [AHCCCS] is established "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration [Administration], established under A.R.S. § 36-2902(A). This rulemaking seeks to create one new rule in A.A.C. Title 9, Chapter 22, Article 7, related to standards for payments.

Proposed Action

The Arizona Department of Health Services has established outpatient treatment centers [OTCs] as a class of health care institutions. Under R9-10-1019, a subclass of OTCs, freestanding emergency departments [FSED or FSEDs], are authorized to provide emergency department services. The rulemaking relates to hospital-based FSEDs, which are FSEDs operating under the same group license as a hospital. The Administration indicates that FSEDs are relatively new to the state's health care delivery system, as most of the facilities have opened since 2015.

The Administration reimburses outpatient hospital services using the outpatient prospective fee schedule,[1] and that methodology is currently used for hospital-based FSEDs. Under the current billing system, a claim for services provided in a hospital is indistinguishable from a claim for services provided in a hospital-based FSED operated by the same hospital. The Administration states that hospital-based FSEDs do not have the same overhead costs and capabilities as an on-site emergency department, however. The rulemaking establishes a methodology that, in the view of the Administration, provides a more cost effective payment

[1] See R9-22-712.10 through R9-22-712.50.

structure for hospital-based FSEDs. Notably, hospital-based FSEDs are exempt from the rule when established to replace the services of a hospital in a rural area that has closed.

The rule requires hospital-based FSEDs to register separately, with the Administration, from the hospital with which it shares common ownership. This change will allow the Administration to distinguish claims for services from hospital-based FSEDs from services provided by the hospital itself. To reimburse services in a hospital-based FSED, the Administration proposes a variable percentage, based on the level of services provided, of the amount that would be paid for similar services provided as outpatient hospital services. The percentage reductions apply only to level 1, 2, and 3 emergency department services, the majority of which can, in the Administration's view, be addressed by a primary care physician in an office setting.[2]

Exemption or Request and Approval for Exception from the Moratorium

The Administration received an exception from the moratorium on July 15, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general and specific authority for the rule. Under A.R.S. § 36-2903.01(F), the director of the Administration "may adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article [Title 36, Chapter 29, Article 1, Arizona Health Care Cost Containment System]."

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rule is generally clear, concise, and understandable.

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

No. The Administration notes that, based on public comments received in response to its original Notice of Proposed Rulemaking,[3] the Administration filed a Notice of Supplemental Proposed Rulemaking[4] to treat hospital-based FSEDs as a special type of outpatient hospital services, and established the aforementioned reimbursement methodology.

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[2] For an explanation of the variations between levels, please consult the *ED Facility Level Coding Guidelines* published by the American College of Emergency Physicians, available at https://www.acep.org/physician-resources/practice-resources/administration/financial-issues-/-reimbursement/ed-facility-level-coding-guidelines/

[3] See 22 A.A.R. 770, published on April 8, 2016.

[4] See 22 A.A.R. 1945, published on July 29, 2016.

In addition to non-substantive technical changes requested by Council staff, the Board has made the following clarifying changes, based on public comments on the supplemental proposal, to the final rule:

- The phrase "hospital-based" has been added to the title.
- Subsection (C) has been amended to clarify the impact of the rule on claims for services other than the evaluation and management procedure codes for the emergency department visit that may appear on the claims from a hospital-based FSED.
- Subsection (E) has been amended to:
  - Remove an incorrect cross-reference to subsection (B).
  - Clarify that payment rates and methods for hospital-based outpatient departments that are not FSEDs are unaffected by the rule.

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

Yes. The Administration notes that six public comments (five written and one oral) were received in response to the Notice of Supplemental Proposed Rulemaking.[5] The Administration provides a summary of those comments, along with its responses, on pages 9-21 of the Notice of Final Rulemaking. Council staff believes that the Administration has adequately addressed the public comments.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

Yes. While the Administration indicates that no study was relied upon for the rule, pages 5-7 of the Notice of Final Rulemaking outline the secondary sources relied upon by the Administration in its evaluation and justification of the final rule.

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

No. The Administration indicates that the rule is consistent with, and not more stringent than, 42 U.S.C. 1396a(a)(30)(A), under which a state plan for medical assistance must provide methods and procedures related to the use of, and payment for, care and services available, in order to prevent unnecessary utilization, and "to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

[5] Copies of the written comments have been included as an attachment to the Notice of Final Rulemaking.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

No. The rule does not require a permit or license.

8. 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.

9. Conclusion

The Administration requests the usual 60-day delayed effective date for the rule. This analyst recommends approval of the rule.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: E-3**

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

FROM: GRRC Economic Team

DATE: November 18, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-16-1203)**
Title 9, Chapter 22, Article 7, Standards for Payments

New Section: R9-22-712.90

I have reviewed the economic, small business, and consumer impact statement (EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist comments:

In this rulemaking, the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration) is proposing to add a new section to Article 7 that will provide a different reimbursement schedule for services provided by Freestanding Emergency Departments (FSED or FSEDs). The rules in Article 7 address the procedures involved with payments made by AHCCCS as well as payments made to AHCCCS. AHCCCS is Arizona's Medicaid agency that offers health care programs to low-income residents of Arizona.

FSEDs are facilities that provide emergency care in a building that is separate from the sponsoring hospital. AHCCCS is concerned that FSEDs are being promoted as an alternative to primary care physicians. Services in FSEDs that could be provided by a primary care physician are more expensive and provide worse health outcomes for patients.

The core issue is seeking methods to encourage AHCCCS recipients to reduce using an FSED for non-emergency services. Centers for Medicare and Medicaid Services limits the amount of copayments that AHCCCS can use to create incentives for patients to receive care in the most appropriate setting. AHCCCS can reduce the reimbursement rates for non-emergency services in FSEDs in order to alter the incentive structure for hospitals. Lowering the reimbursement rates for non-emergency services reduces the incentive for a hospital to create

more FSEDs to increase non-emergency patient share for services that would be better provided by a primary care physician.

AHCCCS estimates that total emergency department payments for levels 1, 2, and 3 services were $172 million in federal fiscal year 2015. Of this $172 million, AHCCCS estimates that FSEDs received $22 million. The Administration estimates that the reimbursement changes will reduce payments to FSEDs by $3 million of this $22 million. The reductions are spread across levels 1, 2, and 3 services as follows:

- $322,071 for Level 1 Services (11%)
- $974,322 for Level 2 Services (32%)
- $1,705,382 for Level 3 Services (57%)

1. <u>Costs and Benefits for:</u>

a. The implementing agency:

The Administration will benefit from the removal of incentives for a less efficient provision of health care services. The Administration will also be able to more accurately identify and quantify the impacts that FSEDs have on the health care system in Arizona.

b. Political subdivisions:

This rulemaking does not directly impact political subdivisions.

c. Businesses:

Hospitals that operate FSEDs will be impacted by this rulemaking. First, FSEDs will be required to register with AHCCCS separately from the sponsor hospital. The Administration estimates that this process requires roughly thirty minutes. Then, FSEDs will receive a lower reimbursement rate for non-emergency services than on-site emergency departments receive for non-emergency services.

d. Small businesses:

No small businesses are directly impacted by this rulemaking. This rulemaking impacts hospitals with emergency departments that report at least $4 million in gross revenue annually.

e. Consumers directly affected by the rulemaking:

Consumers of health care with coverage through AHCCCS will not be directly impacted by this rulemaking. This rulemaking only directly impacts hospitals by changing the reimbursement rates for FSEDs.

2. Do the probable benefits outweigh the probable costs?

The total quantity of money that AHCCCS spends on the provision of health care will remain roughly constant. If AHCCCS spends less on FSEDs, these funds will still be used on health care services in other environments. From an aggregate economic perspective, it is not relevant if AHCCCS uses funds in FSEDs or in primary care physician offices.

From an efficiency perspective, AHCCCS has determined that levels 1, 2, and 3 services are not most effectively provided in an FSED. While the total amount of money AHCCCS spends on health care will not significantly change, the quantity and quality of health care services received for this money will increase.

Finally, hospitals will be required to register FSEDs as distinct entities from the sponsoring hospital. This is an added minimal burden to hospitals. AHCCCS estimates that each hospital that operates an FSED will incur roughly half an hour of additional registration processing. This is the primary cost that must be weighed against the benefits on improved health care outcomes and the benefits of a more efficient provision of health care services through AHCCCS.

When comparing the costs of an additional half an hour of labor to the benefits of more efficient and effective health care, the probable benefits outweigh costs.

3. Analysis of methods to reduce the small business impact:

This rulemaking does not directly impact small businesses.

4. The probable effect on state revenues:

The Administration notes that it cannot distinguish FSED reimbursement claims from on-site hospital emergency department claims. Without this ability, AHCCCS cannot provide an accurate estimate. Regardless, this new rulemaking will have a negative impact on overpayments to FSEDs, which should be a positive effect on AHCCCS solvency.

5. Analysis of any less intrusive or less costly alternative methods:

The Administration notes that alternatives were not considered because altering the reimbursement schedule for FSEDs is the most efficient method of achieving the regulatory objective.

A potential alternative could be to increase the copays for patients who use emergency departments for non-emergency conditions, but there are two major drawbacks to this alternative. First, AHCCCS is very limited in its ability to charge copays to clients due to Medicaid regulations. Also, increasing barriers to health care for low-income residents is antithetical to the mission of AHCCCS.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Administration used Uniform Accounting Reports as well as industry articles to develop the EIS. Specific industry articles are cited in the Notice of Final Rulemaking.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the proposed rule amendments be approved.

AHCCCS
Arizona Health Care Cost Containment System

Douglas A. Ducey, Governor
Thomas J. Betlach, Director

October 17, 2016

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

The Arizona Health Care Cost Containment System (AHCCCS) Administration is submitting the attached regular rule package for your consideration:

- 9 A.A.C. 22, Article 7, Standards for payments.

AHCCCS is providing the following information as required in A.A.C. R1-6-201:

a. The close of record date was 5 p.m., September 6, 2016.

b. Definitions of terms contained in statute or other rules and used in the rule are either cross-referenced or attached.

c. The rulemaking does not relate to a 5-year-review.

d. The rulemaking contains no new fees.

e. The rulemaking contains no fee increase.

f. Documents enclosed:
   - Notice of Final Rulemaking, including the preamble, table of contents for the rule, and text of the rule;
   - Economic, small business, and consumer impact statement;
   - If applicable, copy of definitions of terms, contained in statutes or other rules, used in the rule.

g. All written comments submitted by the public concerning the proposed rule,

h. The adopted rules contain no materials incorporated by reference,

i. The adopted rules do not require a permit,

j. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.

k. A person has not submitted an analysis to the agency that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states, and

l. The AHCCCS Administration has not notified the Joint Legislative Budget Committee (JLBC) of a number of new full-time employees (FTE's) since none were required as a result of this rulemaking as required by A.R.S. § 41-1055.

m. The AHCCCS Administration has requested and received approval to proceed with this rulemaking from the Governor's Office in reference to the rulemaking moratorium described under Executive Order 2016-03.

I certify that the information provided in number 7 of the Preamble is accurate. An effective date 60 days from the filing with the Secretary of State is requested. I respectfully request that the Council consider and approve the adopted rules.

Sincerely,

Matthew Devlin
Assistant Director - Office of Administrative Legal Services
Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

PREAMBLE

1. Articles, Parts, or Sections Affected **Rulemaking Action:**

R9-22-712.90 New Section

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

Authorizing statute: A.R.S. § 36-2903.01

Implementing statute: A.R.S. § 36-2903.01

3. The effective date of the rule:

The agency selected an effective date of 60 days from the date of filing with the Secretary of State as specified in A.R.S. § 41-1032(A).

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

Notice of Rulemaking Docket Opening: 22 A.A.R. 784, April 8, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 770, April 8, 2016

Notice of Public Information: 22 A.A.R. 1067, May 6, 2016

Notice of Supplemental Proposed Rulemaking: 22 A.A.R. 1945, July 29, 2016

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

Name: Gina Relkin

Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSrules@azahcccs.gov

Web site: www.azahcccs.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:

This rulemaking is proposed as part of the AHCCCS Administration's obligation under the federal Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A), to establish methods for the reimbursement of health care providers that are consistent with efficiency, economy, quality of care, and adequate access to care for persons enrolled in AHCCCS, Arizona's implementation of the Medicaid program. Hospitals that elect to participate in the AHCCCS program are required to execute a provider participation agreement. A.R.S. § 36-2904(D). As such, the relationship between the AHCCCS Administration and health care providers is contractual in nature. In general, the terms of State contracts are exempt from rulemaking. A.R.S. § 41-1005(A)(14). However, statutory provisions specific to the AHCCCS program require the agency to adopt rules regarding payment for hospital services. A.R.S. § 36-2903.01(G). This rulemaking distinguishes services provided by a hospital-based freestanding emergency department from other hospital services and establishes the payment methodology for services provided by hospital-based freestanding emergency departments.

The Arizona Department of Health Services has established a class of health care institutions known as outpatient treatment centers (OTCs). See generally, A.A.C. Title 9, Chapter 10, Article 10. A subclass of OTCs is authorized to provide emergency department services. A.A.C. R9-10-1019. In this rulemaking, OTCs licensed to provide emergency department services are referred to as "freestanding emergency departments" (FSEDs). FSEDs are relatively new to the Arizona health care delivery system with most of the facilities opening since 2015. A single license may be issued for a hospital which also operates satellite facilities, such as FSEDs, at the request of the hospital. A.R.S. § 36-422(F). Under the billing methodologies currently in place, a claim for services provided in the hospital is indistinguishable from a claim for services provided in a FSED operated by the same hospital when a single group license is issued because provider registration is based on that license.

For ease of reference, throughout this preamble, the terms "freestanding emergency

department" and "FSED" refer to hospital-based freestanding emergency departments except where the context explicitly states otherwise. Emergency departments that are located within a hospital are referred to as "on-site emergency departments" or "on-site EDs."

Outpatient hospital services are reimbursed using the outpatient prospective fee schedule described in A.A.C. R9-22-712.10 through R9-22-712.50. Because hospital-based FSEDs have been registered under the same license as the hospital operating the FSED, that reimbursement methodology has been used even though the hospital-based FSEDs do not have the same overhead costs and capabilities as an on-site emergency department according to secondary sources reviewed by the AHCCCS Administration (please see specific reference in the responses to public comments). They often do not have the same equipment and do not have the ability to immediately admit persons requiring inpatient care. By the very nature of being a FSED, transportation services are required when a patient requires inpatient care. Services provided by an OTC that is not hospital-based are reimbursed based on a capped fee schedule established by the AHCCCS Administration which also applies to services provided in any clinic or physician's office which, in general, is a lower total reimbursement than that provided for outpatient hospital services and associated professional (e.g., physician) services.

FSEDs are required to operate 24 hours a day, seven days a week: hours that exceed those of most urgent care clinics or physician's offices. Media coverage and promotional materials published by hospitals presenting these facilities emphasize the convenience, shorter wait times, and extended hours of FSEDs. Most offer patients the ability to schedule an appointment for a visit to the FSED (see, for example, the site maintained by Dignity Health at www.dignityhealth.org/arizonageneral/services/er-services and by Abrazo Community Health Network at www.abrazohealth.com/our-services/emergency-trauma). Clearly, scheduling an appointment is incongruous with the generally understood concept of an emergency. Dignity Health has sent direct mailings promoting its hospital-based freestanding emergency departments, offering one first aid kit per household per mailer when presented at the specific FSED location. Taken as whole, these promotional activities have the effect of misleading patients to conclude that a visit to the FSED is an appropriate and more convenient alternative to treatment by a primary care practitioner in an office setting.

For example, the website maintained by Honor Health for the Sonoran Health and Emergency Center states that the FSED offers treatment for multiple conditions including "headache" and "fever." (see https://www.honorhealth.com/locations/emergency/sonoran-health-and-emergency-center). Treatment of non-emergency conditions by healthcare providers other than the patient's primary care practitioner restricts the ability of the primary care practitioner to coordinate care for the patient, potentially leading to sub-optimal health outcomes. Federal law significantly restricts the ability of the AHCCCS program to use copayments to discourage the low-income population it serves from inappropriate use of emergency departments including FSEDs. However, as justification for its final rule authorizing imposition of higher Medicaid copayments for nonemergency use of the emergency room, the Centers for Medicare and Medicaid Services stated that "The goal underlying the policy is to ensure that the *right* care is provided at the *right* time in an *appropriate* setting." (emphasis added) 78 FR 42160 at 42277. The federal government also noted that "…it is important for states to have options to incentivize care in the most appropriate settings and to encourage individuals to develop a regular source of care, to the extent that beneficiaries are assured timely access to needed care" 78 FR 42160 at 42276. The AHCCCS Administration is reasonably concerned about use of FSEDs as a substitute for services that are more appropriately and cost-effectively rendered in a clinic or physician's office, and the proposed rule furthers the goal of delivery and payment of the most appropriate care in the most appropriate setting.

This rulemaking requires hospital-based FSEDs to register separately from the hospital with which it shares common ownership regardless of whether both are listed as part of a single group license so that the AHCCCS Administration can clearly distinguish claims for services from hospital-based FSEDs from claims for services provided by the hospital itself. The rule provides that reimbursement for services in a hospital-based FSED is a percentage (that varies depending on the level of services provided) of the amount that would otherwise be paid for similar services provided as outpatient hospital services but does not include the adjustment in A.A.C. R9-22-712.35 that accounts for the unique costs of services provided in a hospital outpatient setting but which are not applicable to FSEDs. The percentage reductions are applied to level 1, 2, and 3 emergency department visits, many of which can

be addressed by a primary care physician in an office setting which offers better continuity of care at a lower cost.

The rulemaking also includes an exception that permits the application of the adjustment applicable to the hospital in instances where a FSED is established to replace the services of a hospital that has closed in a rural area where appropriate local care might not otherwise be available.

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:

A study was not referenced or relied upon when revising these regulations other than secondary sources referenced in the responses to comments and the cost estimations included in the economic, small business and consumer statement submitted to the Governor's Regulatory Review Council. The term "study" as used in Title 41, Chapter 6, of the Arizona Revised Statutes is not defined. Neither is that term defined in Title 1 of the Arizona Administrative Code or any guidance published by the Arizona Secretary of State or the Governor's Regulatory Review Council. However, both the statutory and regulatory provisions regarding the contents of a "preamble" require disclosure of "where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material." A.R.S. § 41-1001(16); A.A.C. R1-1-602(B)(5)(g). This suggests that a "study" is a written document that analyzes a collection of objective data. The AHCCCS Administration did not rely on any written documents that are a primary source describing the collection and analysis of data. However, the AHCCCS Administration did review several secondary sources that appeared in industry publications discussing freestanding emergency departments. Several, if not all, of these secondary sources include references to studies conducted by entities other than the authors of the secondary sources. As such, the AHCCCS Administration is not aware of where the public can view the data underlying the primary sources referenced in the secondary sources. The following is a list of the secondary sources relied upon by the AHCCCS Administration in its evaluation and justification for this Notice of Final Rulemaking including where they can be found on the internet:

- Ayers, Alan A. "Understanding the Freestanding Emergency Department Phenomenon." The Journal of Urgent Care Medicine. February 2014. http://www.jucm.com/understanding-the-freestanding-emergency-department-phenomenon/2/.
- "How the Freestanding Emergency Department Boom Can Help Patients," New England Journal of Medicine. February 18, 2016 http://catalyst.nejm.org/how-the-freestanding-emergency-department-boom-can-help-patients
- Goodman, Matt. "Are Freestanding Emergency Rooms Driving Up Costs?" May 2016 http://www.dmagazine.com/publications/d-ceo/2016/may/freestanding-emergency-rooms/
- Dignity Health website at www.dignityhealth.org/arizonageneral/services/er-services
- Abrazo Community Health Network website at www.abrazohealth.com/our-services/emergency-trauma
- Honor Health website at https://www.honorhealth.com/locations/emergency/sonoran-health-and-emergency-center
- Do Freestanding Emergency Departments Make Financial Sense? http://www.freemanwhite.com/do-freestanding-emergency-departments-make-financial-sense/
- Warren, David. "As the Number of Freestanding ERs Grows, so does Scrutiny." Associated Press. August 21, 2016. http://bigstory.ap.org/article/39dffacdeddc4eee888eeca1924f50bf/number-freestanding-ers-grows-so-does-scrutiny
- ED Facility Level Coding Guidelines published by the American College of Emergency Physicians https://www.acep.org/physician-resources/practice-resources/administration/financial-issues-/-reimbursement/ed-facility-level-coding-guidelines/
- AHCCCS website at https://azahcccs.gov/PlansProviders/RatesAndBilling/FFS/
- Shlachter, Barry. "As Free-Standing ERs' Business Grows, so Does Backlash." http://www.star-telegram.com/news/business/article3868661.html.

Due to federal and state requirements, the raw data used for the estimates (claims and encounter data) cannot be made publicly available. However, information regarding fee

schedule payments to hospitals, urgent care centers, and physicians are available on the agency's public website (www.azahcccs.gov/PlansProviders/RatesAndBilling/FFS/). In addition, data regarding historical AHCCCS payments to hospitals is also available through the public website at:https://azahcccs.gov/PlansProviders/RatesAndBilling/hosptialReimbursement.html) through the link on that page to the "summary of all hospital payments." As hospital-based freestanding emergency departments are currently indistinguishable in the AHCCCS claims data from on-site hospital emergency departments, utilization data specific to these facilities is not available.

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:

This rulemaking does not diminish a previous grant of authority of a political subdivision.

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

As noted earlier in this preamble, the purpose of this rule is to establish the payment methodology for hospital-based FSEDs. As such, it is not a rule that is designed or intended to directly change any particular conduct. The rule does reflect the AHCCCS Administration's efforts to contain costs and establish payment methodologies that do not intentionally or unintentionally encourage health care providers to deliver services in ways that are not cost effective. Absent this rule, the AHCCCS Administration expects - as a result of the increasing availability of FSEDs - an increase in the amount of taxpayer dollars spent on payments to FSEDs for services that could be addressed more cost effectively at an urgent care center or physician's office.

Hospital-based FSEDs, a subclass of outpatient treatment centers, are relatively new to Arizona. About 12 such facilities have been identified as currently existing, although the administration has information that additional hospital-based FSEDs are planned for the future. Because the administration cannot currently distinguish services provided by hospital-based FSEDs from other outpatient hospital services, the AHCCCS Administration presumes that services provided at these facilities have been reimbursed as specified in A.A.C. R9-22-712.10 through R9-22-712.50. While this proposed rulemaking reduces the

payments for levels 1, 2 and 3 – services that could usually be provided more efficiently and cost effectively by a primary care physician – information provided to the administration by an operator of several of the hospital-based FSEDs suggests low utilization of services at those levels of care.

As such, the administration assumes that the economic impact of this supplemental proposed rulemaking on hospital revenues will be minimal based on the following. Approximately eighty general acute care hospitals have participation agreements with AHCCCS, and these are the entities most likely to expand existing emergency departments through the creation of FSEDs. However, none of those hospitals are small business as defined by A.R.S. § 41-1001(21). As stated in greater detail in the economic, small business, and consumer impact statement submitted to the Governor's Regulatory Review Council, the AHCCCS Administration anticipates that the reimbursement impact on hospital providers will be minimal. AHCCCS is aware of approximately 12 hospital-based freestanding emergency departments in Arizona. Assuming those 12 facilities realize a volume of Medicaid-eligible ED visits proportional to their number, it is estimated that reimbursements for levels 1-3 visits to these facilities under the current fee schedule would equal at most 1.1% ($22,730,608) of total acute hospital reimbursements (more than $2 billion in FY 2015), and that the incremental percentage reductions resulting from this rulemaking would reduce total reimbursements for those 12 facilities by approximately $3 million annually.

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

The Notice of Proposed Rulemaking, published at 22 A.A.R. 770 on April 8, 2016, proposed that services provided by outpatient treatment centers, including hospital-based FSEDs, are not outpatient hospital services which are reimbursed as specified in A.A.C. R9-22-712.10 through R9-22-712.50. Instead, the administration proposed that those services be reimbursed under the capped fee schedule established by the AHCCCS Administration which schedule is exempt from the requirements of rule-making under A.R.S. § 41-1005(A)(9). Public comments received in response to the Notice of Proposed Rulemaking requested that the Proposed Rulemaking describe the reimbursement methodology in the proposed rule. In response, the Administration filed a Notice of Supplemental Proposed Rulemaking, published

at 22 A.A.R. 1945 on July 29, 2016, treats hospital-based FSEDs as a special type of outpatient hospital services which are reimbursed based on a modified version of the methodology for other outpatient hospital services.

Based on comments received on the Notice of Supplemental Proposed Rulemaking, the AHCCCS Administration has also made some clarifying changes to the Final Rule:

- The phrase "hospital-based" has been added to the title of the rule to clarify that the rule only applies to FSED that have common ownership with a hospital.
- Subsection (E) of the rule has been amended to remove an incorrect cross-reference to subsection (B); instead and in addition, subsection (E) has been amended to clarify that the payment rates and methods for hospital-based outpatient departments other than FSEDs are not affected by this rulemaking.
- Subsection (C) has been amended to clarify the impact of this rulemaking on claims for services other than for the evaluation and management procedure codes for the emergency department visit that may appear on the claims from a hospital-based FSED.

In addition, non-substantive technical changes have been made at the request of staff at the Governor's Regulatory Review Council.

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

Dignity Health, September 6, 2016	
1.	*Comment:* FSEDs are not urgent care centers. Laws and regulation mandate FSEDs and On-Site emergency departments be alike.
	Response: AHCCCS agrees that FSEDs are not urgent care centers and that FSEDs must meet minimum standards applicable to all emergency departments; however, this does not mean that on-site emergency departments and FSEDs are the same. Obviously, FSEDs lack on-site inpatient admission capabilities, do not have intensive care capabilities, and are unprepared to handle volume influxes from natural and man-made disasters. See Ayers, Alan A. "Understanding the Freestanding Emergency Department Phenomenon." The Journal of Urgent Care Medicine. February 2014. http://www.jucm.com/understanding-

	the-freestanding-emergency-department-phenomenon/2/. On-site EDs have immediate access to inpatient cardiac catheterization services – a service often required to promptly treat patients who present with complaints of chest pain – while FSEDs do not. Another commenter, AzHHA, noted that some of the FSEDs do not have MRI services available or have them easily accessible.
2.	*Comment:* Dignity Health acknowledges that more can be done to educate patients regarding accessing the appropriate level of care, but Dignity has found no promotional materials that promote primary care through Dignity FSEDs.
	Response: The AHCCCS Administration agrees that many factors, including lack of patient education, lead to inappropriate utilization of emergency department visits, and the AHCCCS Administration appreciates Dignity Health's commitment to improving patient knowledge regarding accessing the appropriate level of care. Nevertheless, it is not prudent for the AHCCCS Administration to maintain a reimbursement methodology that facilitates the growth of FSEDs. Dignity Health acknowledges in its own comments that Level 1 and Level 2 services "are similar to encounters that could be treated in a physician's office or primary health center." AHCCCS believes that most Level 1 services, many Level 2 services, and even some Level 3 services should not be provided in an ED, nor should taxpayers bear the increased costs of treating such services in more costly ED settings. Conditions such as insect bites (level 1), sunburns (level 2), and fevers that respond to ibuprofen (level 3) should not typically be provided in an ED. See the *ED Facility Level Coding Guidelines* published by the American College of Emergency Physicians https://www.acep.org/physician-resources/practice-resources/administration/financial-issues-/-reimbursement/ed-facility-level-coding-guidelines/ . While the expansion of FSEDs expands access to emergency care, there is no evidence of an inability to access emergency care through on-site emergency departments, and the expansion of FSEDs increases opportunities for inappropriate utilization of emergency services without a commensurate benefit.

3.	*Comment:* The proposed rule implies, without supporting data, that AHCCCS members will use FSEDs inappropriately rather than seeking care from their primary care provider. We believe the reasons why AHCCCS members seek care at any emergency room for non-emergent needs are numerous and complex and should not be solely attributed to the availability of FSEDs. The elimination of FSEDS will not change behavior.
	Response: The AHCCCS Administration agrees that many factors lead to inappropriate utilization of emergency department visits. All commenters agree that there is some level of inappropriate use of the ED. The proliferation of FSEDs will exacerbate the problem. The AHCCCS Administration lacks data specific to FSEDs and Medicaid recipients because, under current AHCCCS requirements, a claim from hospital-based FSEDs is not distinguishable from a claim from the hospitals' on-site ED. However, other sources support the AHCCCS Administration's concern. For example: • According to Freeman White (a healthcare consulting and design firm), FSEDS do not appear to lower ED visits at main hospital EDs but rather tend to tap into pent up demand. They are "a last ditch attempt to bolster inpatient volumes." See, *Do Freestanding Emergency Departments Make Financial Sense?* http://www.freemanwhite.com/do-freestanding-emergency-departments-make-financial-sense/ • An analysis by the Colorado-based Center for Improving Value in Health Care found that the cost of treating someone in in an ED exceeds that in an urgent care center by $400-$800. Of the top ten reasons for seeking care at a FSED, seven were non-life threatening conditions such as sore throats and bronchitis. See, Warren, David. "As the Number of Freestanding ERs Grows, so does Scrutiny." *Associated Press.* August 21, 2016. http://bigstory.ap.org/article/39dffacdeddc4eee888eeca1924f50bf/number-freestanding-ers-grows-so-does-scrutiny • Dignity Health's comments state that the admission rate from FSEDs tends to be lower than at on-site EDs, suggesting that there may be a greater percentage of non-

	emergency use at FSEDs compared to on-site emergency departments. • FSEDs often differentiate themselves from on-site EDs by patient experience and shorter wait times. See Ayers, Alan A. "Understanding the Freestanding Emergency Department Phenomenon." The Journal of Urgent Care Medicine. February 2014. http://www.jucm.com/understanding-the-freestanding-emergency-department-phenomenon/2/. While this is certainly not a negative thing, this can encourage non-emergency usage among Medicaid recipients since many do not have deterrent to using FSED services such as a higher co-pay.
4.	*Comment:* The proposed rate methodology is arbitrary. AHCCCS did not evaluate negative impacts on delivery systems or member utilization patterns. Neither did AHCCCS analyze the cost of FSED operations.
	Response: The proposed payment methodology provides for the identical base payment for Levels 4 and 5, which the Administration acknowledges to be primarily true emergencies. For each of Levels 1 -3, the proposed based payment to an FSED is more than the payment for like services when provided in a physician's office or Urgent Care clinic. There are numerous resources suggesting that it is less expensive to run a FSED than an on-site ED. For example: • In a webinar, Greg Davis, Chief Strategy Officer for the Arizona Market for Dignity Health stated "I look at these [FSED] facilities as a lower cost setting than our hospital based emergency departments." Greg Davis, Chief Strategy Officer for the Arizona Market for Dignity Health and Donald Adam, Chief Corporate Officer of Adeptus Health. "Freestanding ERs: A Disruptive Force for Health Systems' Ambulatory Care Strategy." Sponsored by Adeptus Health. https://www.youtube.com/watch?v=cf7fftn9cbM. Published June 15, 2016. • The New England Journal of Medicine recently stated "FSEDs can charge the same fees with a fraction of the overhead costs required to run a full-service hospital" See, Harish, Nir. "How the Freestanding Emergency Department Boom Can Help Patients,"

	New England Journal of Medicine. http://catalyst.nejm.org/how-the-freestanding-emergency-department-boom-can-help-patients/. February 18, 2016. • A 2015 congressional briefing by the Medicare Advisory Commission found that it takes some independent ERs just 20 patients a day to turn a profit. See, Goodman, Matt. "Are Freestanding Emergency Rooms Driving Up Costs?" http://www.dmagazine.com/publications/d-ceo/2016/may/freestanding-emergency-rooms/. May 2016. • The CEO of Baylor Emergency Medical Centers, Dr. John Wood, has been quoted as saying, "for the cost of an 80-bed hospital, we can build 10 ER centers," See, Shlachter, Barry. "As Free-Standing ERs' Business Grows, so Does Backlash." http://www.star-telegram.com/news/business/article3868661.html. In addition, consistent with federal requirements, AHCCCS is required to submit to CMS an analysis of the impact of restructuring provider payments on enrollees' access to care. Historical analyses of access to care have not identified any problems with access to hospital services or emergency department services. See reports posted at https://azahcccs.gov/PlansProviders/RatesAndBilling/FFS/. As such, there is no evidence suggesting that expansion of ED services are necessary to ensure AHCCCS enrollees have adequate access to care.
5.	*Comment:* Dignity Health acknowledges that patients at FSEDs must be transferred when inpatient care is required; however, it also noted that on-site EDs also transfer patients to other hospitals depending on acuity and specialty.
	Response: The Administration acknowledges that transfers sometimes occur at both FSEDs and on-site locations. However, many, if not most, admissions from an FSED will require two AHCCCS covered transports – one to the FSED and another from the FSED to the hospital when inpatient care is required. This, obviously, is not true of on-site emergency departments. The commenter acknowledges that their own data shows that patients

	presenting at FSEDs have lower acuity than at on-site EDs. Research shows that only 3-5% of patients at FSEDs are transferred to hospitals compared to at least 15% being admitted at on-site locations (See, Ayers and Harish, *Id.*). These statistics support the AHCCCS administration's concern that higher non-emergency use occurs at FSEDs.
6.	*Comment:* The proposed rulemaking does not comply with the Arizona Administrative Procedures Act, specifically requirements in A.R.S. § 41-1055.
	Response: The commenter incorrectly states the requirements of the Arizona Administrative Procedures Act. First, none of the requirements of A.R.S. § 41-1055(B) are applicable to a Notice of Supplemental Proposed Rulemaking. That subsection sets forth the requirements for the economic, small business and consumer impact statement that must accompany the Notice of Final Rulemaking. See A.R.S. § 41-1052(A); A.A.C. R1-1-602(C)(5). A *proposed* rulemaking need only include a "preliminary *summary* of the economic, small business, and consumer impact" (emphasis added). See A.A.C. R1-1-502(B)(12). The required contents of such a summary are listed in A.R.S. § 41-1055(A). The Notice of Supplemental Proposed Rulemaking meets those requirements. Under subsection (A), the summary should identify the conduct and the frequency of occurrence that the rule is designed to change, the harm resulting from the conduct, the likelihood it will continue, the estimated change in frequency, and a summary of the impact statement. However, not every rule has its purpose changing conduct. Consistent with A.R.S. § 36-2903.01(G), the AHCCCS Administration is required to adopt rules regarding payments to hospitals that contract with the AHCCCS Administration. This is what this rulemaking does. State law requires that the AHCCCS Administration, like every State agency, must operate its program within its appropriation. A.R.S. § 36-2903(P). Likewise, federal law requires that the AHCCCS Administration establish payment rates and methodologies that are "consistent with efficiency, *economy*, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. 1396a(a)(30)(A). It is a fundamental objective of the AHCCCS program to

	contain costs and minimize the burden on Arizona taxpayers. The preamble to the Notice of Supplemental Proposed Rulemaking clearly identifies reimbursement of hospital-based FSED as its topic, clearly identifies the AHCCCS Administration's concern that the growth of FSED will exacerbate the problem of inappropriate and costly use of emergency departments, identifies that taxpayers are currently funding services at FSED that could be provided more economically in other settings, and states that the taxpayers will be harmed if the current billing practice continues.
7.	*Comment:* Arizona law requires that all rulemaking must be evidence-based.
	Response: Dignity Health in its own comments acknowledges that this is an inaccurate statement of the law. While a description of the data relied on as part of rulemaking should generally be included in the economic, small business and consumer impact statement included with the Notice of Final Rulemaking, the statute also acknowledges that this is not always possible. See A.R.S. 41-1055(C) ("If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize 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.")
8.	*Comment:* Subsection (F) of proposed R9-22-712.90 creates an incentive for a hospital to transfer to a non-affiliated hospital which could negatively impact coordination of care with the patients PCP because a transfer from an FSED to an affiliated hospital results in no payment for the services rendered at the FSED.
	Response: The AHCCCS Administration believes it is unlikely that a hospital system would transfer an FSED patient to an unaffiliated hospital when doing so would be contrary to the best interest of the patient, just so the hospital system could bill separately for the ED visit rather than having the cost of the ED reimbursed as part of the inpatient stay at the

	affiliated hospital. With respect to on-site EDs, it has been the long-standing policy of AHCCCS (as reflected in both the administrative rules applicable to payments under tier and DRG), that the costs for ED services are reflected in the tier/DRG payment when there is an inpatient admission directly from the ED to the "same" hospital. Similarly, when the admission is from a hospital based FSED to a hospital with a common ownership interest, the cost of the FSED visit is recovered through the DRG payment. Based on this comment, AHCCCS will be reviewing its policy of separate reimbursement of on-site ED visits when there is an admission to a physically separate hospital that shares common ownership. Any changes will be reflected in separate rule making.
9.	*Comment:* Dignity Health concludes that AHCCCS has proposed this regulation solely to penalize Dignity Health alone, for participating in the development of FSEDs.
	Response: This proposed rulemaking applies to all current and future hospital-based FSEDs. At least four other hospital systems in Arizona also operate FSEDs. The rulemaking is not targeted at Dignity Health.
10.	*Comment:* Subsection E of the proposed rule removes all hospital-based outpatient treatment centers from the outpatient capped fee schedule otherwise applicable under R9-22-712.10 through 712.50. Not all hospital-based OTC's are FSEDs
	Response: The AHCCCS Administration agrees. The preamble to the Notice of Supplemental Proposed Rulemaking reflects the intention of the AHCCCS Administration to establish payment rules for services provided at FSEDs. Subsection (E) was intended to apply only to non-hospital-based FSEDs and not to other hospital-based OTCs. The final rule has been modified to reflect this.
11.	*Comment:* Subsection (D) of the proposed rule appears to establish an exception applicable to only one rural FSED. The rule should not dissuade other hospitals from establishing FSEDs in underserved communities.
	Response: The rule exempts prospectively any hospital-based FSED that opens in any rural

	setting where the only hospital-based ED has closed after January 1, 2015. This addresses the AHCCCS Administration's concern for ensuring appropriate ED access in light of the national trend of rural hospital closures.
12.	*Comment:* Level 3 FSED visits should be fully compensated because level 3 visits require specialized immediate diagnostic tools that are generally only available in an ED setting.
	Response: The AHCCCS Administration agrees that many – but not all – level 3 visits require the resources found in an ED setting. This is reflected in the lowest percentage reduction (10%). However, not all level 3 visits require those resources. According to the ED Facility Level Coding Guidelines published by the American College of Emergency Physicians, level 3 visits include visits for fevers that respond to antipyretics (e.g., aspirin).
Arizona Hospital & Healthcare Association, September 10, 2016	
13.	*Comment:* We have serious concern that—while well-intentioned—the proposed rule will harm access to emergency care in medically underserved areas of the state while doing little to address the underlying causes of inappropriate use of emergency department (ED) services by AHCCCS members.
	Response: This rulemaking does not prohibit or restrict the opening of FSEDs in either rural or urban locations. The rule simply establishes the rate of payment for FSED services. Providers are free to make independent business judgments regarding the establishment of new FSEDs. The proposed payment methodology provides for the identical base payment for Levels 4 and 5, which the Administration acknowledges to be emergencies. And for each of Levels 1 -3, the proposed base payment to a FSED is more than the payment for like services when provided in a physician's office or Urgent Care clinic. The Administration does not believe, nor is there any evidence to support, that this payment methodology will negatively impact access to care to emergency department services. Subsection (D) addresses the concern in rural areas where the only hospital-based ED has closed. This is consistent with other AHCCCS payment methodologies that treat urban and rural settings differently. The rule does not encourage hospitals to establish

	FSEDs where ED services already exist thereby limiting opportunities for inappropriate use of FSEDs.
14.	*Comment:* We also dispute a number of assumptions the Administration makes about hospital-based FSEDs in the Preamble, including statements about the capabilities of these facilities, their role within the larger delivery system, and how they hold themselves out to their respective communities. While some of these statements may be true for certain FSEDs in the metro Phoenix area—where the garnering of market share and/or marketing objectives may be a motivating factor—they should not be generalized to all hospital-based FSEDs, particularly those located in rural and medically underserved areas.
	Response: Please see the responses to comment number 1 regarding FSED capabilities, number 5 regarding transportation for inpatient care, and number 4 regarding access to care.
15.	*Comment:* We have not seen promotional materials that present FSED as an alternative to primary care. We have queried our members as to whether they have held out their FSED services as an appropriate alternative to primary care and they have responded with a resounding "no."
	Response: Please see the response to comment number 2.
16.	*Comment:* The proposed payment reductions do not adequately address the fixed costs of all services provided at the FSED, especially those located in rural areas.
	Response: Federal law, 42 CFR 1396a(a)(30)(A) directs the State Medicaid agency to establish rates that are consistent with efficiency, economy, quality care, and access to care. In essence, federal law requires that the State pay no more or no less than necessary to assure adequate access to care. The law does not require the State to establish rates that individually meet the fixed costs of each cost center of a hospital. As the commenter noted, for level 4 and level 5 ED visits the payment to a FSED is the same as the payment to an on-site ED. The Administration does not believe, nor is there any evidence to support, that this payment methodology will materially impact aggregate hospital revenues or, more

	importantly, negatively impact access to care to emergency department services.
17.	*Comment:* The Preamble does not identify any data or studies used by the Administration to justify the proposed payment changes, including development of the proposed methodology, which makes it impossible to evaluate the reasonableness of this proposal.
	Response: Please see the response to comment number 7.
18.	*Comment:* The Administration should explain how it determined the appropriateness of this particular fee schedule, which will allow the public and other stakeholders, including policymakers, to more effectively evaluate the proposal.
	Response: Please see the responses to comments number 4 and 13.
19.	*Comment:* In subsection (E) it appears the cross-reference to subsection (B) should refer to subsection (A).
	Response: The AHCCCS Administration agrees and has changed the cross-reference in the final rule.
20.	*Comment:* Subsection (E) states that all hospital-based outpatient treatment centers will be reimbursed based on the non-hospital fee schedule. We recommend limiting the application of subsection (E) to FSED not associated with hospitals.
	Response: Please see the response to comment number 10. Subsection (E) was intended to apply only to non-hospital-based FSEDs and not to other hospital-based OTCs. The final rule has been modified to reflect this.
21.	*Comment:* Subsection C should clarify whether the proposed schedule for hospital-based FSEDs applies to all CPT codes, including ancillary service codes. We recommend excluding the latter codes and retaining their current reimbursement rate.
	Response: AHCCCS agrees that the entire claim is not subject to the percentage reduction. The reductions are applied only to the evaluation & management procedure codes for

	Levels 1-3. Subsection C has been modified to reflect this more clearly.
Susan Watchman of Gammage & Burnham, September 6, 2016 (Public Hearing)	
22.	*Comment:* Subsection (E), as written, sweeps in other kinds of provider-based outpatient clinics and suggests that their billing would change from being UV billers reimbursed under hospital outpatient fee schedule RF133 into 1500 billers
	Response: Please see the response to comments 10 and 20. Subsection (E) was intended to apply only to non-hospital-based FSEDs and not to other hospital-based OTCs. The final rule has been modified to reflect this.
23.	*Comment:* Subsection (D) carves out a very narrow rule exception that appears to address just one situation. FSEDs can serve a purpose in some of our underserved areas and perhaps even in urban areas, but are so disperse. By narrowing the exception so much you may actually be acting counter to desires to increase access to care in those areas
	Response: Please see the response to comment number 11.
Health System Alliance of Arizona, September 6, 2016.	
	Comment: The proposed rule was promulgated without the historical cost study on impacted systems.
	Response: Please see the response to comments number 3, 4, and 7.
Abrazo Community Health Network, September 6, 2016	
	Comment: Abrazo FSEDs are not designed or marketed as alternatives to primary care or urgent care.
	Response: Please see the response to comment number 2.
	Comment: Abrazo FSEDs are equipped with the same diagnostic equipment as the hospital attached EDs.

	Response: Please see the response to comment number 1.
	Comment: Abrazo is concerned that the proposed reductions to FSED reimbursement will place financial stress on the hospital.
	Response: Please see the response to comment number 16. In addition, please see the economic, small business and consumer statement submitted to the Governor's Regulatory Review Council along with the Notice of Final Rulemaking. The AHCCCS Administration estimates that the adjustment to payments to hospital-based FSEDs represents approximately three million dollars annually to all hospitals operating such facilities.
Honor Health Network, September 1, 2016	
	Comment: Savings to AHCCCS as a result of this change in payment methodology should be used to increase reimbursement rates for hospitals in order to enhance quality of care and efficient delivery of services.
	Response: The AHCCCS Administration appreciates the suggestion; however, the use of program savings is beyond the scope of this rulemaking.

12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.

There are no other matters prescribed by statute applicable to rulemaking specific to this agency, to this specific rule, or to this class of rules.

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 the provider to obtain a permit or a general permit.

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

The rule must comply with 42 U.S.C. 1396a(a)(30)(A). The AHCCCS Administration believes this rule is consistent with state and federal requirements to conserve taxpayer funds while assuring access to quality health care services.

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:

The rule does not include any incorporation by reference of materials as specified in statute.

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, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments

A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.

B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.

C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with sections R9-22-712.20 through R9-22-712.30 without a percentage reduction.

1. 60% for a level 1 emergency department visit as indicated by CPT 99281.
2. 80% for a level 2 emergency department visit as indicated by CPT 99282.
3. 90% for a level 3 emergency department visit as indicated by CPT 99283.
4. 100% for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.

D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.

E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.

F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

Abrazo
Community Health Network

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September 6, 2016

Thomas J. Betlach
Director
Arizona Health Care Cost Containment System
801 E. Jefferson St., MD 4100
Phoenix, AZ 85034

Re: Proposed Rulemaking 22 A.A.R. 770 – Reimbursement of Freestanding Emergency Departments

Dear Director Betlach:

On behalf of Abrazo Community Health Network ("Abrazo"), I want to thank the Arizona Health Care Cost Containment System ("AHCCCS") administration for seeking input from its providers on the proposed changes to freestanding emergency departments ("FSEDs") reimbursement. We appreciate your consideration of our comments.

Abrazo is a large integrated health system that includes six acute care hospitals, five outpatient centers and multiple physician medical groups. Abrazo also operates two FSEDs. The Abrazo Buckeye Emergency Center is licensed as a hospital based entity of Abrazo West Campus and Abrazo Peoria Emergency Center is licensed as a hospital based entity of Abrazo Arrowhead Campus. Both of our FSEDs provide high quality care to patients across rural and urban areas of Maricopa County.

Abrazo's approach for FSEDs is to strategically locate facilities in areas with little access to traditional hospital-based emergency departments and where care options are not otherwise available. As such, we consciously avoid locating FSEDs in urban communities with sufficient access to traditional hospital-based emergency departments. The Buckeye Emergency Center is 13 miles from the nearest hospital while the Peoria Emergency Center is 10 miles.

Further, our FSEDs are not designed or marketed as alternatives to primary care physician offices or urgent care facilities. The patients presenting at our two FSEDs have an acuity level similar to the patients presenting at Abrazo's hospital-based emergency departments. The vast majority of patients present at Buckeye and Peoria Emergency Centers as a Level III Emergency Department Visit or higher, based on procedure codes associated AHCCCS fee-for-service rates.

Because of this higher acuity level, we ensure that our FSEDs have the services and equipment to provide the necessary level of care to our patients. Both of our FSEDs have ambulance bays to receive all types of emergency medical service transports (except trauma cases) and are staffed to provide 24/7 critical care capabilities. Our FSEDs follow the same state requirements for staffing as Abrazo's hospital-based emergency departments, and the same on-call specialists that provide services to Abrazo West Campus and Arrowhead Campus provide on-call coverage to Buckeye and Peoria Emergency Centers. Our FSEDs are also equipped with the same medical diagnostic equipment as hospital-based emergency departments, including X-ray, ultrasound, CT, respiratory therapy equipment and a full-service laboratory.

We share the AHCCCS administration's goal of creating a healthcare system that promotes efficiency, quality and access to care. Abrazo is concerned with the impact that the proposed reductions to FSED reimbursement will have on our facility. All health care providers have shared the burden of reduced

reimbursement rates since 2009 but operational and maintenance costs have continued to increase over this same period. Each time reimbursement is reduced, further financial stresses are placed on providers that will ultimately result in reduced staffing, delayed capital investment and postponed physical plant maintenance.

As policies are developed for FSEDs, we want to work collaboratively with AHCCCS leadership to ensure our facilities are not negatively impacted. Both the Buckeye and Peoria Emergency Centers are important parts of the healthcare delivery system for the communities they serve. We stand ready to be a resource to the administration.

Sincerely,

Michele Finney
Market CEO
Abrazo Community Health Network

CC:

Christina Corieri, Policy Advisor, Health and Human Services, Office of Arizona Governor Doug Ducey

September 1, 2016

Mr. James Maguire
AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

RE: Notice of Supplemental Proposed Rulemaking on Standards for Payment: Reimbursement of Freestanding Emergency Departments

Dear Mr. Maguire:

On behalf of the Arizona Hospital and Healthcare Association (AzHHA) thank you for the opportunity to comment on the AHCCCS Administration's proposed rule to establish a new payment methodology for hospital-based freestanding emergency departments (FSEDs). AzHHA is a statewide association of more than 70 hospitals, affiliated healthcare systems, and other healthcare organizations across Arizona. Our members are committed to working collectively to achieve the Triple Aim – improving the quality of healthcare and the health of all Arizonans, while reducing the growth in per capita healthcare costs.

We have supported and continue to support many of the Administration's recent efforts to develop payment methodologies that reward efficiency and focus on value. We also share the Administration's concern that greater emphasis should be placed on the appropriate utilization of services by AHCCCS members, including unnecessary use of emergency services for conditions that could be treated in a primary care or urgent care setting. Many of our members are partnering with AHCCCS health plans to reform the delivery system to advance these goals.

Having said this, we have serious concern that—while well-intentioned—the proposed rule will harm access to emergency care in medically underserved areas of the state while doing little to address the underlying causes of inappropriate use of emergency department (ED) services by AHCCCS members. As of this writing, two AzHHA members operate FSEDs in Arizona. Both serve populations outside urban cores; one is located in Vail and the other in Sedona. In each of these communities, the hospital-based FSED is the sole source of emergency services available. Based on the service areas of these communities, some patients would need to travel an hour or more to the next closest ED.

We also dispute a number of assumptions the Administration makes about hospital-based FSEDs in the Preamble, including statements about the capabilities of these facilities, their role

within the larger delivery system, and how they hold themselves out to their respective communities. While some of these statements may be true for certain FSEDs in the metro Phoenix area—where the garnering of market share and/or marketing objectives may be a motivating factor—they should not be generalized to all hospital-based FSEDs, particularly those located in rural and medically underserved areas. The following are our specific comments.

Hospital-Based FSED Capabilities

The Preamble asserts the outpatient prospective fee schedule (A.A.C. R9-22-712.10 through R9-22-712.50) has been used to reimburse services provided by a hospital-based FSED

> *"even though the hospital-based FSED does not have the same capabilities as a hospital emergency department. They often do not have the same equipment or access to on-call specialists and do not have the ability to immediately admit persons requiring inpatient care."*

Under Medicare Conditions of Participation, hospital-based FSEDs are subject to all the requirements of their main campus's ED, including 24 hour a day operation and EMTALA obligation. Moreover, the Centers for Medicare & Medicaid Services (CMS) instructs state surveyors that the ***capabilities and capacity of the hospital's main campus*** (not just the off campus ED) be used when determining whether there has been a violation of EMTALA. (CMS S&C Letter 08-08, page 4; emphasis added.) CMS further requires:

- The organization and direction of emergency services at a hospital-based FSED to be by a qualified member of the hospital's medical staff.
- Medical and nursing staff to be integrated into the hospital's single organization medical and nursing staffs respectively.
- Nursing services and infection control to comply with Medicare's hospital Conditions of Participation (CoPs).
- Quality assessment/performance improvement programs and medical records to be integrated with the hospital's main campus program and systems, and comply with hospital CoPs.
- Laboratory services to be available at the FSED in accordance with hospital CoPs (CMS S&C Letter 08-08).

CMS clearly intends hospital-based FSEDs, which it designates as hospital outpatient departments (HOPDs), to meet patient needs under the same regulatory framework as the hospital's main campus. Physician specialists, if not on-site, must be available by phone consult—which can also occur on a hospital's main campus. Hospital-based FSEDs must also have full laboratory and imaging services. In discussions with our members who operate FSEDs, the only significant difference we found in capabilities compared to the main campus is the absence of emergency MRI services. (As one would expect, such decisions are based on a

calculation of equipment and operational costs relative to expected utilization and patient outcomes.) Other imaging services, such as CT scan, ultrasound, and X-ray services are available on-site.

Hospital-based FSEDs are also staffed by board certified emergency medicine physicians and registered nurses. If a patient needs inpatient services, qualified hospital staff accompanies the patient to the main campus as required under federal law. (See the section below for additional information on this requirement.)

It is important to note that hospital-based FSEDs are regulated differently than independent FSEDs, which often do lack the same capabilities as hospital EDs. Independent FSEDs are licensed by the Arizona Department of Health Services as outpatient treatment centers, subject to the requirements of R9-10-1019. However, they are NOT required to follow the rigorous Medicare hospital CoPs because they are not affiliated with a hospital. As such, independent FSEDs are not held to the same standards as hospital-based EDs—whether located on the main campus or freestanding.

Transportation & Access to Care

The Preamble goes on to state:

> *"By the very nature of being a FSED, transportation services are required when a patient requires inpatient care."*

It is not clear under what context the Administration is making this observation. While it's true that a patient who needs to be admitted would be transported to the hospital's main campus or to another facility (depending on the patient's medical needs and preference), the alternative of NOT having access to emergency services is much worse for patients living in rural or medically underserved areas.

For example, patients living on the opposite side of Sedona from Cottonwood would need to travel an hour to reach emergency services if the Sedona Campus of Verde Valley Medical Center (VVMC) did not offer ED services. The community's population swells during certain times of year, which further exacerbates travel times due to limited roadways and travel routes to VVMC's main campus. Without Northwest Emergency Center (NEC) at Vail, patients would need to travel to Benson Hospital or Carondelet St. Joseph's Hospital in Tucson for the nearest emergency services.

While policymakers may perceive FSEDs as unnecessary and duplicative of emergency services in urban areas like Maricopa County—where medical care is readily accessible, this is simply not the case in rural communities and medically underserved areas. Our members have described several instances of lives being saved, including children's lives, as a result of the emergency care their physicians and nurses provide at their FSEDs. While patients needing a higher level of care—including inpatient services—will be transported to another facility, the

stabilization and emergency treatment received at the FSED is indispensable to the well-being of these patients.

The only alternative for addressing the lack of emergency medical care in rural or medically underserved areas is for a "full-service" acute care hospital to locate in the community. This is a tremendously expensive enterprise. It is also an inefficient use of limited resources when patient volume is not sufficient to justify the construction and operation of inpatient beds. In this regard, our members strive to be good financial stewards by assessing local community needs and providing only those services that can be supported.

The Sedona Campus of VVMC is an example of this stewardship. Twenty years ago, Verde Valley Medical Center in Cottonwood and Flagstaff Medical Center each recognized that Sedona was a medically underserved community. But rather than establishing separate medical campuses there, which could have duplicated services, the organizations merged to become Northern Arizona Healthcare (NAH). This shared vision and collaboration created the Sedona Campus of VVMC, which was established as part of the new NAH system. The campus today offers a variety of locally-driven medical services, including emergency services.

It is also important to note that transportation between a hospital-based FSED and the hospital's main campus is considered an intra-hospital transport, which must be consistent with 42 CFR 482.13(c)(2) relating to the patient's right to receive care in a safe setting. The hospital is accountable for the patient's safety and care during such transportation. Moreover, while there is a cost associated with this transportation, it is typically not passed onto the patient/payer. And, as noted above, such transportation is considerably more cost-effective than building inpatient beds on a medical campus with insufficient volume to support them.

Promotional Materials and Primary Care Alternative

The Preamble states:

> *"Media coverage and promotional materials published by hospitals present these facilities as an appropriate alternative to treatment by a primary care practitioner in an office setting."*

We have not seen the materials the Administration references, so we cannot respond to the actual documents or claims they make. However, we have queried our members as to whether they have held out their FSED services as an appropriate alternative to primary care. They have responded with a resounding "no."

We have also looked at the websites of VVMC Sedona Campus and NEC to see how they characterize their services. Both websites clearly portray their FSED services as emergency services, not as an alternative to primary care. We do not believe our members are "marketing" their FSED services as primary care alternatives, and we urge the Administration not to

assume the entire industry is doing so based on promotional materials Administration staff have seen from one or two health systems.

In this vein, we urge the Administration to use their considerable leverage with these health systems to encourage them to withdraw such promotional materials rather than promulgating statewide payment rules that could harm access to care in rural and medically underserved areas.

FSEDs and the Delivery System

The Preamble states:

> *"Treatment of non-emergency conditions by healthcare providers other than the patient's primary care practitioner restricts the ability of the primary care practitioner to coordinate care for the patient, potentially leading to sub-optimal outcomes. As such the AHCCCS Administration is concerned about the use of the FSED as a substitute for services that are more appropriately and cost-effectively rendered in a clinic or physician's office."*

AzHHA wholeheartedly agrees with the Administration that non-emergency conditions are best treated in a clinic or physician office. (However, as stated previously, we do not believe our member hospitals are promoting their FSED services as a primary care alternative.) Patients use FSEDs for non-emergent conditions for many of the same reasons they "inappropriately" use the hospital's main campus ED:

- Their symptoms mimic an emergency.
- They are injured or in acute pain, and their physician is unavailable to see them (e.g., at night and on weekends).
- Their physician directs them to an ED because he or she cannot see them in a timely manner.
- They are uninsured and/or lack a primary care provider.

A number of strategies can be employed to reduce non-emergency use of EDs—at FSEDs and those located on a hospital's main campus. These include public education campaigns, more robust physician networks and timely access to physician services. Our members also tell us that improved Medicaid physician payments, especially in rural areas, would help to shore up the networks there and alleviate unnecessary ED visits.

When patients are seen at a hospital-based FSED, it is important to note their treatment is not "siloed" at the FSED. The FSED is an extension of the hospital. Services are clinically integrated with the hospital's main campus. FSED clinicians and other providers coordinate care and follow up treatment with community and hospital-based physicians in accordance

with the same policies and procedures utilized by the main campus. Patients benefit from having their care delivered locally, with follow-up care coordinated closer to home.

AzHHA strongly believes hospital-based FSEDs are an asset to rural and medically underserved areas. They are a cost-effective alternative to building full-scale acute care hospitals in medically underserved areas that do not have sufficient population to support inpatient beds, but which have a demonstrated need for emergency services. If the Administration moves forward with the proposed rule, we urge the Administration to consider the role FSEDs play in these communities when finalizing the rule by exempting them from the proposed payment changes.

Rule Provisions & Recommendations

The proposed rule would reimburse level 4 and 5 hospital-based FSED visits at 100 percent of the hospital outpatient fee schedule; level 3 visits at 90 percent; level 2 visits at 80 percent; and level 1 visits at 60 percent. We appreciate the Administration proposing the use of a "sliding fee" or scalable schedule, which recognizes the higher cost of treating high acuity patients, and which will mitigate the financial impact of the proposal. However, we are concerned the proposed payment reductions do not adequately address the fixed costs of all services provided at the FSED, especially those located in rural areas. Moreover, the Preamble does not identify any data or studies used by the Administration to justify the proposed payment changes, including development of the proposed methodology, which makes it impossible to evaluate the reasonableness of this proposal.

We urge the Administration to explain how it determined the appropriateness of this particular fee schedule, which will allow the public and other stakeholders, including policymakers, to more effectively evaluate the proposal.

Under the proposed rule, a hospital-based FSED outside of Pima and Maricopa counties will be eligible to receive a peer group modifier "where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015." The Preamble explains this adjustment is for FSEDs that "replace the services of a hospital that has closed in a *rural area where appropriate local care might not otherwise be available*." (Emphasis added.)

AzHHA appreciates the Administration acknowledging the importance of local access to care in rural areas. However, we do not believe the proposal goes far enough in protecting access to emergency services for Medicaid beneficiaries. First, as a matter of policy a rural hospital should not have to close for a hospital-based FSED to receive enhanced payment relative to the current proposal. The State Legislature has long recognized the need to protect access to healthcare in rural areas by adopting a number of special Medicaid payment provisions, including supplemental payments to Critical Access Hospitals and the Rural Hospital Inpatient

Fund. We strongly believe access to emergency services in rural areas needs similar robust protection, more than is provided by the peer group modifier proposal.

If the Administration moves forward with the proposed payment methodology for hospital-based FSEDs, we strongly recommend it take a more comprehensive approach to ensuring access to emergency services in rural areas. We recommend that hospital-based FSEDs located in counties with less than 500,000 residents be exempt from the new methodology under R9-22-712.90 and continue to receive the full hospital outpatient fee schedule for ED visit levels 1 through 5.

Medically underserved areas can also be found in pockets of more urbanized counties, such as Maricopa and Pima counties, and we urge the Administration to take this into account when finalizing the rule. **Should the Administration move forward with the rule, we urge hospital-based FSEDs located in counties with more than 500,000 residents be exempt from the new payment methodology, if there are no other emergency services within ten miles of the FSED. These facilities would thus continue to receive the full hospital outpatient fee schedule for ED visit levels 1 through 5.**

In reading the proposed rule, we have also found two technical issues that should be clarified in the final rule, should the Administration proceed. First, based on our discussion with Administration staff, the purpose of Subsection E is to clarify FSEDs not affiliated with a hospital will be paid the capped non-hospital fee schedule—although this is not at all clear from the proposed language. Administration staff has indicated a drafting error occurred in the proposed rule, and the internal reference to "subsection B" will be changed to "subsection A" in the final rule, which they believe will clarify the intent. While we appreciate this change, we do not believe it is sufficient. Under the change recommended by Administration staff, any outpatient treatment center that is not a hospital-based FSED will be reimbursed based on the non-hospital fee schedule. This would include those HOPDs that are licensed as OTCs, but are not FSEDs, as well as all independent OTCs (including FSEDs not affiliated with a hospital). As such, we recommend replacing the term "outpatient treatment center" with "free standing emergency department." Alternatively, Subsection E could be stricken from R9-22-712.90, and the title rewritten as "Reimbursement of Hospital-based Freestanding Emergency Department." This perhaps makes the most sense since the focus of the rulemaking is on hospital-based FSEDs.

Also, subsection C should clarify whether the proposed schedule for hospital-based FSEDs applies to all CPT codes, including ancillary service codes. We recommend excluding the latter codes and retaining their current reimbursement rate.

In conclusion, we agree with the Administration that FSEDs should not promote their services as an alternative to primary care. These facilities should exist for the central purpose of providing emergency medical care, although under federal law, they are required to screen for an emergency medical condition anyone who presents to the ED. Having said this, we also

believe that much more can be done to reduce inappropriate utilization of EDs (including at hospital-based FSEDs) by Medicaid beneficiaries and others. The creation of more robust physician networks; public education campaigns around appropriate ED utilization; and better care coordination and clinically integrated care can make a difference. (As stated previously, hospital-based FSEDs are on good footing to advance such care coordination closer to home due to their clinical integration with the hospital main campus and local footprint.)

Regrettably, we do not believe the proposed rule will do much to advance appropriate utilization of the ED, including hospital-based FSEDs, as it does not address the underlying causes. Moreover, we do not believe the rulemaking makes a strong enough case to warrant a change in payment methodology, particularly given the current status of AHCCCS payments, which cover about 70 percent of the cost of hospital services in the aggregate. Additional information and data is necessary to fully evaluate the proposed methodology. And, we are very concerned that many of the assumptions about hospital-based FSEDs included in the Preamble are incorrect and/or generalizations.

Finally, we strongly believe that the proposed rule will harm access to emergency services in rural and other medically underserved areas. Only a few FSEDs currently exist outside of the metro-Phoenix area. However, these facilities are a more cost-effective strategy for bringing emergency care to underserved areas than building full-service acute care hospitals. As such, we believe more hospitals (especially in rural areas) will want to explore this option in the future as the delivery system continues to shift away from inpatient services. We urge the Administration to support this transformation in the delivery system rather than penalizing hospitals that are trying to innovate by bringing more cost-effective emergency care to their communities.

Thank you for the opportunity to submit comments on the AHCCCS Administration's proposal. Please feel free to contact me if you have any questions.

Sincerely,

Greg Vigdor,
President and Chief Executive Officer

3030 N. Central Ave, Ste 1402
Phoenix, AZ 85012
Dignityhealth.org

Fax

To:	James Maguire	**From:**	Linda Hunt
Fax:	602-253-9115	**Pages:**	14 (including cover page)
Phone:		**Date:**	September 6, 2016
Re:	FSED Proposed Rule	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

Please let me know if you should have any questions.

Thank you,

Kelli Marsh (602-406-5867)

3030 N. Central Ave, Ste 1402
Phoenix, AZ 85012
Dignityhealth.org

September 6, 2016

James Maguire
Office of Administrative and Legal Services
AHCCCS Administration
701 E. Jefferson, Mail Drop 6200
Phoenix, Arizona 85034

Via Fax & Email:
(602) 253-9115
AHCCCSrules@azahcccs.gov

RE: Dignity Health Comments to Notice of Supplemental Proposed Rule-Making
Reimbursement of Freestanding Emergency Departments
Proposed Rule A.A.C. R9-22-712.90

Dear Mr. Maguire:

On behalf of Dignity Health, I want to thank you for the opportunity to comment on the proposed A.A.C. R9-22-712.90 (the "Proposed Rule"). Dignity Health in Arizona is a respected leader in world-class medical care, cutting-edge research, superior education and is driven by its mission to serve the poor and underserved. At its heart are five hospitals – St. Joseph's Hospital and Medical Center, St. Joseph's Westgate, Mercy Gilbert Medical Center, Chandler Regional Medical Center and we have recently opened Dignity Health-Arizona General Hospital ("Dignity AGH") in partnership with Adeptus Health LLC. Dignity AGH is a licensed general hospital located in Laveen that currently has eight freestanding emergency departments ("FSEDs") at locations throughout the metro-Phoenix area.

Dignity Health's growth in this sector of the market was driven with the intent to meet the needs of patients in their communities by expanding access points to medically appropriate emergency services while easing substantial overcrowding occurring in all of our acute care hospital emergency departments. With one year of data behind us, we can confirm that FSEDs deliver the same level of services and capabilities as on-site emergency departments without driving up utilization. For those reasons and others explained in this comment letter, ***Dignity Health regretfully opposes the Proposed Rule decreasing reimbursement to FSEDs.***

<u>FSEDs are NOT Urgent Care Centers</u>

The Administration makes numerous stated and implied assumptions and generalizations throughout the Proposed Rule about the operations of FSEDs that are not factual. One implied notion is that FSEDs are simply urgent care centers with another title. Therefore, it is imperative the Administration has an understanding of what a FSED is and is not - as it is essential in determining the value of their services.

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A FSED is a facility **licensed by the state to provide 24-hour emergency services to patients at the same level as a hospital-based emergency room that is physically detached from an acute care hospital.** There are many specific services and federal and state statutory licensing requirements that establish clear distinctions between the different levels of care provided in FSEDs compared to an urgent care facility. Below is a list of those key differences between FSEDs and urgent care centers:

Hours of Operation: FSEDs are required by statute and regulation to be open twenty-four hours a day, seven days a week, and three hundred sixty five days a year, just like hospital ERs. Urgent care centers do not have the same requirements and are generally open seven days a week with limited hours i.e. 8 am – 8 pm with even more limited time frames of operation on Sundays and holidays.

Healthcare Providers: FSEDs are required by law to have a board-certified physician present at all times. Patients can expect to be seen by an emergency medicine doctor at FSEDs. Dignity AGH FSED doctors typically have done full residencies in emergency medicine and are board-certified in emergency medicine. Emergency Department doctors are trained to deal with pediatric and adult emergencies, through experience in both areas during their residencies. The doctors at FSEDs are members of the medical staff and hold staffing privileges in the emergency departments of our Dignity AGH. Urgent care facilities are not required to have board-certified physicians on-staff. While some urgent care centers are occasionally staffed by physicians the urgent care model is to utilize physician assistants or nurse practitioners.

Services: Because Arizona law requires FSEDs to operate in the same manner as on-site emergency rooms, the services of a FSED are far greater in scope and require a much higher level of technology to comply with mandated services.

- All Dignity AGH FSEDs have up-to-date CT scanners (just as hospital emergency departments do). They also have a broad range of radiological services such as digital X-ray systems, ultrasonography, and Doppler technology.
- All Dignity Health FSEDs operate full labs onsite to complete blood count, electrolyte panel, liver panel, cardiac enzymes, urinalysis, pregnancy testing, and rapid screening for illnesses, such as strep throat, flu, RSV, and mono. The lab results are available within minutes.
- All Dignity AGH FSEDs provide cardiopulmonary monitoring, nebulizer treatments, and airway management. Physicians and nurses can electronically monitor heart rate and vital signs for patients with cardiac and/or pulmonary illnesses. For illnesses like asthma and bronchitis, they can administer oxygen, asthma nebulizer treatments, and other treatment modalities. FSEDs care for heart attacks, stroke and minor trauma. The FSED physician and nursing staff have specialized training and experience in critical airway management, as is the case in all ERs.
- All Dignity AGH FSEDs are required to have the capability to administer IV fluids and medications. Many illnesses require IV antibiotics, steroids, fluids, and other medication to be treated appropriately. In pediatric cases, computerized IV fluid pumps are used to maintain precision in fluid quantity.

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- All Dignity AGH FSEDs must comply with the Emergency Medical Treatment and Labor Act (EMTALA) – the federal law requiring anyone coming to an emergency department to be screened and stabilized, regardless of their insurance status or ability to pay.
- All Dignity AGH FSEDs are capable of keeping patients overnight on an observation status (an 8–23 hour timeframe) if needed.
- All Dignity AGH FSEDs provide video access to translators that speak in native languages to ensure the patient and their family is aware of the medical treatment needed.
- All Dignity AGH FSEDS provide pharmacy services delivering appropriate medications in a complex environment that presents unique medication management challenges, spanning medication selection, dosing, administration, and monitoring.
- All Dignity AGH FSEDs provide direct admissions through pre-arranged hospital admissions arrangements.

Urgent care centers perform some basic primary care services and uncomplicated testing (e.g., blood pressure, blood sugar, strep throat), but they usually offer limited (if any) imaging services. The urgent care model provides lower acuity care service. Unlike FSEDs urgent care centers are not designed to provide complex care such as cardiopulmonary services, stroke intervention, heart attacks, IV fluid, complex pharmaceuticals and special pediatric services. Finally, urgent care centers are not required to comply with EMTALA and do not have the capabilities to allow for extended observations nor do they have direct admission arrangements with hospitals unless they are provider based.

For the reasons detailed above, it is our hope that the Administration re-examines its view towards FSEDs and acknowledges that FSEDs are not urgent care centers.

Laws and Regulation Mandate FSEDs and On-Site EDs Be Alike

The Administration asserts that FSEDs "do not have the same capabilities" and "often do not have the same equipment or access to on call specialists" and do not provide "the same services" as on-site emergency rooms. Dignity Health respectfully disagrees with these statements. We have described some of the ways in which the FSED is identical to the on-site ED in the above discussion distinguishing FSEDs from urgent care centers. In fact, FSEDs are legally and operationally a department of a licensed general hospital. The Dignity AGH FSEDs are part of the emergency department of the main hospital located in Laveen. Under Medicare, FSEDs are classified as "provider based departments." 42 C.F.R. § 413.65. They are subject to all state licensing, Medicare certification, and other requirements that apply to the "on-site" ED of a general hospital, rather than the less rigorous requirements applied to an outpatient treatment clinic that is not part of a hospital.

Dignity Health believes the Administration's justifications for the Proposed Rule are incorrect as a matter of fact and ignore the federal and state laws governing licensing and certification required of FSEDs. While FSEDs may be new to Arizona, Medicare has identified them and regulated them as part of the hospital, subject to hospital standards, for more than a decade. The Medicare regulations for provider based departments and the Hospital Conditions of Participation (HCoP), and related survey guidance require that:

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1. the FSED be subject to the governing body of the hospital, and all governing body policies apply to the FSED;
2. the administrative functions of the FSED be integrated into those of the main site;
3. all reporting and supervisory relationships between the FSED and the main hospital site have the same frequency, intensity, and level of accountability as exists for departments at the main site;
4. the FSEDs be financially integrated with the hospital;
5. the FSED medical and nursing staff be part of the hospital's single organized medical and nursing staff, respectively;
6. the FSED and on-site ED be under the same overall medical direction;
7. the FSED integrated into the quality assessment and improvement program (QAPI) of the hospital;
8. the medical records of the FSED be part of the hospital's single medial record system and meet the HCoP standards for hospital medical records; and
9. the infection control procedures meet the HCoP for infection control.

See 42 C.F.R. §§ 482.1-.45 (Hospital Conditions of Participation); 42 C.F.R. §413.56 (provider based status) and CMS Survey and Certification Memorandum, S&C-08-08.

In practical terms, the requirements for a freestanding emergency department mean our FSEDs require the same capital investment as the on-site EDs, and must meet identical clinical, operational, architectural, equipment, and other physical plant standards as prescribe by Arizona state law and administrative rules. Below is a list of some of those requirements:

Architectural Requirements

- Requirements for Trauma and Resuscitation Capability: two exam rooms that open to form one trauma room, with medical air, surgical scrub sink, surgical lights, emergency equipment, and larger square footage than is required for the standard treatment rooms in the ED.
- Bariatric facilities and equipment for managing obese patients, including bariatric lift and associated storage space.
- Secure Holding Room – anti-ligature hardware, anti-ligature fixtures and special considerations for electrical, plumbing, and walls, ceiling, and other surfaces.
- Decontamination area with dedicated entry, shower/spray down area, dedicated emergency equipment as needed, HVAC with 100% exhaust, acid and stain resistant finishes, and a location meeting requirements for minimum distance from other openings to prevent contamination (30-foot minimum).
- Airborne Infection Isolation Capability: Isolation areas with 100% exhaust HVAC.
- Separate restrooms, and separate pressure monitoring meeting HCoP.
- Medical air ports in all exam rooms and central storage for medical air.

Clinical and Related Equipment Standards

- Open 24 hours a day/7 days a week/365 days a year.

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- Emergency trained board-certified emergency physicians on duty 24/7/365.
- Minimum of two emergency-trained RNs on duty 24/7/365.
- CT and other imaging and diagnostics comparable to on-site ED.
- Use of portable ventilators.

Additionally, all Dignity AGH facilities are accredited by The Joint Commission as emergency departments and comply with state-of-the-art standards on a continuous basis.

Federal and State laws and regulations require all Emergency Departments meet specific architectural requirements and services standards that ensure emergency services can be provided to presenting patients. All Dignity AGH FSEDs have met those criteria and Dignity Health firmly disagrees with the Administration's assumption that FSEDs do not have the same "capabilities" and "equipment" as on-site facilities.

Promotional Materials Could Provide More Clarity

The Administration contends that promotional materials distributed in the community "present these facilities as appropriate alternative to treatment by a primary care practitioner in an office setting." Preamble ¶ 5 at p. 3. Dignity Health firmly agrees with the Administration's position that promoting inappropriate level of care sends the wrong message to the public and more specifically to AHCCCS members. In fact, a key FSED strategy of the Dignity Health market is to relieve the significant overcrowding in our EDs due to non-emergent issues. Therefore, promoting non-emergent patients to come to FSEDs for primary care services is counterintuitive to our goal.

We have completed a thorough review of our marketing material and web site resources and while we found no materials that promote primary care treatment at our FSEDs, we welcome the Administrations input if it believes such material came from our FSEDs. ***Dignity Health acknowledges that we can and want to do more to educate patients and provide more clarity on the appropriate level of care. We are committed to providing the right care at the right place and marketing it as such. We welcome the Administrations suggestions in improving our promotional material to that end.***

Higher ED Utilization By AHCCCS Members Unfounded

The Proposed Rule implies that by having FSEDs in the market AHCCCS members will use the FSED instead of their primary care provider thereby driving up ED utilization and costs for AHCCCS. We believe the reasons why AHCCCS members seek care at ***any*** emergency room for non-emergent needs are numerous and complex and should not be solely attributed to the availability of FSEDs. Yet, the Proposed Rule clearly singles out FSEDs - imposing financial penalties on them for systemic issues with no demonstrated FSED utilization data.

The elimination of FSEDs will not change behavior. An AHCCCS member that seeks care at a FSED will go to the acute care hospital ED if a FSED is not available. Dignity Health recognizes and fully supports the Administration's long-standing commitment in guiding member behavior to the appropriate level of care and ensuring the integrity of coordination of

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care by AHCCCS Health Plans. It is not our intent to drive up utilization. Again – our strategy is to alleviate overcrowding in our on-site hospital EDs.

FSEDs extend the availability and accessibility of services in the community. Dignity Health agrees that more could and should be done by the providers, and primary care providers, to educate and actively engage with members to coordinate services *before* their members go to the ED. As stated previously, hospitals, including those that operate FSEDs, are legally bound by EMTALA, federal and state Medicaid rules, and licensing requirements to evaluate and treat the patients that come to them. It is unreasonable to financially penalize FSEDs to "correct" for inappropriate ED utilization. The FSEDs are meeting a service need in the same manner, and at the same cost, as other comparable ED facilities.

While Dignity Health does not have access to the entire set of AHCCCS or other payer data and cannot fully analyze the utilization trends of all FSEDs as compared to other services, Dignity Health has evaluated member utilization patterns and payer costs using data from its partner Mercy Care Plan (MCP) and Medicare.

According to data from MCP, overall growth in its AHCCCS membership January 2015-May 2016, annualized through 2016 is approximately 8.8%. During that same period, the combined Dignity Health and Dignity AGH share of MCP ED utilization (on-site and FSED) increased about 8%, roughly equivalent to membership growth. This indicates that the increase in ED encounters in the combined Dignity Health system did not come from increased member utilization rates, but solely due to capturing a greater share of the ED "market." The MCP data also showed that its members used the EDs at the "primary" and busiest hospitals (St Joseph's Chandler Regional, Mercy Gilbert) less, and that the newer hospitals (Dignity AGH and Westgate) had high growth and absorbed the shift. There appeared to be a corresponding shift in overall acuity of patients by location, suggesting that patients were appropriately "self-triaging" or being triaged by first responders.

This data confirms that the Administration's assumptions are unfounded. Dignity AGH FSEDs have not had any apparent significant impact on inappropriate ED utilization. It is unreasonable to financially penalize FSEDs to "correct" for an unfounded cause.

Arbitrary Rate Methodology

AHCCCS has a long history of working with stakeholders in developing sound provider rate methodologies. Likewise, Dignity Health has been a long-standing active partner in the Administration's initiatives to implement innovative programs that promote efficiency and value in the development of new rates and payment policies. We were disappointed at the release of the Proposed Rule knowing that AHCCCS deviated from its established cooperative stakeholder process by developing a Rule without cooperative efforts through data sharing from stakeholders.

The Administration acknowledges in the Preamble that it did not conduct any studies of FSEDs before issuing the Proposed Rule. It appears that AHCCCS did not evaluate whether FSEDs had any negative impact on the delivery system or member utilization patterns, nor does

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it appear that AHCCCS analyzed FSED costs or operations. We firmly believe the Proposed Rule offers an arbitrary percentage rate cut with no justified methodology for reducing the rate.

Dignity Health strongly opposes the Administration's proposed arbitrary rate reduction for Level 1, 2, and 3 visits - assuming all are comparable to physician office visits without data to support their assumption. Rather than make that comparison to on-site EDs, the Administration arbitrarily cut reimbursement to the Level 1, 2, and 3 visits to 60%, 80% and 90% of the full hospital OPPS payment respectively, to "recapture" ***presumed*** lower facility costs. It is arbitrary to discriminate against licensed and certified FSEDs based on untested assumptions about costs and services when compared to comparable on-site EDs.

Because reimbursements for Levels 1, 2 and 3 are already adjusted to account for the lower level of acuity, placing a cut on top of the adjusted rate imposes an excessive and unjustified reduction. Dignity Health welcomes the opportunity to partner with the Administration and other stakeholders in advance of adopting a final Rule to evaluate the Administrations concerns and gain more insight into the methodology used to develop the rate reductions. We, therefore urge the Administration to postpone the Rule making on this arbitrary methodology and allow stakeholders to share data and weigh the actual impact of FSEDs in urban and rural Arizona.

Transfers Occur at FSEDs and On-site Locations

The Administration also asserts that patients at FSEDs who require inpatient care must be transferred. That is accurate. However, it is important to note that transfers occur in approximately 15% of all cases. It should also be noted that on-site EDs also transfer patients to other related and unrelated hospitals on a regular basis depending on acuity and specialty.

Our experience suggests that the transfer rate from the FSEDs tends to be lower than the admission rate (including admit-to-observation) from the on-site EDs at our primary facilities. It appears from the Preamble that the Administration would attribute this to inappropriate use of the FSEDs and lower acuity patients. But while there may be some increased volume from lower acuities in turn contributing to the low transfer rate, there are other contributing factors that are beneficial to the delivery system in general and AHCCCS.

Dignity Health agrees transfers do occur at FSEDs; the Administration should also recognize that transfers also occur at on-site EDs.

The Proposed Rulemaking Does Not Comply With the Arizona Administrative Procedures Act (APA)

The Proposed Rule at R9-22-712.90(C) establishes discounts to the hospital outpatient fee schedule ("HOPPS") for FSED services at levels 1, 2 and 3, reducing payments to 60%, 80% and 90% of the full HOPPS rate respectively. Subsection F of the Proposed Rule also disallows payment to any FSED that transfers a patient to a hospital with an "ownership interest" in the FSED, treating those transfers differently than those from an FSED or on-site ED facility to an unrelated hospital or those from an on-site ED to a related hospital.

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Clearly, subsection F appears targeted at Dignity AGH, to dissuade it from making transfers to Dignity Health facilities. It appears that these distinctions were made without any factual basis or support. The regulation, therefore, is inconsistent with Arizona law governing the promulgation and validity of regulations.

Arizona law requires Rules to be based on a sober and responsible study of the factual and legal context for the rules. Put another way, rule-making must be evidence-based. Under A.R.S. § 41-1055, AHCCCS is required to present an economic, small business and consumer impact statement in its preamble that weighs the costs and benefits of the Rule ***with specificity***. As further defined in A.A.C. R1-1-101, this required "impact statement" is the agency's ***proof*** "that the agency ***has studied*** the Rule's economic impact on the regulated community as well as the impact on small businesses and consumers."

The full relevant section of the APA is lengthy and included as Attachment B. Notably, the APA, A.R.S. § 41-1055, requires that the agency:

1. identify the conduct that the Rule is designed to change and its frequency, the conduct's harm, and the change in frequency expected from the Rule making (A.R.S. § 41-1055(A)(1));
2. conduct a cost-benefit analysis, including the probable costs and benefits to businesses and consumers directly affected by the Rule (A.R.S. § 41-1055(B)(2)-(5)).
3. describe less intrusive or less costly methods of achieving the purpose of the Rule, including costs of each alternative and the rationale for not utilizing that method (A.R.S. § 41-1055(B)(7)); and
4. describe, if the Rule is not based on data, why the available data is inadequate or unacceptable, and what methods were used to attempt to obtain adequate data (A.R.S. § 41-1055(C).

The rulemaking fails to meet these standards. The Preamble, in Paragraph 9 contains no summary of any cost-benefit analysis and no references to any study. Instead, AHCCCS makes 2 or 3 "findings," in which the critical words are "***assume***" and "***presume***." And in fact, the Administration is straightforward in acknowledging in the Preamble at Paragraph 6 that no study was either done or relied upon.

The Administration's assumptions and presumptions that make up the Preamble and impact statement fail to meet the minimum legal requirements for rule-making under the APA. ***The Proposed Rule is therefore legally insufficient. The Proposed Rule also fails the basic legal test that rules have a "rational basis" and not be "arbitrary and capricious" as a result of the same deficiencies.***

Not only is the distinction between FSEDs and on-site EDs unsupported by any facts, AHCCCS has drawn an unsupported distinction between a transfer from an FSED to a hospital with an "ownership interest" in the FSED (which results in zero payment to the FSED), and transfers from an FSED or on-site ED to an unrelated hospital <u>or</u> transfers from an on-site ED to a related hospital. Proposed A.A.C. R9-22-712.90(F).

AHCCCS has offered no explanation or factual basis for the distinction. There is no other AHCCCS context in which the identity of investors in a facility affects whether the facility

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is entitled to be paid for services to AHCCCS members. The ownership or investment interests in a facility do not determine the cost of operating a facility, nor do they affect any other metric that might be relevant to reimbursement, such as utilization or acuity of services. Simply put, tying reimbursement to who owns the FSED is arbitrary and capricious. Moreover, while the Administration acknowledges concern that FSEDs may "potentially" impede coordination of care by PCPs (Preamble ¶ 5 p. 3), the proposed subsection F creates an incentive to transfer patients ***outside*** the Dignity Health System. This obviously, and not potentially, has a likely negative impact on coordination of care.

Dignity Health can come to no other conclusion than that AHCCCS has proposed this regulation solely to penalize Dignity Health, and Dignity Health alone, for participating in the development of FSEDs. It is our opinion that this qualifies as unreasonable and arbitrary rule making.

Additional Rule Concerns

Subsection E: Subsection E of the Proposed Rule removes other provider based departments other than FSEDs from the hospital outpatient reimbursement system. These other provider based departments are generally licensed as OTCs in Arizona, but are otherwise treated as hospital departments in the same manner as FSEDs. They are currently reimbursed under the HOPPS, including the "RF 133" schedule for provider based departments that offer on-going care. We understand this may not have been the Administration's intent, and that the intent was only to confirm the reimbursement rate for OTCs ***that are not provider based.*** If the Proposed Rule is limited to OTCs that are not provider based, the language is over-broad and should be revised. And if the Administration in fact intends to make this change, ***the Proposed Rule was not properly noticed or described in the Preamble and is therefore invalid under the APA.***

Rural Facilities: The Administration has carved out what appears to be a one-provider exception to the reduced payment for a rural FSED. In doing so, the Administration has overlooked an opportunity to facilitate expanded services in underserved areas of Arizona. FSEDs could be beneficial to communities underserved by or inaccessible to hospitals and physicians. ***As a matter of public policy, we do not agree that AHCCCS should dissuade Dignity Health or any other providers desiring to serve such communities through an FSED by erecting financial roadblocks to viability.***

Final Comments

Although FSEDs are relatively new, Dignity Health's experience in this market to-date is contrary to all of the Administration's assumptions presented in the Proposed Rule. We do not believe implementing the Rule as proposed will change behaviors of AHCCCS members - it only harms providers.

Dignity Health fully appreciates and understands the Administration's legitimate concern about inappropriate ED visits for AHCCCS members and its obligation to contain costs on behalf of the State. And we agree that encounters at level 1 and 2 are more similar to encounters that can be treated in a physician's office or primary health center had ***the member*** not made the

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choice to come to the FSED. **But level 3 visits are encounters that require specialized immediate diagnostic tools that are generally only available in an ED setting.**

Dignity Health firmly believes level 3 should be fully compensated under the AHCCCS hospital OPPS. Reimbursements for levels 1, 2 and 3 are already adjusted to account for the lower level of acuity, placing a cut on top of the adjusted rate in this manner imposes an unjustified and excessive reduction. We strongly urge the Administration withhold implementation of the Rule until a sound data driven methodology can be vetted among stakeholders to determine a just outcome.

Please know Dignity Health remains committed to delivering the best and most affordable care to our AHCCCS patients and maintaining our longstanding partnership with the Administration. We look forward to working with AHCCCS in providing input that will assist in any further development of a fair and equitable Rule.

Again, Dignity Health thanks you for the opportunity to provide comments on the Proposed R9-22-712.90. I am hopeful that our constructive comments and perspectives are helpful and I welcome any questions you may have.

Sincerely,

Linda Hunt
Sr. Vice President of Operations & President/CEO, Arizona
Dignity Health

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ATTACHMENT A

Date Opened/ Scheduled	Name	Address
December 2014	Dignity Health Arizona General Hospital	7171 South 51st Avenue Laveen, AZ 85339
May 1, 2015	Dignity Health Arizona General Hospital Freestanding ED	2977 East Germann Rd Chandler, AZ 85286
July 10, 2015	Dignity Health Arizona General Hospital Freestanding ED	5171 West Olive Avenue Glendale, AZ 85302
August 7, 2016	Dignity Health Arizona General Hospital Freestanding ED	4760 East Germann Road Gilbert, AZ 85212
October 16, 2016	Dignity Health Arizona General Hospital Freestanding ED	1064 East Ray Road Chandler, AZ 85225
January 22, 2016	Dignity Health Arizona General Hospital Freestanding ED	4328 East Chandler Blvd. Phoenix, AZ 85048
February 19, 2016	Dignity Health Arizona General Hospital Freestanding ED	1833 North Power Road Mesa, AZ 85205
April 15, 2016	Dignity Health Arizona General Hospital Freestanding ED	251 North Estrella Pkwy Goodyear, AZ 85338
July 2016	Dignity Health Arizona General Hospital Freestanding ED	14267 West Bell Road Surprise, AZ 85374

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ATTACHMENT B

41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary in the preamble shall include:
1. An identification of the proposed rule making, including all of the following:
(a) The conduct and its frequency of occurrence that the rule is designed to change.
(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.
(c) The estimated change in frequency of the targeted conduct expected from the rule change.
2. A brief summary of the information included in the economic, small business and consumer impact statement.
3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the 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.
B. The economic, small business and consumer impact statement shall include:
1. An identification of the proposed rule making.
2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.
3. 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 proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.
(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.
(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.
4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.
5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:
(a) An identification of the small businesses subject to the proposed rule making.
(b) The administrative and other costs required for compliance with the proposed rule making.
(c) A description of the methods prescribed in section 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 to use each method.
(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

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6. A statement of the probable effect on state revenues.
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.
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. 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.
C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize 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.
D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter and is not required to file a petition pursuant to subsection E of this section for the following rule makings:
1. Initial making, but not renewal, of an emergency rule pursuant to section 41-1026.
2. Proposed expedited rule making or final expedited rule making.
E. Before filing a proposed rule with the secretary of state, an agency may petition the council for a determination that the agency is not required to file an economic, small business and consumer impact statement. The petition shall demonstrate both of the following:
1. The rule making decreases monitoring, record keeping, costs or reporting burdens on agencies, political subdivisions, businesses or persons.
2. The rule making does not increase monitoring, record keeping, costs or reporting burdens on persons subject to the proposed rule making.
F. The council shall place a petition under subsection E of this section on the agenda of its next meeting if at least four council members make such a request of the council chairperson within two weeks after the filing of the petition.
G. The preamble for a rule making that is exempt pursuant to subsection D or E of this section shall state that the rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement.
H. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.
I. If a person submits an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, the agency shall consider the analysis.

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Health System Alliance
of Arizona

September 6, 2016

Director Tom Betlach
AHCCCS
801 E. Jefferson
Phoenix, Arizona 85034

Dear Director Betlach:

The purpose of this letter is to provide comment on the proposed rule regarding reimbursement for Free-Standing Emergency Departments.

The Health System Alliance of Arizona shares the Administration's goal of promoting the delivery of healthcare services in the most efficient treatment setting necessary to properly care for patients in a safe and effective manner. That being said, we also recognize that as a healthcare delivery system, we must remain cognizant of any pending policy changes and their potential impact on our networks of care.

The AHCCCS system has a strong history of stakeholder engagement and study on proposed policy changes that are expected to have a substantive impact on their provider networks. While we can appreciate AHCCCS's intent to structure a reimbursement system to drive incentives towards efficiency and lower acuity treatment settings, we are concerned this proposed rule was promulgated without the historical cost study on impacted systems.

The Health System Alliance of Arizona agrees that reimbursement rates should be evaluated and where adjustments can be made to improve efficiency and promote quality, we all should do our part to engage and partner in those efforts. This proposed rate adjustment for Free-Standing Emergency Departments is just one proposal to adjust reimbursement to hospital systems. There are other proposals also under consideration, including 340B reimbursement modifications. Individually, it may appear that these proposals would have a minimal impact on our member systems, but taken together implementation of all of these changes will have a much more dramatic fiscal impact on our membership.

In spite of our challenges with the current proposal, we remain committed to our partnership with the AHCCCS Administration. We welcome the opportunity to evaluate reimbursement rates in a comprehensive manner and are more than happy to partner with your organization to identify ways that we can work together to achieve the goals that you have set forth.

Alliance member systems that are impacted by this proposal will be submitting their own comment and analysis on the impact of this proposal for your consideration. I am more than happy to coordinate a meeting with my Alliance membership to discuss these impacts in more detail or provide any additional assistance you believe necessary.

Health System Alliance of Arizona

I appreciate your consideration.

Best Regards,

Jennifer A. Carusetta
Executive Director
Health System Alliance of Arizona

HONORHEALTH

September 1, 2016

Tom Betlach, Director
Arizona Health Care Cost Containment System
801 East Jefferson
Phoenix, AZ 85034

Dear Director Betlach,

As a locally owned, nonprofit integrated health system, HonorHealth is committed to improving the health and well-being of those we serve. The future of healthcare and the movement to population health management has required HonorHealth to develop a network of care that allows us to not only take care of the sick, but to manage the health of those in our community. As population health managers, we will need to be competitively priced, with quick and easy access, as well as offer great customer service and innovations in care.

The proposed rulemaking relating to hospital-based freestanding emergency departments (FSEDs) impacts the HonorHealth Sonoran Health and Emergency Center, which opened in 2013 to provide much needed medical services in Phoenix and Anthem. Since Sonoran opened, HonorHealth has planned to expand its services and eventually build a hospital on the 22 acres, when population growth requires it. The Sonoran Health and Emergency Center is not the typical FSED business model that you are currently seeing in the marketplace by others. We believe our use of FSEDs is infrequent and temporary to launch a presence in an area of need, with the intention to develop more robust facilities for the longer term. It is not intended to be a substitute for services that are best treated in a primary care setting.

As an operating department of HonorHealth Deer Valley Medical Center, Sonoran provides emergency services, medical imaging, breast health and outpatient lab services. We believe this is the best model in addressing some community needs that are not otherwise being met through alternative ambulatory facilities and not duplicative to our campus-based emergency rooms. Now that Sonoran Health and Emergency Center and the community have grown in their need for an acute care hospital, HonorHealth has aggressive plans to expand Sonoran service offerings and build a hospital on the campus, opening in 2018.

HonorHealth would respectfully ask that any new savings to AHCCCS as a result of this change in payment methodology be used to increase reimbursement rates for hospitals in order to enhance quality of care and efficient delivery of services. As your own June 2015 commissioned cost study showed, the 2014 aggregate Medicaid pay-to-cost ratios for combined inpatient and outpatient were estimated to be only 66.5 percent. We welcome the opportunity to evaluate reimbursement rates in a more comprehensive manner.

Sincerely,

Todd LaPorte
Executive Vice President and Chief Administrative Officer

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

FREESTANDING EMERGENCY DEPARTMENTS

1. **Identification of rulemaking.**

This final rulemaking by the AHCCCS Administration establishes new rule R9-22-712.90 consistent with this Agency's obligation to comply with federal Medicaid Law 42 U.S.C. §1396a(a)(30)(A) as well as this Agency's longstanding commitment to efficient utilization and delivery of quality health care while maximizing health care coordination for AHCCCS members. Proposed rule R9-22-712.90 requires hospital-based freestanding emergency departments to obtain a separate provider identification number from that of the hospital so that they can be distinguished from on-site hospital emergency departments. The rulemaking also sets forth the payment methodology for services provided by hospital-based freestanding emergency departments.

Currently, AHCCCS pays for hospital-based freestanding emergency department services using the outpatient hospital reimbursement methodology delineated in A.A.C. R9-22-712.10 through R9-22-712.50. (This adjustment accounts for the unique costs of services provided in a hospital outpatient setting which are not applicable to hospital-based freestanding emergency departments.) As a result, payments to hospital-based freestanding emergency departments are currently equivalent to those provided to on-site hospital emergency departments, and they are considerably higher than payments for the same services rendered at a physician's office or urgent care center. It is important to note that payments for physician services at hospital-based freestanding emergency departments will remain unchanged under this rulemaking: Payments to physicians treating patients at hospital-based freestanding emergency departments will be identical to payments to physicians at on-site hospital emergency departments. Significantly, nothing in this rulemaking limits or restricts the establishment of hospital-based freestanding emergency departments.

Supporting accessibility to high quality yet cost effective health care is the cardinal tenet of the AHCCCS Program where more creative, efficient models of health care delivery are imperative in today's marketplace. The AHCCCS Administration is concerned about use of hospital-based freestanding emergency departments as a substitute for services that are more appropriately and cost-effectively rendered in a clinic or physician's office. Rewarding inefficient care and encouraging overpayment of services contravene this central obligation. The AHCCCS Administration, in its fiduciary responsibility to the Arizona taxpayer, serves in a public trust capacity and is responsible to safeguard taxpayer funds from unnecessary expenditures. This rulemaking is proposed in furtherance of these obligations, protecting taxpayers from the added and unnecessary financial burdens of the higher costs of treatment associated with emergency department care when primary care and other settings are more appropriate.

This rulemaking is proposed to comply with federal law 42 USC §1396a(a)(30)(A) which mandates that Medicaid Agencies reimburse providers consistent with efficiency, economy, and quality of care. Although comments to the proposed rule from hospital providers and their advocacy organizations complain about potential reductions in revenue, base payments to hospital-based freestanding emergency departments under this rule are at 100% of the current outpatient hospital rate for level 4 and 5 visits, (those paid to on-site emergency departments), at 90% of the current outpatient hospital rate for level 3 visits in recognition that certain level 3 procedures require urgent attention, and at 80% and 60% of the payment rates for lower priority levels 2 and 1, respectively. In recognition of the unique access to care issues that may arise in rural areas, payments to hospital-based freestanding emergency departments will be supplemented by a peer group modifier under certain circumstances: when the facility is located in a city or town in a county of less than 500,000 residents and when the only hospital operating there closed an emergency department on or after January 1, 2015.

Non-emergency use of the emergency department remains a persistent problem in the United States, contributing to unnecessary medical expenditures and lack of coordination of

necessary health care services. The growing presence of hospital-based freestanding emergency departments will contribute to excessive emergency department utilization. According to the Colorado-based Center for Improving Value in Health Care, seven of the top ten reasons for seeking care at a freestanding emergency department were for non-life threatening conditions such as sore throats and bronchitis. See, Warren, David. "As the Number of Freestanding ERs Grows, so does Scrutiny." *Associated Press*. August 21, 2016. http:/bigstory.ap.org/article/39dffacdeddc4eee888eeca1924f50bf/number-freestanding-ers-grows-so-does-scrutiny.

Laws 2015, Chapter 14, Section 22 requires the AHCCCS Administration to report on the use of emergency departments for non-emergency purposes. In its 2015 report to the Legislature, the Administration noted that "the New England Healthcare Institute reports that total avoidable ED use is as high as 56% while the Center for Disease Control and Prevention reports a national average of non-emergency use of the emergency department for persons under 65 at about 10%." Based on the Administration's analysis of its utilization data, it found that for State Fiscal Year 2014, the top ten diagnoses for a Level I visit were:

- acute upper respiratory infections of unspecified site
- encounter for removal of sutures
- head injury, unspecified
- issue of repeat prescriptions
- fever, unspecified
- abdominal pain, unspecified site
- unspecified otitis media
- other threatened labor, antepartum condition or complication
- contusion of face, scalp, and neck except eye(s)
- cough.

It is self-evident that many, if not most, of these conditions can be appropriately addressed in the less expensive physician's office or urgent care center. The report to the Legislature also noted that overall utilization of levels 1 through 3 visits decreased from State Fiscal Years 2012 to 2014. The report attributes this trend to a variety of initiatives undertaken by the Administration, its contracted health plans, and providers. This rulemaking reflects the

Administration's concern that the current payment methodology incentivizes an expansion of access points (through hospital-based freestanding emergency departments) where inappropriate use of emergency department services can occur. Understandably, the AHCCCS Administration is concerned about use of hospital-based freestanding emergency departments as a substitute for services that are more appropriately and cost-effectively rendered in a clinic or physician's office. Payment for such services when provided by a hospital-based freestanding emergency department is substantially higher than payments to a physician's office or an urgent care center.

Despite no accessibility issues to emergency care in this State, the number of hospital-based freestanding emergency departments is anticipated to grow substantially throughout Arizona in upcoming years. As part of a national strategy to serve an affluent family demographic, these facilities have been promoted as appropriate alternatives to primary care treatment settings as they offer shorter wait times and a more enhanced patient experience. See Ayers, Alan A. "Understanding the Freestanding Emergency Department Phenomenon." The Journal of Urgent Care Medicine. February 2014. http://www.jucm.com/understanding-the-freestanding-emergency-department-phenomenon/2/. The hospital-based freestanding emergency department model allows hospitals to expand both their revenue base and their brand presence without the costly requirements associated with building a hospital. They are useful in capturing referrals for hospitals and their affiliated providers. Moreover, these facilities will benefit from the increase in persons who commonly use hospital emergency departments for primary care services. Approximately one dozen hospital-based freestanding emergency departments currently exist in Arizona with some presently under construction. Many of these facilities are located in densely populated metropolitan areas such as Chandler. As one example, the hospital-based freestanding emergency department located in Surprise, Arizona sits approximately three miles from a hospital with an on-site emergency department. Absent this rulemaking, the AHCCCS Administration will continue to reimburse services received by members at these facilities at the same rates as those provided to on-site hospital emergency departments.

The AHCCCS Administration recognizes that hospital-based freestanding emergency departments must satisfy more stringent requirements than those of urgent care centers or general outpatient treatment centers, including licensure to provide 24-hour emergency services, presence of a board-certified physician, and availability of more advanced levels of technology. However, unlike on-site hospital emergency departments, hospital-based freestanding emergency departments do not offer on-site inpatient admissions and lack the intensive care capabilities of on-site emergency departments. For patients who must be admitted to a hospital, transportation to the hospital will be necessary, delaying care and incurring additional charges. Overhead costs associated with hospital-based freestanding emergency departments are less than those of on-site emergency departments. As noted in the Agency's response to comments submitted by Dignity Health, The New England Journal of Medicine stated that "FSEDs can charge the same fees with a fraction of the overhead costs required to run a full-service hospital." Thus, hospital-based freestanding emergency departments experience greater profitability. Extending the same payment rates to these facilities as those made to on-site emergency hospital departments is inconsistent with the Agency's statutory mission.

As mentioned above, the base payment for higher level emergency department visits (levels 4 and 5) will be unaffected, and based on the current list of existing urban hospital-based freestanding emergency department providers, total reimbursement for level 4 and 5 visits will be the same as for an on-site ED. Payment for levels 1, 2, and 3 services will be reimbursed as a percentage of the amount otherwise paid for the same services provided in an on-site ED. The reductions delineated in the proposed rulemaking are modest and only apply to lower level emergency department visits, generally those that can be addressed by a primary care physician in an office setting or an urgent care center. Even with the incremental percentage reductions that will be applied to levels 1 through 3, payments to hospital-based freestanding emergency departments will exceed payments to urgent care centers based upon a rate by rate comparison of the five visit levels (see table C below).

The Administration anticipates that the reimbursement impact on hospital providers will be minimal. AHCCCS is aware of approximately 12 hospital-based freestanding emergency

departments in Arizona. Assuming those 12 facilities realize a volume of Medicaid-eligible emergency department visits proportional to their number, it is estimated that reimbursements for levels 1-3 visits to these facilities under the current fee schedule would equal at most 1.1% ($22,730,600) of total acute hospital reimbursements (more than $2 billion in FY 2015), and that the incremental percentage reductions resulting from this rulemaking would reduce total reimbursements for those 12 facilities combined by approximately $3 million annually.

The American College of Emergency Physicians describes level 1 visits as initial assessments where no medication or treatment is provided. Uncomplicated insect bites are an example. Treatment of sunburns, minor viral infections, and simple traumas are generally coded as level 2 visits. Level 3 codings are associated with minor trauma, fevers which respond to antipyretics (fever reducers such as aspirin and ibuprofen), and medical conditions requiring prescription drug management. Please refer to the following link for more information:
https://www.acep.org/physician-resources/practice-resources/administration/financial-issues-/-reimbursement/ed-facility-level-coding-guidelines/

Although the AHCCCS Administration supports economic development, economic expansion, and job creation in Arizona, this Agency, in its fiduciary responsibility to Arizona taxpayers, does not advocate an absolute extension of the on-site hospital emergency department payment model to hospital-based freestanding emergency departments in light of the above. Inherent in its public trust role is the Agency's duty to ensure that taxpayer monies are expended prudently. As a consequence, the AHCCCS Administration is proposing a payment model which safeguards against overpayments to hospital-based freestanding emergency departments for services not medically appropriate for these settings and which lack the vital coordination of necessary health care services. Failure to adopt the proposed payment methodology will promote overpayment of care and subject Arizona taxpayers to unnecessary expenditures.

It is important to underscore that the AHCCCS Administration routinely evaluates accessibility of services when provider rates are modified to identify potential adverse consequences so they can be addressed. To comply with federal requirements, the Agency submits to the Centers for Medicare and Medicaid Services an analysis which assesses the impact of restructuring provider payments on enrollee access to care. The historical analyses of enrollee access to care have not identified accessibility issues regarding enrollee access to care to hospital services or emergency department services. Despite the Agency's continued scrutiny of accessibility issues, the AHCCCS Administration has not identified any information to suggest that expansion of emergency department services is necessary to ensure member access to care. See reports posted at https://azahcccs.gov/PlansProviders/RatesAndBilling/FFS/. Moreover, the Centers for Medicare and Medicaid Services is aware of the proposed reimbursement scheme for hospital-based freestanding emergency departments and has not expressed concerns about accessibility issues for emergency care in Arizona. As part of its ongoing access monitoring review plans that will be shared with the public and submitted to the federal government, the AHCCCS Administration will perform continuing reviews of emergency services accessibility in Arizona to ensure that members continue to have adequate access to these services.

As with other proposed rate modifications, AHCCCS provides notice to the public in advance of the changes, inviting public comment which the Agency considers before implementing such changes. With respect to hospital-based freestanding emergency departments, two separate opportunities for public comment have been provided: a general notification of proposed rates anticipated to be effective October 2016 and January 1, 2017 for various services, including those for freestanding emergency departments, described in the general Notice of Public Information posted in August 2016; the other regarding the proposed rulemaking concerning this topic. Refer to the Agency's responses to the comments in the Notice of Final Rulemaking. As mentioned, comments submitted by or on behalf of hospitals were primarily complaints about the loss of their revenue due to the rulemaking.

The decline in revenue to hospital organizations as a result of this rulemaking is anticipated to be nominal compared to their overall revenue. As previously mentioned, payments to rural freestanding emergency departments will be supplemented by a peer group multiplier in situations where the only hospital operating in a city or town in a county of less than 500,000 residents closed an emergency department on or after January 1, 2015.

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

Proposed rule A.A.C. R9-22-712.90 requires hospital-based freestanding emergency departments to register for a provider identification number separate from the hospital with which they are affiliated. Registration of hospital-based freestanding emergency departments is not anticipated to be a burdensome process: It is estimated that one-half hour will be necessary to complete registration of each hospital-based freestanding emergency department. As previously mentioned, AHCCCS is aware of approximately 12 hospital-based freestanding emergency departments in Arizona, and therefore, approximately 6 hours will be required to complete the registration process. The rulemaking also sets forth the payment methodology for hospital-based freestanding emergency departments consistent with efficiency, economy, and quality of care as mandated by federal law 42 USC 1396a(a)(30)(A). The rulemaking does not prohibit or restrict the establishment of hospital-based freestanding emergency departments. Rather, the rulemaking is designed to foster efficient utilization of AHCCCS services and safeguard against overpayment of primary care services received in these settings while supporting accessibility of emergency care in rural settings where emergency care is limited. Payments for physician services at hospital-based freestanding emergency departments will remain unchanged under this rulemaking from payments currently made to physicians treating patients at on-site hospital emergency departments.

b. <u>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</u>:

The continuing growth of hospital-based freestanding emergency departments will multiply the opportunities for inappropriate use of emergency departments, resulting in inefficient utilization of services, overpayment for care, and inability to coordinate necessary medical care. Failure to amend the existing reimbursement scheme where hospital-based

freestanding emergency departments and on-site hospital emergency departments currently receive identical reimbursement for levels 1, 2, and 3 visits will perpetuate and intensify inefficient utilization of health services and overpayment of care more appropriate for primary care settings or urgent care centers. Proposed R9-22-712.90 protects taxpayers from the unnecessary fiscal burdens associated with higher costs of treatment in emergency departments when primary care settings are more suitable. The rulemaking is also necessary to comport with federal Medicaid law 42 USC 1396a(a)(30)(A). Furthermore, this rulemaking supports the important federal goal of Medicaid programs that "the right care is provided at the right time in an appropriate setting." 78 FR 42160 at 42277. Payments to physicians who treat patients in hospital-based freestanding emergency departments will not be affected by this rulemaking. Moreover, this rulemaking does not restrict hospitals from establishing hospital-based freestanding emergency departments.

c. <u>The estimated change in frequency of the targeted conduct expected from the rule change</u>:

As hospital-based freestanding emergency departments are currently indistinguishable in the Administration's claims data from on-site hospital emergency departments, utilization data specific to these facilities is not available. Through this rulemaking, the AHCCCS Administration will require that these facilities register separately from their affiliated hospitals so services and utilization at these facilities can be identified. The proposed reimbursement scheme will modestly reduce payments for services at levels 1, 2, and 3, thus supporting cost effective care and discouraging overutilization of care in higher cost settings. The rulemaking will allow the AHCCCS Administration to establish mechanisms to prevent overpayment of those services which can be delivered more effectively in primary care and other settings. The proposed fee schedule rates for hospital-based freestanding emergency departments will exceed the rates for urgent care centers at each of levels 1 through 3. Refer to the table below for a rate to rate comparison using AHCCCS fee schedule rates effective October 2016 for the three provider types:

Level	Urgent Care Center	Hospital-Based Freestanding Emergency Department	On-Site Hospital Emergency Department
Level 1	$30.90	$32.72	$54.54
Level 2	$52.77	$71.10	$88.87
Level 3	$76.28	$124.42	$138.24
Level 4	$116.45	$221.18	$221.18
Level 5	$146.03	$332.40	$332.40

The AHCCCS Administration evaluated data currently available from federal fiscal year 2015 to obtain the total amount of paid claims and adjudicated encounters from the AHCCCS payment system for levels 1, 2, and 3 emergency department visits. Using this data, the AHCCCS Administration estimates total payments by the AHCCCS Program for levels 1, 2, and 3 emergency department visits to be $172,373,800 for federal fiscal year 2015. The $172,373,800 total payments from AHCCCS for level 1, 2, and 3 emergency department visits comprise:

- approximately 8.2% of a total $2,093,822,300 for AHCCCS acute hospital payments
- approximately 17.8% of a total $966,265,800 for AHCCCS outpatient hospital payments, and
- approximately 34.6% of the total $497,626,900 for AHCCCS hospital emergency department payments

Assuming 12 hospital-based freestanding emergency departments in Arizona are operational, the AHCCCS Administration estimates that total payments to hospital-based freestanding emergency departments for levels 1-3 using the current payment model totals no more than $22,731,000 (an average of $1.9 million each if evenly distributed) and comprise:

- at most 1.1% of the total $2,093,822,300 in AHCCCS payments to hospitals.

- at most 2.4% of the total $966,265,800 in AHCCCS payments to hospitals for outpatient hospital services, and

- at most 4.6% of the total $497,626,900 in AHCCCS payments to hospitals for emergency department services.

- Thus, the Administration estimates the payment reduction for levels 1-3 visits for the 12 hospitals currently operating hospital-based freestanding emergency departments to be approximately $3,000,000 with the estimated breakdown of payment reductions as follows: $322,071 for level 1 visits (11% of the $3,000,000 savings), $974,322 for level 2 visits (32% of the $3,000,000 savings) and $1,705,382 for level 3 visits (57% of the $3,000,000 savings). Under this rule, base payments to hospital-based freestanding emergency departments are at 100% of the current outpatient hospital rate for levels 4 and 5 visits.

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

The State and taxpayers will directly benefit from this rulemaking as the payment model is fiscally prudent, will not reward inefficient utilization of services, will not financially incentivize overexpansion of hospital-based freestanding emergency departments that present avenues for increased inappropriate use of emergency departments, and will comply with federal requirement 42 USC §1396a(a)(30)(A) that provider payments be consistent with efficiency, economy, and quality of care. The payments described in the rulemaking will not result in overpayment of primary care services provided in hospital-based freestanding emergency departments. Although this rulemaking reduces the payments for lower priority level 1, 2 and 3 services, they typically can be provided more efficiently and cost effectively by a primary care physician or by an urgent care center. In its comments submitted to the proposed rulemaking, Dignity Health acknowledges that Level 1 and Level 2 services "are similar to encounters that could be treated in a physician's office or primary health center." Reimbursement for level 4 and 5 visits will be at 100% of the on site hospital base rate. Hospitals operating freestanding emergency departments will experience a decline in revenue associated with the percentage reductions for levels 1, 2, and 3 emergency department visits. Refer to information in 1.c.

3. <u>Cost benefit analysis.</u>

a. <u>Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking</u>

including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

Because hospital-based freestanding emergency department cannot be separately identified from on-site hospital emergency departments, the Administration cannot report specific data. However, information provided to the AHCCCS Administration by an operator of several of the hospital-based freestanding emergency departments suggests low utilization of services at the lower priority levels of care. As a result, the Administration assumes that the economic impact of this supplemental proposed rulemaking on hospital revenues will be minimal.

ii. Benefit:

The AHCCCS Administration will directly benefit from this rulemaking as the payment model is fiscally prudent, will not reward inefficient utilization of services, and will comply with federal requirement 42 USC §1396a(a)(30)(A).

iii. Need for additional Full-time Employees:

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

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

This rulemaking does not directly affect political subdivisions.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking. The Administration anticipates a minimal economic impact on public and private employment. The rulemaking does not limit or restrict the establishment of hospital-based freestanding emergency departments.

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.

Small businesses are not the subject to the proposed rulemaking. Although the 2015 Uniform Accounting Reports identify Page Hospital as having less than one hundred full time employees, this hospital is one of the many hospitals within the Banner Hospital

System. Furthermore, the 2015 Uniform Accounting Reports identify no Arizona hospitals with emergency departments as reporting gross annual revenue less than $4,000,000.

b. **Administrative and other costs required for compliance with the proposed rulemaking.** The Administration does not anticipate an impact upon the administrative expenses of the small business community because the rulemaking does not change practices of small businesses.

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. As such, it does not establish any deadlines for compliance or reporting.

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. As such, consolidation or simplification of compliance or reporting requirements is not applicable.

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

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.**

Arizona taxpayers will benefit from this rulemaking because the proposed payment model deters overpayments to hospital-based freestanding emergency departments for primary care services that are inappropriate in such settings and because the reimbursement is fiscally prudent. Opportunities for overpayments to hospital-based freestanding emergency departments will intensify with the expansion of these facilities throughout the State, making care at these facilities more convenient. Taxpayers will also benefit because this payment methodology comports with federal and state requirements to ensure that costs are contained, that payments are cost effective, consistent with efficiency, economy, and quality of care. AHCCCS members and other patients of hospital-based freestanding emergency departments will not be affected by the rulemaking. Hospitals may experience a slight decline in revenue under the proposed payment scheme.

6. Statement of the probable effect on state revenues.

The Agency cannot identify the probable effect on state revenues because hospital-based freestanding emergency departments are currently indistinguishable in the Administration's claims data from on-site hospital emergency departments. Therefore, no precise data is available. New provider types are currently being established for these facilities so that AHCCCS can identify and distinguish them from on-site hospital emergency departments. In light of the rapid expansion of these facilities in Arizona, the rulemaking is anticipated to reduce the likelihood of overpayments by the AHCCCS Program for non-emergency care provided in hospital-based freestanding emergency departments. Failure to adopt his rulemaking will result in overpayments to these facilities for primary care services when no accessibility issues for either emergency care or primary care exist, thus incentivizing the expansion of facilities where inappropriate use of emergency department services takes place. Failure to adopt this rulemaking will also promote inefficient utilization of health care services. In either circumstance, taxpayer funds will not be expended prudently, and taxpayers will be subjected to unnecessary expenditures.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and

benefits for each option and providing the rationale for not using nonselected alternatives.

The Administration did not consider other alternatives because the proposed changes are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

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

The Administration reviewed journal and industry articles regarding this subject some of which are referenced in the Notice of Final Rulemaking.

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.

F-1

DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0701)
Title 18, Chapter 9, Article 1, Aquifer Protection Permits – General Provisions; Article 3, Aquifer Protection Permits – General Permits; Article 4, Nitrogen Management – General Permits

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE : November 18, 2016

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0701)**
Title 18, Chapter 9, Article 1, Aquifer Protection Permits – General Provisions; Article 3, Aquifer Protection Permits – General Permits; Article 4, Nitrogen Management – General Permits

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This five-year-review report from the Arizona Department of Environmental Quality (Department) covers 69 rules in A.A.C. Title 18, Chapter 9, related to aquifer protection permits and nitrogen management.

Article 1, containing general provisions related to aquifer protection permits (APP or APPs), contains ten rules.

Article 3, related to APP general permits, contains 55 rules. The article covers the four types of APP general permits issued by the Department pursuant to A.R.S. § 49-245. Part A of the article establishes general provisions that apply only to permits issued under Article 3. The lone rule in Part B establishes various paperless permits for discharge activities. The permits are "paperless" because an owner or operator does not submit a notice to the Department to obtain permit coverage, but simply complies with the requirements in rule. Part C establishes Type 2 general permits. Part D establishes Type 3 general permits, which involve more Department review than Type 2 permits. Part E establishes Type 4 general permits, which provide permit coverage for on-site facilities.

Article 4, related to Nitrogen Management General Permits, contains four rules addressing two general permits related to agriculture. The permits require that an owner or operator comply with best management practices, and do not require an owner or operator to submit a notice to the Department to obtain permit coverage.

Proposed Action

Where changes would significantly improve both environmental protection and customer service, the Department anticipates submitting a rulemaking to the Council by December 2019

for Sections 101, 109, A312, A316, B301, C301, C302, C306, E301, E302, E303, E304, E314, E315, E323, and Table 1.

In addition to amending the above rules, the Department has identified possible new general permit options in the APP program, for such discharging activities as RV parks with 24,000- to 100,000-gallon septic systems, septic tank replacements, aeration and filtration combination waste water treatment systems, and green waste composting.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates that the rules are generally effective, with the following exceptions:

- Section A310 provides a thorough procedure for a qualified person to evaluate site soil conditions and provide an analysis of the treatment capacity of the soils. The rule would be more effective if subsection (F)(2) clarified that a presoaking procedure is necessary only for certain soil types.
- Section A312 would be more effective if the table setback requirements for drinking water wells and other property lines specified what the appropriate recorded documents between adjacent property owners would be. In addition, the term "bacteria" should be replaced with "total coliform" or "e. Coli" in the definition of "nominally free of bacteria" used in subsection (E)(2). Also, the term "nominally free" should be defined with specificity.
- In Section B301, subsection (B) should allow any discharge from hydrostatic testing from pipelines that are not from a drinking water distribution system, and subsection (E) should include discharges from reverse osmosis reject water.
- Section E315 would be more effective if the standard in subsection (B)(2)(d) referred to 10,000,000 (Log_{10} 7) instead of 1,000,000 (Log_{10} 7). Council staff does not know what this means, or why it is significant, but trusts the Department's judgment on such matters.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Department has received written criticisms of the rules. All criticisms, along with the Department's responses, are detailed on pages 39-51 of the report.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 49-104(B)(13), under which the Department must "[p]rescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases."

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

Yes. The Department indicates that the rules are generally consistent with statutes and other rules, with the following exceptions:

- Section A303: The citation in subsection (D) incorrectly refers to (B)(1) instead of (C)(1).
- Section C302: The citation in subsection (A) incorrectly refers to A.R.S. § 49-201(19) instead of A.R.S. § 49-201(20).
- Section C306: Subsection (A) is outdated, as 2010 amendments to A.R.S. § 49-241(B) mean that an Arizona Pollutant Discharge Elimination System permit is no longer required as part of this Type 2 general permit.
- Section E315: The citation in subsection (C)(6)(a) incorrectly refers to Section E309(E) instead of Section A309(E).
- Table 1: A citation for Single Family Dwellings incorrectly refers to Section A314(D)(1) instead of Section A314(4)(a).

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

Yes. With the exception of provisions that are inconsistent with statute, the Department indicates that it enforces the rules as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that, with the exception of the aforementioned effectiveness and consistency issues, the rules are generally clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. While many federal laws relate to clean water, the Department indicates that no federal laws directly correspond to these rules.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules were adopted prior to July 29, 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. For Article 1 and Article 3, Parts A, B, C, and E, the Department intended to submit a rulemaking to the Council by January 2014. Because of the Department's changing rulemaking priorities, and because of the rulemaking moratorium, the Department did not pursue the rulemaking further.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, the Department expects to submit a rulemaking to the Council in December 2019. This analyst recommends that the report be approved.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-1**

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

FROM: GRRC Economic Team

DATE : November 18, 2016

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0701)**
Title 18, Chapter 9, Article 1, Aquifer Protection Permits – General Provisions; Article 3, Aquifer Protection Permits – General Permits; Article 4, Nitrogen Management – General Permits

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The Department last amended Article 1 in November 2005. The Department believes that the observations made in the last Economic Impact Statement (EIS) regarding Article 1 were accurate and that costs have been minor. The Department believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed since the effective date. Approximately 442 facilities have individual Aquifer Protection Permits (APPs).

Article 3 was last amended in November 2005. The Department believes that the EIS was accurate and that costs have been minor. The Department believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date. Since January 1, 2007. The Department has received and processed the following number of general permits: Type 2 – 408, Type 3 – 108, Type 4.01 (sewage collection system) – 876, and Type 4 (on-site facilities) – 314. The Type 1 general permits are "paperless" permits for various types of discharge activities, the Department does not track the number of these permits.

Article 4 was last amended in November 2005. The Department believes that the EIS assessments for the rules were accurate and that costs have been minor. The Department also believes that the rules' impact on the state's economy, small business and consumers has not changed since the effective date. As the Nitrogen Management General Permits are "paperless" permits, the Department does not track the number of these permits.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department states that the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

April 26, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Five-Year-Review Report: Title 18, Chapter 9, Articles 1, 3 and 4

Dear Ms. Ong:

The Arizona Department of Environmental Quality (ADEQ) has reviewed Title 18, Chapter 9, Articles 1, 3 and 4 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of ADEQ's findings, proposed courses of action and reasons, and justifications. As this Report details, ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5, and continues to evaluate individual rule sections in the context of the entire Aquifer Protection Permit program. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in these Articles.

I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at wl1@azdeq.gov.

Sincerely,

Misael Cabrera
Director

Enclosures: Five-Year Review Report

FIVE-YEAR REVIEW REPORT

TITLE. 18 ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 1 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A) (7), (A) (10), (A) (11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. Objective of the rules:

   The Article 1 General Provisions apply to Articles 2 through 4, Article 2 governing individual Aquifer Protection Permits (APPs), and Articles 3 and 4 governing general permits.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. The Arizona Department of Environmental Quality's (ADEQ) uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 1, Article 5, 18 A.A.C. Chapter 11, Article 3, and 18 A.A.C. Chapter 14, Article 1. No corresponding federal programs apply to Article 1.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this Article. All criticisms and ADEQ responses are detailed in Attachment I.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Article 1 was amended in January 2001, and again in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state’s economy, small business and consumers has not changed since the effective date. Approximately 442 facilities have individual APPs.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on

Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ had proposed submitting some amendments to Council by January 2014 in response to comments received for the 2011 review. Under ADEQ's changing rulemaking priorities and Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as the proposed amendments did not clearly qualify. ADEQ will review the actions considered in 2014 and include them in the December 2019 rulemaking, if an exception is granted under any Executive Order applicable to that rulemaking.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 1.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue both individual and general permits as appropriate.

14. Proposed course of action:

    ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5, and continues to evaluate individual rule sections in the context of the entire program. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in this Article where changes would significantly improve both environmental protection and customer service. Where specific comments were received they have been documented in the Section-by-Section Analysis. All criticisms and ADEQ responses are detailed in Attachment I.

II. Section-by-Section of Rules

R18-9-101. Definitions

2. Objective of the rules:

   The definition section defines important terms used in 18 A.A.C., Chapter 9, so that the rules are understandable to the general public, such as acronyms, words with uncommon meanings, and technical terms.

3. Effectiveness of the rules in achieving the objective:

   The rule effectively defines important terms used in the rules.

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable but are used in enforcement of the rules.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in

Attachment I.

14. Proposed course of action:

As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

2. Objective of the rules:

This section lists two types of facilities to which the APP rules do not apply. Drywells that receive stormwater run-off must be registered under A.R.S. § 49-332. Application of pesticides is regulated under federal law, and under state law where ADEQ and the Arizona Department of Agriculture have responsibilities to determine the impact that agricultural pesticides have on groundwater.

3. Effectiveness of the rules in achieving the objective:

The rule effectively informs of what the APP program does not cover.

5. Status of Agency enforcement policy regarding the rule:

This rule is enforced as it explains who is not regulated under the APP program.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

This rule was amended in January 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2001. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed since the effective date.

R18-9-103. Class Exemptions

2. Objective of the rules:

This section lists exemptions of classes or categories of facilities that are exempt from the APP rules requirements. These classes of facilities, and their impact on groundwater are regulated though other regulatory schemes.

3. Effectiveness of the rules in achieving the objective:

The rule effectively informs of other exemptions.

5. Status of Agency enforcement policy regarding the rule:

This rule is enforced as it explains who is not regulated under the APP program.

R18-9-104. Transition from Notices of Disposal and Groundwater Quality Protection Permitted Facilities

2. Objective of the rules:

Arizona has protected groundwater for a number of years but through different regulatory schemes. This section explains the transition of the previous types of permits to the APPs.

3. Effectiveness of the rules in achieving the objective:

The rule effectively informs entities permitted under prior laws of the APP transition process.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ and entities permitted under prior laws comply with this rule in transitioning to an APP.

R18-9-105. Permit Continuance

2. Objective of the rules:

   Arizona has protected groundwater for a number of years but through different regulatory schemes. This section explains that the previous types of permits are still valid until ADEQ issues an APP as long as the facility complies with the terms of the permit.

3. Effectiveness of the rules in achieving the objective:

   The rule effectively explains the circumstances that permits issued under prior laws continue to be valid.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with this rule in its interactions with entities permitted under prior laws.

R18-9-106. Determination of Applicability

2. Objective of the rules:

   Under this section, a person may submit information for ADEQ to determine whether the future operation or activity will need an APP. ADEQ also will determine whether the operation or activity is eligible for a general permit. This section prescribes the information the person must submit and the time-frame.

3. Effectiveness of the rules in achieving the objective:

   This section effectively communicates how a person may submit a determination of applicability to ADEQ and ADEQ's process in responding.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the process in this rule for entities that chose to submit a determination of applicability.

R18-9-107. Consolidation of Aquifer Protection Permits

2. Objective of the rules:

   This section describes the circumstances when ADEQ may consolidate two or more APPs into one APP.

3. Effectiveness of the rules in achieving the objective:

   This section effectively communicates when ADEQ may consolidate two or more APPs into one APP.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the process in this rule in consolidating two or more APPs.

R18-9-108. Public Notice

2. Objective of the rules:

   This section describes that ADEQ will provide monthly notice on recent activities related to individual APPs, such as applications, final decisions or clean closure approvals. ADEQ will provide notice to county governments, other government entities that may be affected by the permit action, any person who requests to be notified, and may provide notice on the web.

3. Effectiveness of the rules in achieving the objective:

   This section effectively communicates when ADEQ provides regular public notice on recent activities related to individual APPs.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the requirements in this rule to provide regular public notice.

R18-9-109. Public Participation

2. Objective of the rules:

   This section describes that ADEQ will publish a notice of Preliminary Decision on issuing or denying a significant permit amendment or final permit determination of an individual APP. A written public comment period begins on the date ADEQ publishes the Notice of Preliminary Decision in one or more local newspapers. This section also describes when ADEQ will conduct a public hearing to address a Notice of Preliminary Decision and how it will respond to any comments submitted.

3. Effectiveness of the rules in achieving the objective:

   This section effectively communicates how ADEQ informs the general public of activity on individual APP applications, when it conducts a public hearing, and the manner in which it responds to public comments.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the requirements in this rule as part of the permitting process for applications for individual APPs and significant amendments to existing APPs.

14. Proposed course of action:

   ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5. In its evaluation submitted to the Office of the Governor, ADEQ proposed to amend this rule to allow options of public notice, such as posting on the website and electronic update subscriptions. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-110. Inspections, Violations, and Enforcement

2. Objective of the rules:

   This section lists the statutory provisions under which ADEQ conducts inspections of permitted facilities and takes enforcement actions. These provisions apply to any facility under a general and individual APP, except for on-site wastewater treatment facilities as described in R18-9-A308.

3. Effectiveness of the rules in achieving the objective:

   This section effectively communicates the statutory provisions for ADEQ to conduct inspections and take enforcement actions.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the provisions of this rule in inspections, violations, and enforcement actions.

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART A. GENERAL PROVISIONS

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 3, Part A (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A) (7), (A) (10), (A) (11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. Objective of the rules:

   Article 3 covers the APP general permits (Type 1, 2, 3, and 4) issued pursuant to A.R.S. § 49-245. Part A establishes general provisions that apply to Article 3. The Notice of Intent to Discharge is the main document that applicants for general permits submit to ADEQ for review. R18-9-A308 through R18-9-A317 apply to on-site wastewater treatment facilities (on-site facilities) which make up the largest group of the APP general permits.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 1, Article 5, 18 A.A.C. Chapter 11, Article 3, and 18 A.A.C. Chapter 14, Article 1. No corresponding federal programs apply to Article 3.

5. Status of Agency enforcement policy regarding the rule:

   An APP is required to discharge under A.R.S. § 49-241(A) and (B). A.R.S. § 49-245 allows ADEQ to issue an APP general permit for a defined class of facilities. Article 3 establishes the applicable standards that permittees must comply with under these APP general permits. The applicable standards also serve as the basis for enforcement actions. Under Arizona Revised Statutes, Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

   ADEQ enforces these rules in reviewing and determining approval or denial on an application for a general APP, and in setting the terms of a general APP in rule. If a person seeking a general permit cannot comply with the terms, the person must seek and obtain an individual APP.

   Under A.R.S. § 49-107, ADEQ may authorize political subdivisions, such as county or city agencies, to exercise certain environmental regulatory functions, powers or duties by a provision of law. Many of the Type 4 general permits are implemented and enforced by delegated local authorities. These delegated local authorities may have standards of compliance that are stricter than those of ADEQ but not less strict.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ received various written criticisms in anticipation of this Five-year Review Report. Specific written criticisms are detailed in Attachment I. ADEQ is evaluating the criticisms of the individual rule sections in the context of the entire program. There were 9 different commenters, including

delegated county officials and industry stakeholders.

All criticisms and ADEQ responses are detailed in Attachment I

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Article 3 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date. Since January 1, 2007, ADEQ has received and processed the following number of general permits:

   - Type 2 – 408,
   - Type 3 – 108,
   - Type 4.01 (sewage collection system) – 876, and
   - Type 4 (on-site facilities) – 314

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ had proposed submitting some amendments to Council by January 2014. Under ADEQ's changing rulemaking priorities and the previous Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as it did not believe that the proposed amendments clearly qualified.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 3.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action:

    ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5, and continues to evaluate individual rule sections in the context of the entire program. In its evaluation submitted to the Office of the Governor, ADEQ noted possible new general permits options in the APP program, for such discharging activities as:

    - RV parks with 24,000- to 100,000-gallon septic systems

- Septic tank replacements
- Aeration and filtration combination waste water treatment systems
- Green waste composting

As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in this Article where changes would significantly improve both environmental protection and customer service. Where specific comments were received they have been documented in the Section-by-Section Analysis. All criticisms and ADEQ responses are detailed in Attachment I.

II. Section by Section Analysis of Rules

R18-9-A301. Discharging Under a General Permit

1. Authorization of rules by existing statutes:

   A.R.S. § 49-245

2. Objective of the rules:

   This rule establishes the basic application and review process for Type 1, 2, 3 and 4 general permits, and more specific provisions for the Type 3 and 4 general permits. For the Type 4 general permit, ADEQ issues a construction authorization allowing the permittee to construct the on-site facility, after which the permittee must request and be issued a Discharge Authorization before operating the on-site facility.

3. Effectiveness of the rules in achieving the objective:

   This rule establishes the requirements so that ADEQ receives adequate information to make the determination of whether the proposed facility meets the terms and conditions by reviewing pre-construction design and review post construction survey and testing data.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the provisions of this rule in processing and reviewing Type 2, 3, and 4 general permits.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I

R18-9-A302. Point of Compliance

1. Authorization of rules by existing statutes:

   A.R.S. § 49-244

2. Objective of the rules:

   This rule establishes the point of compliance for the general permits, which is where compliance with the aquifer water quality standards is determined.

3. Effectiveness of the rules in achieving the objective:

   This rule informs where the point of compliance is for the Aquifer Protection general permits.

5. Status of Agency enforcement policy regarding the rule:

ADEQ complies with the provisions of this rule in determining the point of compliance for a facility operating under a general permit.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   This rule was created in January 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in in the last rulemaking in 2001. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date.

R18-9-A303. Renewal of a Discharge Authorization

2. Objective of the rules:

   This rule establishes the requirement for renewal of a Discharge Authorization and the renewal period for Type 2 and 3 general permits. This rule authorizes the discharge authorization for Type 1 and 4 general permits for the life of the facility.

3. Effectiveness of the rules in achieving the objective:

   This rule establishes the renewal time period and specifies the time frame for both the agency and applicant.

4. Consistency of the rules with state and federal statutes and rules:

   The citation in subsection (D) incorrectly refers to (B)(1) instead of the correct subsection, which is (C)(1). ADEQ will correct this citation in a future rule making. ADEQ and the regulated community are aware of this problem.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ enforces the renewal terms for Type 2 and 3 general permits.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I

R18-9-A304. Notice of Transfer

2. Objective of the rules:

   This rule establishes the requirement for most permittees to file a notice of transfer application for a change in ownership for facilities covered under a general permit. This rule also provides a notice of transfer requirement for the Type 4 general permits by referencing R18-9-A316.

3. Effectiveness of the rules in achieving the objective:

   This rule informs an owner/operator of the requirements and process to provide a notice of transfer to ADEQ for any changes in ownership for facilities covered by a general permit.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ enforces the notice of transfer requirements for ownership transfers for the APP general permits.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-A305. Facility Expansion

2. Objective of the rules:

   This rule establishes the process for an owner/operator that wishes to expand a facility covered under a Type 2, 3, or 4 general permit.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule informs the permittee on the details that are required to be submitted with a new Notice of Intent for an existing facility covered under a Type 2, 3, or 4 general permit.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ enforces the provisions of this rule when determining a permittee's request to expand a facility covered by a Type 2, 3, or 4 general permit.

R18-9-A306. Closure

2. Objective of the rules:

   This rule establishes the closure requirements for discharging facilities under A.R.S. § 49-252 for the various general permits.

3. Effectiveness of the rules in achieving the objective:

   This rule informs the permittee on the process to close a generally permitted facility.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the provisions of this rule when reviewing a permittee's notice to close a generally permitted facility, when applicable. For some general permits, the closure requirements are self-enforced by the permittee.

R18-9-A307. Revocation of Coverage Under a General Permit

2. Objective of the rules:

   This rule establishes the parameters and process the director must follow in order to revoke coverage under a general permit and provides the director the ability to allow continuation of discharge until other coverage or permits are issued. It also establishes the applicant’s right to appeal and an informal settlement.

3. Effectiveness of the rules in achieving the objective:

   This rule provides the process for the director to revoke coverage under a general permit.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the provisions of this rule when revoking a general permit.

R18-9-A308. Violations and Enforcement For On-Site Wastewater Treatment Facilities

2. Objective of the rules:

This rule states ADEQ's enforcement authority against the owner or operator of an on-site facility who violates provisions of a general permit or of Article 3.

3. Effectiveness of the rules in achieving the objective:

   This rule provides enforcement authority to ADEQ under A.R.S. § 49-261 if a facility is not operating according to the provisions of the general permit.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ complies with the provisions of this rule when enforcing violations or taking enforcement actions against an on-site facility.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   This rule was created in January 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in in the last rulemaking in 2001. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date.

R18-9-A309. General Provisions for On-Site Wastewater Treatment Facilities

2. Objective of the rules:

   This rule establishes general provisions for all on-site facilities, which are covered under Type 4 and some Type 1 general permits. The rule establishes prohibitions and general requirements, and adds requirements in addition to R18-9-A301, for the Notice of Intent to Discharge (Notice of Intent) and Discharge Authorization. The rule also provides requirements for closure, the proprietary listing process to verify performance claims for treatment products, and recordkeeping.

3. Effectiveness of the rules in achieving the objective:

   This rule informs potential applicants of general limitations and other provisions to effectively reduce human health and environmental impacts.

5. Status of Agency enforcement policy regarding the rule:

   ADEQ enforces this rule in making determinations regarding on-site facilities.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-A310. Site Investigation for Type 4 On-Site Wastewater Treatment Facilities

2. Objective of the rules:

   Soil characteristics are important for an on-site facility to operate effectively. This rule requires a site investigation by a qualified person and requires both surface and subsurface characterization to evaluate the treatment capacity of the soils.

3. Effectiveness of the rules in achieving the objective:

This rule provides a thorough procedure for a qualified person to evaluate site soil conditions and provide an analysis of the treatment capacity of the soils. The rule could be more effective if subsection (F)(2) clarified that the presoaking procedure is necessary only for certain soil types. ADEQ will correct this

citation in future rule making. ADEQ and the regulated community are aware of this problem.

5. Status of Agency enforcement policy regarding the rule:

   Many of the procedures established in this rule are self-enforcing by the investigator performing the site investigation, but the results would be documented to ADEQ.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-A311. Facility Selection for Type 4 On-Site Wastewater Treatment Facilities

2. Objective of the rules:

   This rule establishes a selection process for an on-site facility, presuming a septic system will be installed unless the site investigation determines that local conditions require additional treatment works or disposal works covered under specific general permits.

3. Effectiveness of the rules in achieving the objective:

   This rule provides the selection process for an on-site facility including the requirement to install an alternative system if site conditions cannot support proper treatment of septic tank effluent.

5. Status of Agency enforcement policy regarding the rule:

   Many of the considerations for selecting an on-site facility are self-enforcing by the person installing the on-site facility, but final selection would be enforced by ADEQ when the person seeks a general permit.

R18-9-A312. Facility Design for Type 4 On-site Wastewater Treatment Facilities

2. Objective of the rules:

   This rule establishes different design requirements for on-site facilities including: design flow determination, additional general requirement for alternative systems, and setbacks from features to minimize the risk of contamination for on-site facility effluent. The rule also provides more details on other rule sections such as:

   1. Soil absorption rate and disposal sizing using data presented in the site investigation to design an adequately sized disposal to provide sufficient coliform treatment,
   2. Vertical separation distance design requirements to provide sufficient amount of soil to provide coliform treatment prior to the wastewater interfacing with a limiting condition,
   3. Material and manufactured system general requirements, and
   4. Alternative design process to overcome site limiting conditions.

3. Effectiveness of the rules in achieving the objective:

   This rule provides the applicant design standards for the application and standards for ADEQ to evaluate applications. The rule would be more effective if two areas were clarified: (1) the table setback requirements for drinking water wells and other property lines need to specify what the appropriate recorded documents between adjacent property owners would be, for example an easement or a covenant and (2) the definition of “nominally free of bacteria” as used I subsection (E)(2) should be changed to replace “bacteria” with “total coliform” or “e.coli.” and “nominally free”

should be defined with specificity.

5. Status of Agency enforcement policy regarding the rule:

ADEQ enforces the provisions of this rule when reviewing and determining design documents submitted as part of the Notice of Intent to Discharge for a Type 4 on-site facility.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on the rules. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-A313. Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities

2. Objective of the rules:

This rule establishes general installation, operation, and maintenance requirements for owners of on-site facilities.

3. Effectiveness of the rules in achieving the objective:

This rule provides information on general standards for installation, operation and maintenance requirements for an on-site facility in order to maintain general permit coverage.

5. Status of Agency enforcement policy regarding the rule:

Many of the provisions of this rule are self-enforcing by the person installing, operating, or maintaining the on-site facility. The provisions of this rule would also serve as a basis for ADEQ in taking enforcement actions against the permittee of an on-site facility.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-A314. Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

2. Objective of the rules:

This rule establishes design and material requirements specifically for septic tanks (which are usually the main component for an on-site facility) including a capacity requirement and a water tightness test requirement.

3. Effectiveness of the rules in achieving the objective:

This rule informs potential applicants of septic tank design parameters used mainly by tank pre-cast companies or occasionally for septic tanks cast in place.

5. Status of Agency enforcement policy regarding the rule:

Many of the provisions of this rule are self-enforcing by the person installing, operating, or maintaining the on-site facility. ADEQ enforces the provisions of this rule when reviewing and evaluating design documents submitted as part of the Notice of Intent to Discharge for a Type 4 on-site facility.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-A315. Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

2. Objective of the rules:

This rule establishes the requirements for installing and designing an interceptor when it is required to pre-treat for fats, oils, and greases.

3. Effectiveness of the rules in achieving the objective:

This rule informs potential applicants of the installation and design requirements for interceptors for fats, oils, and greases.

5. Status of Agency enforcement policy regarding the rule:

Many of the provisions of this rule self-enforcing by the person installing, operating, or maintaining the on-site facility. ADEQ enforces the provisions of this rule when reviewing and determining design documents submitted as part of the Notice of Intent to Discharge for a Type 4 on-site facility.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities

2. Objective of the rules:

This rule establishes the requirement that when property served by an on-site facility is transferred, there must be an inspection of the on-site facility by a qualified person, who will also prepare a report of inspection. The person to which the property is transferred must report the transfer to ADEQ.

3. Effectiveness of the rules in achieving the objective:

This rule informs permittees and new owners of the process required to transfer the general permit to the new owner.

5. Status of Agency enforcement policy regarding the rule:

ADEQ enforces the provisions of this rule through the notice of transfer process.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5. In its evaluation submitted to the Office of the Governor, ADEQ proposed to amend this rule as the data collected through this program is not used. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-A317. Nitrogen Management Areas

2. Objective of the rules:

   This rule establishes a process for ADEQ to evaluate groundwater pollution by nitrogen and provides a methodology for ADEQ to designate the area as a Nitrogen Management Area. The Nitrogen Management Area designation provides ADEQ authority to require connection to a sewage collection system or require the installation of nitrogen reduction technologies.

3. Effectiveness of the rules in achieving the objective:

   This rule effectively establishes a process and criteria for ADEQ to evaluate groundwater pollution by nitrogen and designate the area as a Nitrogen Management Area.

5. Status of Agency enforcement policy regarding the rule:

   This rule provides a tool for ADEQ to work collaboratively with local authorities to control groundwater pollution by nitrogen from such sources. ADEQ has not designated a Nitrogen Management Area due to lack of sufficient resources to gather and develop the data necessary to delineate areas of nitrogen contamination of groundwater, especially by dense concentrations of septic tanks.

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART B. TYPE 1 GENERAL PERMITS

R18-9-B301. Type 1 General Permit

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A) (7), (A) (10), (A) (11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. Objective of the rules:

   The rule in Part B establishes multiple "paperless" permits for various types of discharge activities. The owner or operator does not submit a notice to ADEQ in order to obtain permit coverage, but must comply with the requirements in the rule.

3. Effectiveness of the rules in achieving the objective:

   This rule provides permit coverage and establishes parameters for minor discharges so that owners and operators of facilities responsible for discharging activities do not violate A.R.S. § 49-241(A) by discharging without a permit. The rule could be more effective by amending: 1) subsection (B) to allow any discharge from hydrostatic testing from pipelines that are not from a drinking water distribution system; and 2) subsection (E) to include discharge from reverse osmosis reject water.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 11, Article 3. No corresponding federal programs apply to Article 3.

5. Status of Agency enforcement policy regarding the rule:

   An APP is required to discharge under A.R.S. § 49-241(A) and (B). ADEQ enforces this rule in responding to a complaint. If the permittee is operating outside the requirements of one of these general permits, the permittee must obtain another type of general permit or an individual APP. Under Arizona Revised Statutes, Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rule is clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   The rule was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the rule's impact on the state's economy, small business and consumers has not changed since the effective date. As the Type

1 general permits are “paperless” permits for various types of discharge activities, ADEQ does not track the number of these permits.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ had proposed submitting some amendments to Council by January 2014. Under ADEQ’s changing rulemaking priorities and the previous Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as it did not believe that the proposed amendments clearly qualified.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 3.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action:

    As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 3, Part C (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A) (7), (A) (10), (A) (11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. Objective of the rules:

   Part C establishes the Type 2 general permits which provide permit coverage for a variety of discharge activities. The structure of each section follows a similar format of establishing the threshold discharge activities that qualify, additional submittals to accompany the Notice of Intent to Discharge, design requirements, operational and maintenance requirements, and recordkeeping.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 1, Article 5, 18 A.A.C. Chapter 11, Article 3, and 18 A.A.C. Chapter 14, Article 1. No corresponding federal programs apply to Article 3.

5. Status of Agency enforcement policy regarding the rule:

   An APP is required to discharge under A.R.S. § 49-241(A) and (B). A.R.S. § 49-245 allows ADEQ to issue an APP general permit for a defined class of facilities. Article 3 establishes the applicable standards that permittees must comply with under these APP general permits. Discharge under a Type 2 general permit is authorized if the person meets the requirements of the general permit and files a Notice of Intent to Discharge. ADEQ enforces these rules in reviewing and determining approval or denial on an application for a Type 2 general APP, and in setting the terms of a Type 2 general APP in rule. If a person seeking a general permit cannot comply with the terms, the person must seek and obtain an individual APP.

   The applicable standards also serve as the basis for enforcement actions. Under Arizona Revised Statutes, Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ has not received any written criticisms on the rules within the past five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Article 3 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state’s economy, small business and consumers has not changed since the effective

date. Since January 1, 2007, ADEQ has received and processed 408 Type 2 general permits.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ had proposed submitting some amendments to Council by January 2014. Under ADEQ's changing rulemaking priorities and the previous Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as it did not believe that the proposed amendments clearly qualified.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 3.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action:

    ADEQ is evaluating individual rule sections in the context of the entire program. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in this Article. If listed specifically in the Section-by-Section Analysis, ADEQ has already evaluated the rule section for amendment.

II. Section by Section Analysis of Rules

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

2. Objective of the rules:

   This rule establishes the threshold requirements for a drywell that drains an area where hazardous substances are used, stored, loaded, or treated. This rule establishes the Notice of Intent requirements for the 2.01 General Permit, and the requirements for design, performance, recordkeeping and inspections, spills, and closure.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

14. Proposed course of action:

ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5. In its evaluation submitted to the Office of the Governor, ADEQ proposed to remove the requirement that drywell sediments and soil samples be compared to Soil Remediation Levels and only compare to Groundwater Protection Levels. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

2. Objective of the rules:

   This rule establishes the threshold requirements for intermediate stockpiles not qualifying as inert material at a mining site. This rule establishes the Notice of Intent requirements for the 2.02 General Permit, and the requirements for design and closure.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

4. Consistency of the rules with state and federal statutes and rules:

   The citation in subsection (A) refers to the incorrect section in A.R.S. § 49-201(19) and should be changed to the correct citation of A.R.S. § 49-201(20).

14. Proposed course of action:

   As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-C303. 2.03 General Permit: Hydrologic Tracer Studies

2. Objective of the rules:

   This rule establishes the threshold requirements for discharges caused by a hydrologic tracer study. This rule establishes the Notice of Intent requirements for the 2.03 General Permit, and the requirements for design and performance, recordkeeping, and closure.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the person performing a hydrologic tracer study adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed hydrologic tracer study meets the terms and conditions.

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

2. Objective of the rules:

   This rule establishes the threshold requirements for a drywell that drains an area at a facility for dispensing motor fuel, including a commercial gasoline station with an underground storage tank. This rule establishes the Notice of Intent requirements for the 2.04 General Permit, and the requirements for design, flow control and pretreatment, performance, recordkeeping and inspections, spills, and closure.

3. Effectiveness of the rules in achieving the objective:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-C305. 2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System

2. Objective of the rules:

This rule establishes the requirements for a permittee to manage, operate, and maintain a sewage collection system under the terms of a Capacity, Management, Operations, and Maintenance Plan (CMOM Plan) under the 2.05 General Permit. This rule defines the term "imminent and substantial threat to public health or the environment", used in this section. It establishes the Notice of Intent requirements, and the requirements for the CMOM Plan, which is used as the basis for determining compliance in the event of a sewage release. It includes recordkeeping and reporting requirements, including requiring the permittee to notify the public in certain circumstances of sewage releases.

3. Effectiveness of the rules in achieving the objective:

This rule gives the owner or operator of a sewage collection system adequate information on the requirements to comply with this general permit, and how compliance will be determined in the event of a sewage release.

R18-9-C306. 2.06 General Permit: Fish Hatchery Discharge to a Perennial Surface Water

2. Objective of the rules:

This rule establishes the threshold requirements for a fish hatchery to discharge to a perennial surface water. This rule establishes the Notice of Intent requirements for the 2.06 General Permit, and the requirements for the design and performance.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

4. Consistency of the rules with state and federal statutes and rules:

A.R.S. § 49-241(B) was amended in 2010 to eliminate the requirement that a facility that has a point source discharge to a navigable water is considered a discharging facility and requires an APP. This means that an AZPDES (Arizona Pollutant Discharge Elimination System) permit is no longer required as part of this Type 2 general permit, as stated in subsection (A).

14. Proposed course of action:

As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART D. TYPE 3 GENERAL PERMITS

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 3, Part D (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A) (7), (A) (10), (A) (11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. Objective of the rules:

   Part D establishes the Type 3 general permits which provide permit coverage for a variety of discharge activities and involve greater ADEQ review than the Type 2 general permits. The structure of each section follows a similar format of establishing the threshold discharge activities that qualify, additional submittals to accompany the Notice of Intent to Discharge, design requirements, operational and maintenance requirements, and recordkeeping.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 1, Article 5, 18 A.A.C. Chapter 11, Article 3, and 18 A.A.C. Chapter 14, Article 1. No corresponding federal programs apply to Article 3.

5. Status of Agency enforcement policy regarding the rule:

   An APP is required to discharge under A.R.S. § 49-241(A) and (B). A.R.S. § 49-245 allows ADEQ to issue an APP general permit for a defined class of facilities. Article 3 establishes the applicable standards that permittees must comply with under these APP general permits. Discharge under a Type 3 general permit is authorized if the person meets the requirements of the general permit and files a Notice of Intent to Discharge. ADEQ enforces these rules in reviewing and determining approval or denial on an application for a Type 3 general APP, and in setting the terms of a Type 3 general APP in rule. If a person seeking a general permit cannot comply with the terms, the person must seek and obtain an individual APP.

   The applicable standards also serve as the basis for enforcement actions. Under Arizona Revised Statutes, Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ has not received any written criticisms on the rules within the past five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Article 3 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules'

impact on the state's economy, small business and consumers has not changed since the effective date. Since January 1, 2007, ADEQ has received and processed 108 Type 3 general permits.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ did not propose any amendments to Council.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 3.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action:

    ADEQ is evaluating individual rule sections in the context of the entire program. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in this Article. If listed specifically in the Section-by-Section Analysis, ADEQ has already evaluated the rule section for amendment.

II. Section by Section Analysis of Rules

R18-9-D301. 3.01 General Permit: Lined Impoundments

2. Objective of the rules:

   This rule establishes the threshold requirements for lined surface impoundments and lined secondary containment structures. This rule establishes the Notice of Intent requirements for the 3.01 General Permit, and the requirements for the design and installation, performance, recordkeeping and reporting, and closure.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

2. Objective of the rules:

This rule establishes the threshold requirements for facilities that treat water for industrial process or potable uses to discharge filtration backwash and discharges from sedimentation and coagulation in the water treatment process. This rule establishes the Notice of Intent requirements for the 3.02 General Permit, and the requirements for the impoundment design and siting, performance, and recordkeeping and reporting.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination if the proposed facility meets the terms and conditions.

R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes

2. Objective of the rules:

   This rule establishes the threshold requirements for discharges from a vehicle and equipment wash facility. This rule establishes the Notice of Intent requirements for the 3.03 General Permit, and the requirements for design, installation, and testing, performance, recordkeeping and reporting, monitoring, and closure.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites

2. Objective of the rules:

   This rule establishes the threshold requirements for discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites. This rule establishes the Notice of Intent requirements for the 3.04 General Permit, and the requirements for design, performance, recordkeeping and reporting, and closure.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-D305. 3.05 General Permit: Disposal Wetlands

2. Objective of the rules:

   This rule establishes the threshold requirements for constructed or natural wetlands that receive discharges of reclaimed water for disposal. This rule establishes the Notice of Intent requirements for the 3.05 General Permit, and the design requirements, performance requirements, and recordkeeping and reporting requirements.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites

2. Objective of the rules:

   This rule establishes the threshold requirements for constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility. This rule establishes the Notice of Intent requirements for the 3.06 General Permit, and the design requirements, performance requirements, and recordkeeping and reporting requirements.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

2. Objective of the rules:

   This rule establishes the threshold requirements for constructed wetlands that receive, with the intent to treat, discharges of reclaimed water that meet secondary treatment levels. This rule establishes the Notice of Intent requirements for the 3.07 General Permit, and the design requirements, performance requirements, and recordkeeping and reporting requirements.

3. Effectiveness of the rules in achieving the objective:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART E. TYPE 4 GENERAL PERMIT

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 3, Part E (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104(B)(10), (B)(13), 49-203(A)(4), (A) (7), (A) (10), (A) (11); A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits)

2. Objective of the rules:

   Part E establishes the Type 4 general permits which provide permit coverage for on-site facilities. The structure of each section follows a similar format of establishing the threshold discharge activities that qualify, additional submittals to accompany the Notice of Intent to Discharge, performance, design and installation requirements, operational and maintenance requirements, and recordkeeping.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 1, Article 5, 18 A.A.C. Chapter 11, Article 3, and 18 A.A.C. Chapter 14, Article 1. No corresponding federal programs apply to Article 3.

5. Status of Agency enforcement policy regarding the rule:

   An APP is required to discharge under A.R.S. § 49-241(A) and (B). A.R.S. § 49-245 allows ADEQ to issue an APP general permit for a defined class of facilities. Article 3 establishes the applicable standards that permittees must comply with under these APP general permits. Discharge under a Type 4 general permit is authorized if the person meets the requirements of the general permit and files a Notice of Intent to Discharge. ADEQ enforces these rules in reviewing and determining approval or denial on an application for a Type 4 general APP, and in setting the terms of a Type 4 general APP in rule. If a person seeking a general permit cannot comply with the terms, the person must seek and obtain an individual APP.

   The applicable standards also serve as the basis for enforcement actions. Under Arizona Revised Statutes, Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

   Under A.R.S. § 49-107, ADEQ may authorize political subdivisions, such as county or city agencies, to exercise certain environmental regulatory functions, powers or duties by a provision of law. Many of the Type 4 general permits are implemented and enforced by delegated local authorities. These delegated local authorities may have standards of compliance that are stricter than those of ADEQ but not less strict.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ received various written criticisms in anticipation of this Five-year Review Report. Specific written criticisms are stated in the Section-by-Section Analysis. ADEQ is evaluating the criticisms of

the individual rule sections in the context of the entire program. Written criticisms as to multiple sections can be found in Attachment I.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Article 3 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date. Since January 1, 2007, ADEQ has received and processed 876 Type 4.01 general permits (sewage collection system), and 314 Type 4 (on-site facilities) general permits.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ had proposed submitting some amendments to Council by January 2014. Under ADEQ's changing rulemaking priorities and the previous Executive Orders implementing a rule moratorium, ADEQ did not seek an exception to the previous Executive Orders as it did not believe that the proposed amendments clearly qualified.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 3.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action:

    ADEQ is evaluating individual rule sections in the context of the entire program. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019 for certain sections in this Article. If listed specifically in the Section-by-Section Analysis, ADEQ has already evaluated the rule section for amendment.

II. Section by Section Analysis of Rules

R18-9-E301. Type 4.01 General Permit: Sewage Collection Systems

2. Objective of the rules:

This rule establishes the threshold requirements, performance requirements, Notice of Intent requirements, design requirements, discharge authorization requirements, operation and maintenance requirements, and repair exclusions for a sewage collection system.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule informs of the specific design and installation requirements for the sewage collection system general permit.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on the rules. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

   As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-E302. Type 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for septic systems (treatment and disposal).

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule effectively provides sufficient guidance to design and install a septic system.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

   As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-E303. Type 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for composting toilets.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-E304. Type 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for pressure distribution systems.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-E305. Type 4.05 General Permit: Gravelless Trench, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for gravelless trenches.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E306. Type 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for natural seal evapotranspiration beds.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the

proposed facility meets the terms and conditions.

R18-9-E307. Type 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for lined evapotranspiration beds.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E308. Type 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for Wisconsin mounds.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E309. Type 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for engineered pad systems.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E310. Type 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for intermittent sand filters.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E311. Type 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for peat filters.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E312. Type 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for textile filters.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E313. Type 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for denitrifying systems using separated wastewater streams.

3. Analysis of effectiveness of the rules in achieving the objectives:

This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E314. Type 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for sewage vaults.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on the rules. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

   As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-E315. Type 4.15 General Permit: Aerobic System, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for aerobic systems.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions. The rule would be more effective if the standard in R18-9-E315(B)(2)(d) referred to 10,000,000 (Log_{10} 7) instead of 1,000,000 (Log_{10} 7). ADEQ enforces Log_{10} 7, which is 10,000,000.

4. Consistency of the rules with state and federal statutes and rules:

   The citation in R18-9-E315(C)(6)(a) refers to R18-9-E309(E), which is incorrect. The correct citation should be R18-9-A309(E).

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

   As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

R18-9-E316. Type 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation

requirements, and operation and maintenance requirements for a nitrate reactive media filter.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E317. Type 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for a cap system.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E318. Type 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for a constructed wetland.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on the rules. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E319. Type 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for a sand-lined trench.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E320. Type 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for disinfection devices.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the {e terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E321. Type 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for surface disposal.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

R18-9-E322. Type 4.22 General Permit: Subsurface Drip Irrigation, Less Than 3000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes the general conditions, performance standards, design and installation requirements, and operation and maintenance requirements for subsurface drip irrigation.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on the rules. All criticisms and ADEQ responses are detailed in Attachment I.

R18-9-E323. Type 4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

2. Objective of the rules:

   This rule establishes, in addition to what is established in R18-9-E302 through R18-9-E322, additional

analysis and design requirements related to systems sized between 3,000 and 24,000 gallons per day.

3. Analysis of effectiveness of the rules in achieving the objectives:

   This rule gives the owner or operator of a facility adequate information on the requirements to comply with this general permit, and ADEQ adequate information to make the determination of whether the proposed facility meets the terms and conditions.

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

   As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

Table 1. Unit Design Flows

2. Objective of the rules:

   This Table establishes the design flow rates to be used when designing a sewage collection system, an on-site facility, or a sewage treatment facility.

3. Analysis of effectiveness of the rules in achieving the objectives:

   The Table effectively achieves its objective of providing numerical design parameters.

4. Consistency of the rules with state and federal statutes and rules:

   The citation in Table 1 for Single Family Dwellings refers to R18-9-A314(D)(1), which does not exist. The correct citation should be R18-9-A314(4)(a).

7. Written criticisms of the rules received within the last five years:

   ADEQ received written criticisms on this rule. All criticisms and ADEQ responses are detailed in Attachment I.

14. Proposed course of action:

   ADEQ evaluated its rules in accordance with Executive Order 2015-01, Paragraph 5. In its evaluation submitted to the Office of the Governor, ADEQ proposed to amend this rule as many design flow values are too conservative, leading to overdesign & waste of limited capital improvement program funds, affecting both public & private utilities. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting a rulemaking to the Council by December 2019.

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

I. Information That Is Identical For All Rules in Title 18, Chapter 9, Article 4 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. §§ 49-104, 49-203, 49-241, 49-247

2. Objective of the rules:

   The Nitrogen Management General Permits consist of two general permits related to agriculture. Both permits require that the owner or operator comply with best management practices. Neither permit requires that the owner or operator submit a notice to ADEQ in order to obtain permit coverage.

4. Consistency of the rules with state and federal statutes and rules:

   These rules are consistent with state statutes and rules. ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. §§ 49-201, 49-241 through 49-252; 18 A.A.C. Chapter 11, Article 3. No corresponding federal programs apply to Article 4.

5. Status of Agency enforcement policy regarding the rule:

   Under A.R.S. § 49-247(G), if a person violates the applicable best management practices under these rules, ADEQ can require the person to obtain an APP under A.R.S. § 49-241(A). Under Arizona Revised Statutes, Title 49, Chapter 2, Article 4, ADEQ has authority to take enforcement action for a violation of these APP rules, or a permit condition issued pursuant to these rules. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

   ADEQ has not received any written criticisms on the rules within the past five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

   Article 4 was created in January 2001, and amended in November 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in the last rulemaking in 2005. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the rules' impact on the state's economy, small business and consumers has not changed since the effective date. As the Nitrogen Management General Permits are "paperless" permits, ADEQ does not track the number of these permits.

9. Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    The Governor's Regulatory Review Council approved this Five-Year Review report at its August 2, 2011 meeting. ADEQ did not propose any changes to the rules that were reviewed.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 4.

13. Compliance with A.R.S. § 41-1037:

    These rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue general permits.

14. Proposed course of action:

    No amendments are proposed.

II. Section by Section Analysis of Rules

R18-9-401. Definitions

2. Objective of the rules:

   The definition section defines terms specifically used in 18 A.A.C., Chapter 9, Article 4 so that the rules are understandable to the general public, such as acronyms, words with uncommon meanings, and technical terms.

3. Effectiveness of the rules in achieving the objective:

   The rule effectively defines important terms used in the rules.

5. Status of the enforcement of the rule:

   Definitions are not enforceable but are used in the enforcement of the rules.

R18-9-402. Nitrogen Management General Permits: Nitrogen Fertilizers

2. Objective of the rules:

   This section establishes the best management practices for an owner or operator to comply with the Nitrogen Management General Permit to apply nitrogen fertilizers.

3. Effectiveness of the rules in achieving the objective:

   The rule effectively informs about the best management practices for an owner or operator to comply with the Nitrogen Management General Permit to apply nitrogen fertilizers.

R18-9-403. Nitrogen Management General Permits: Concentrated Animal Feeding Operations

2. Objective of the rules:

   This section establishes the best management practices for an owner or operator to comply with the Nitrogen Management General Permit for concentrated animal feeding operations.

3. Effectiveness of the rules in achieving the objective:

The rule effectively informs about the best management practices for an owner or operator to comply with the Nitrogen Management General Permit for concentrated animal feeding operations.

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

2. Objective of the rules:

   This section explains under what circumstances ADEQ may revoke coverage under a Nitrogen Management General Permit, and the consequence that the permittee must obtain coverage under an individual APP.

3. Analysis of effectiveness of the rules in achieving the objective:

   The rule effectively explains under what circumstances ADEQ may revoke coverage under a Nitrogen Management General Permit, and the process involved.

Attachment I

ADEQ will consider rule changes consistent with the existing rules moratorium. The Department received comments from 9 different sources, including the On-Site Wastewater Advisory Committee. Commenters included delegated county officials and industry stakeholders.

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
ARTICLE 1				
R18-9-101	Need to clarify that the sewage originates from a "Single Family Dwelling" as listed in Table 1. Wastewater flow and pollutant loads vary by Wastewater Source, nature of the source, such as institutional, recreational or commercial and impact design and operational aspects of all wastewater treatment facilities.	ADEQ agrees. Table 1 already specifies the sewage flow from a single family dwelling as well as other source types; however ADEQ will work with stakeholders to identify additional unit design flows for institutional, recreational or other facilities.	Yes	December 2019
ARTICLE 3				
R18-9-A301	Subsection (B)(2)(h) –should require that a subsequent property owner obtain, sign and submit a new Notice of Intent to Discharge similar to a Transfer of Authorization as outlined in R18-9-A304B	ADEQ disagrees. The suggested change in regulation would increase regulatory burden to property owners without providing additional environmental and public health protection.	No	N/A
R18-9-A303	1. A renewal period of the Discharge Authorization for all alternative wastewater permits and 4.23 General Permits and Type 1.09 to allow on-going oversight.	ADEQ disagrees. The suggested changes would increase regulatory burden to property owners and managers of collection systems without	No	N/A

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	2. A new Notice of Intent to Discharge with the sale of a property. 3. An annual renewal on the General Permit 4.01, contingent upon the receipt and review of an Annual Inspection Report.	providing additional environmental and public health protection.		
R18-9-A303(C)	1. Change renewal interval from current 5 years to 10 year terms; this may require a higher initial permit fee 2. Amend rule to easily transition [minor permit amendment] existing Type 2 or Type 3 General Permit facilities located within the PMA of an area-wide permit into the area-wide permit so long as the facility will continue to comply with all substantive requirements of the General Permit.	1. ADEQ Disagrees. Current rules do not require inspection or reporting from those covered by General Permits; even with 5-year renewal period some facilities forget to renew. ADEQ recommends contact with Permittees more frequently than 5 years, not less. 2. ADEQ agrees. Currently this change would be taken through an "other" amendment R18-9-A211.D. The rule could be amended to allow this change as a minor amendment under R18-9-A211.C. Provision should be made to allow ADEQ to bill time spent making these changes under the fee rule at R18-14-102	1. No. 2. Yes	December 2019
R18-9-A304	1. Subsection (A) could be eliminated and subsection (B) expanded to allow for a transfer of authorization, and require subsequent new property owners to file a new application and reauthorize the terms. 2. Add a requirement to authorize a Transfer of Authorization for a Type 4 onsite wastewater treatment facility	1. ADEQ disagrees. The suggested change as stated would increase regulatory burden to property owners without providing additional environmental and public health protection. 2. ADEQ disagrees. R18-9A304 already accomplishes this.	1. No 2. No	N/A
R18-9-A309	1. Subsection (A)(8)(c) has	1. ADEQ disagrees. These	1. No	December

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	inconsistencies with the testing methodology in the Subdivision rules. 2. Should require inspections of onsite wastewater treatment facilities, including qualifications for inspectors, who will identify deterioration, damage, or overload. If there's any deficiency, the discharge must cease and a Notice of Intent to Discharge is required. 3. Subsection (B)(3) should have more explicit terminology on hydraulic flow and pollutants load and allow consideration of a waste strength other than residential. 4. Subsection (B)(6) 4.02 systems should not be exempt from the basic submittal requirements, large sized and commercial flows need to include design elevations, and construction notes as required of other general permits and operation and maintenance manuals. 5. Subsection (E) should ensure that proprietary products are properly evaluated following defined procedures and using consistent listing notice documentation. 6. Subsection (E) Add language that allows correction by removal from the listing for a product that could be found to be misrepresented. 7. Subsection (E): proprietary products listing process could be amended to make it more efficient. Should change treatment categories in order to keep up with technologies. If the listing has additional criteria, these could be incorporated into rule in each	rules are different from, but not inconsistent with, the subdivision regulations. 2. ADEQ disagrees. The suggested change in regulation would increase regulatory burden to property owners without providing additional environmental and public health protection The rule already addresses these issues through Table 1, the definition of "typical sewage," and subsection (B)(3) itself. 3. ADEQ agrees and will address this in the future rulemaking 4. ADEQ agrees. In past rulemaking (2001) ADEQ decided that this information would not be required for applications for 4.02 permits. ADEQ will work with stakeholders to evaluate whether to now include these requirements as part of the application process. 5. ADEQ agrees and currently evaluates proprietary products but acknowledges that the current rule provides no regulatory standard for review of new products; however ADEQ will address this in the future rulemaking. 6. ADEQ agrees and will address this in the future	2. No 3. Yes 4. Yes 5. Yes 6. Yes	2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	General Permit section to make the rules more streamlined. Additionally, performance numbers if altered should be updated in the written rule text.	rulemaking. 7. ADEQ agrees and will consider new general permits categories in response to new proven technologies	7. Yes	
R18-9-A310	1. The rule could be more effective if subsection (F)(2) clarified that the presoaking procedure is necessary only for certain soil types. 2. Subsection (C) should change from the ASTM Specifications to USDA Soil Classification method for site evaluations. 3. Subsection (G) procedure should be removed since it increases the risk of aquifer contamination from nitrate and potentially harmful organisms. 4. Subsection (G) Seepage pits need to be held to the same testing requirements as all other onsite systems.	1. ADEQ agrees and will correct this citation in the future rule making. ADEQ and the regulated community have been in regular communication regarding this problem. 2. ADEQ agrees and will work with stakeholders to evaluate whether advantages outweigh disadvantages of replacing the current ASTM Unified Soil Classification System with the USDA soil classification system. 3. ADEQ disagrees. The regulatory requirements for the design of a seepage pit addresses this issue. 4. ADEQ disagrees. The testing requirements for each type of onsite system are appropriate for that facility and do not necessarily apply to another type of onsite system.	1. Yes 2. Yes 3. No 4. No	December 2019
R18-9-A312	1. Subsection (C) should change from the ASTM Specifications to USDA Soil Classification method for site evaluations. 2. Subsection (C)(2) Eliminate or modify property line setbacks. 3. The soil absorption rate charts in subsection (D) have criteria that	1. ADEQ agrees and will work with stakeholders to evaluate whether advantages outweigh disadvantages of replacing the current ASTM Unified Soil Classification System with the USDA soil classification system.	1. Yes	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	aren't addressed or defined. 4. Subsection (E)(4) should consolidate and correct the Minimum Vertical Separation charts as the current minimum vertical separation charts are cumbersome and difficult to use. 5. Subsection (E)(4)(b) hydraulic analysis needs to be modified, to apply only to higher flows or the case of an extreme lot such as one that has a slope greater than 12% and very limiting soils conditions. It is a financial burden to property owners as many lots in Arizona are small lots with poor soils that would never qualify for an onsite system using hydraulic analysis criteria in rule. 6. Subsection (G) should include language similar to Delegation Agreement terms that certain items cannot be altered, such as performance criteria or minimum vertical separation. E. coli should be considered as it updates out of date science practices and is now recognized by ADEQ Drinking Water program, instead of BOD and TSS, which will eventually not be recognized as accurate measurable parameters due to outdated test methods; science is marching on and a different approach to system classification may need to be considered.	2. ADEQ disagrees. This part of the rule (C)(2) allows the department to consider alternatives to setback requirements specified in (C)(1). It is unclear how modifying or eliminating setbacks would still be protective of public health. 3. ADEQ agrees and will work with stakeholders to evaluate if and how the vertical separation charts can be simplified. 4. ADEQ agrees will work with stakeholders to evaluate this subsection for possible modification if scientific studies or experimental data justify a modification. 5. ADEQ agrees and will examine the financial burden and this proposal in the future rule making. 6. ADEQ agrees and will work with stakeholders to determine if BOD and TSS should be retained as performance criteria and if fecal coliform and/or E. coli are more appropriate for assessing performance than the current total coliform measure.	2. No 3. Yes 4. Yes 5. Yes 6. Yes	

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
R18-9-A313	Subsection (B)(1-8) should not be part of ongoing operation and maintenance, but instead should have be items observed on inspection.	ADEQ disagrees. The rule is enforceable as written and should not be deleted from this section. The commentator appears to suggest that the requirements should be part of the inspection conducted for transfer of the permit. Such a change in regulation would increase regulatory burden to property owners.	No	N/A
R18-9-A314	1. Subsection (1)(B) should expand to include a requirement that all wastewater components used in the treatment process are tested for water tightness. 2. Subsection (1)(c)(iv): The criteria unnecessarily limit the length of the 1000 gallon capacity tank. 3. Subsection (4)(a): Update the chart for fixture count & bedrooms; technology is improving where modernization of all fixtures takes into consideration water conservation.	1. ADEQ agrees and will work with stakeholders to consider if and when all components should be tested for water tightness. 2. ADEQ agrees and will work with stake holders to review septic tanks sizing criteria to ensure that current or any modified criteria will adequately maintain performance based on treatment, hydraulic, and residence time considerations. 3. ADEQ agrees and will work with stakeholders to review fixture and bedroom count criteria.	1. Yes 2. Yes 3. Yes	December 2019
R18-9-A315	The formula for the sizing of a grease interceptor is incorrect; it includes flows from Table #1 which would include human waste that is not intended to be routed through a grease interceptor; should use corrected UPC formula and keep this formula for alternative methods.	ADEQ agrees and will correct this error in the future rulemaking. ADEQ and the regulated community have been in regular communication regarding this problem.	Yes	December 2019
R18-9-A316	1. The rule excludes local regulators from receiving inspection reports and repair-related information, despite being delegated responsibility for "compliance assistance and enforcement" purposes. Inspection findings are essential for proper county	1. ADEQ agrees and will consider how to make inspection reports available to counties delegated such responsibilities. 2. ADEQ disagrees. The	1. Yes 2. No	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	administration of delegated repair-related provisions in R18-9-A309.A.9.b – e, as well as pre-existing ordinances for repairs. 2. Should fully incorporate in R18-9-A316 the relevant parts of R18-9-A303 Renewal of Discharge Authorization, and R18-9-A304 Notice of Transfer for both Type 1.09 general permits GPs and Type 4 onsite wastewater treatment facilities. 3. An installer who benefits financially from putting in a new tank should not also inspect that system at transfer or complete a site evaluation or the design also be the inspector. Also the training is insufficient for a layperson to conduct a soils evaluation	suggested change in regulation would increase regulatory burden to property owners with no increase in environmental or public health protection. 3. ADEQ disagrees. Currently there is insufficient information on whether regulating such a business practice would reduce the potential for contamination of groundwater to any significant degree. Such a rule could require ADEQ to regulate business and contracting practices, which would seem outside of both statutory scope and departmental expertise.	3. No	
R18-9-B301	1. Subsection (I) should be eliminated by 2021, and these permits should be merged into the Type 4 general permits and be required to file a new Notice of Intent to Discharge. 2. Consider making a new section specific to toilet usage, instead of full sanitary facilities for a single family residence.	1. ADEQ disagrees. The suggested change would increase regulatory burden to property owners with no increase in environmental or public health protection. 2. ADEQ will contact the commenter for clarification on this comment. Further information would be needed to address these concerns.	1. Yes 2. No	N/A
R18-9-E301	1. Subsection (B) should require a report by the certified operator to verify operational performance, maintenance records, and facility condition as operator records provide the most accurate evaluation of operation and physical condition of the 4.01 general permit facilities. 2. Subsection (D)(1)(b)(i): The requirement for designs to accommodate infiltration can add	1. ADEQ agrees. Certified operators, who are required to operate sewage collection systems, make evaluations and respond to operational performance issues and facility condition as a continuing part of their responsibilities. ADEQ will work with stake holders to determine if reporting is warranted.	1. Yes	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	unnecessary cost to a Septic Tank Effluent Pump (STEP) systems, which are designed to prevent most or all infiltration and exfiltration, so this requirement is unnecessary and restrictive to this type of collection. 3. Subsection (D)(4)(a): should add language to specifically addresses STEP system design and operation, because STEP systems filter out solids before the effluent reaches the collection lines, minimum velocities are not necessary. 4. R18-9-E301(D)(5)(c)(v): the vast majority of wet wells are designed in a round basin, which are made in one foot increments so they are only available in 48in, 60in, 72in, 84in. Under the rule language, the 20 square feet requirement comes to a required basin diameter of 60.54inches, making a 60in basin .54 inches too small as the code is written. 5. For facilities that are privately owned, the rule does not have any mechanism for self-enforcement, especially for the operation, maintenance and permit responsibilities. For the operation and maintenance manual that engineer needs to confirm, there should be detailed requirements for what manual should include, such as a detailed listing of the Operation Preventative Maintenance Program, inspection procedures, and appendices with relevant parts of the code and design standards.	2. ADEQ agrees. The current rule does not include specific criteria for STEP systems. ADEQ will work with stakeholders to consider adding STEP system criteria. 3. ADEQ agrees. The current rule does not include specific criteria for STEP systems. ADEQ will work with stakeholders to consider adding STEP system criteria. 4. ADEQ agrees and will work with stakeholders to consider modifying the current criteria to be compatible with current design practice. 5. ADEQ disagrees. A self-enforcement mechanism is not appropriate. The rules do not distinguish between private and public ownership. The operation and maintenance requirements for sewage collection systems apply equally to both private and publicly owned facilities.	2. Yes 3. Yes 4. Yes 5. No	
R18-9-E302	1. Make a second section under 4.02 that deals just with gravity disposal methods.	1. ADEQ disagrees. Septic tank systems covered under the 4.02 general	1. No	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	2. Make a tank section just for tanks, using the information from R18-9-A314 because many alternative systems incorporate the use of a tank in their treatment process. 3. Allow bundled expanded polystyrene (EPS) technology as an allowable effluent disposal media in R18-9-E302 in lieu of crushed stone and pipe in an onsite wastewater treatment system dispersal trench.	permit are already gravity disposal systems. Not enough information is provided to understand the commenter's concern. 2. ADEQ agrees and will work with stake holders to evaluate whether the septic tank should be broken out as separate general permit. Under the current 4.02 general permit, the septic tank and disposal field are considered together under one permit as this is the standard design for more than 90% of onsite systems that are installed in Arizona. Any potential change to the rules would have to ensure that no additional regulatory burden is imposed for this overwhelming majority of systems. 3. ADEQ agrees and will work with stake holders to evaluate whether this technology can be added as a disposal field choice under the 4.02 general permit. The commenter should be aware that ADEQ can currently consider this technology on a case-by-case basis under the alternative design procedure specified in R18-9-A312(G).	2. Yes 3. Yes	
R18-9-E303	1. Current rule when using a compost toilet does not benefit a property owner as the remaining gray water generator in the home must still meet the vertical separation rules as black water. This means that if a lot requires an alternative system	1. ADEQ agrees and will work with stake holders to review the composting toilet general permit to determine if it can be made more efficient and effective with respect to	1. Yes	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	and the owner elects to use a compost toilet, they still must use an alternative system for the remaining gray water. 2. Modify to address human and food preparation waste pre-processing from a source connected to an onsite wastewater treatment facility. Consideration should be given for general permit integration of water recycling within the confines of a single parcel of land or "site". 3. Make a new section that would address all toilet technologies.	safe management of the black, gray, and kitchen waste waters that are generated by the household. 2. See response immediately above. 3. ADEQ will contact the commenter for additional clarity. Further information would be needed to address these concerns.	2. Yes 3. No	
R18-9-E304	1. Language should be added requiring electronic components similar to R18-9-A312(F), a section for the use of siphons, flow equalization, and effluent and grinder pumps. 2. Subsection (D)(2)(e) incorporation by reference should be updated to the 2012 National Electric Code. 3. Subsection (D)(4) The 1.1 times the adjusted SAR should be allowed when using pressure distribution regardless if the site conditions allows or doesn't allow gravity flow.	1. ADEQ agrees and will work with stake holders to evaluate whether criteria for these components should be added to this general permit. 2. ADEQ agrees and will work with stake holders to update code references as appropriate. 3. ADEQ agrees and will work with stake holders to consider adopting a different factor for adjusted SAR if warranted by scientific studies or experimental data.	1. Yes 2. Yes 3. Yes	December 2019
R18-9-E305	This section could be could be eliminated and placed in R-18-9-E302 with other trench methods.	ADEQ agrees and will work with stake holders to consider this change if it continues to efficiently provide the option to install a gravel less trench under the 4.02 general permit.	Yes	December 2019
R18-9-E308	The 1990 Wisconsin Mound Design Manual needs to be updated design criteria.	ADEQ agrees and will work with stake holders to update manual references as appropriate.	Yes	December 2019
R18-9-E310	The intermittent sand filter, peat filter and textile filter should be given the	ADEQ agrees and will work with stake holders to consider	Yes	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	same favorable rating or higher than the pad products.	adopting different performance criteria if warranted by scientific studies or experimental data.		
R18-9-E311	1. The intermittent sand filter, peat filter and textile filter should be given the same favorable rating or higher than the pad products. 2. Eliminate section allowing site built peat system, peat is very specific to performance and cannot be field verified to know the correct percentage of sphagnum as well as air dried porosity.	1. ADEQ will work with stake holders to consider adopting different performance criteria if warranted by scientific studies or experimental data. 2. ADEQ will work with stake holders to study this issue to determine if it is appropriate to remove criteria for site-built peat filter bed systems.	1. Yes 2. Yes	December 2019
R18-9-E314	Should require that the allowance of a vault system requires a yearly permit that is submitted with associated pumping records. Vault systems are not economically sustainable and should not be considered. Also expand this section to include whole house combustion systems, if they cannot install an onsite system they should have to consider a whole house combustion system, expensive but not as costly as regular pumping and deals with all of the waste.	ADEQ disagrees. Vault systems may be viable, permanent options in some situations. One example is a campground in a remote location with difficult soil conditions. The current two-year permit duration is appropriate for temporary systems transitioning to different system for on-site treatment and disposal.	No	N/A
R18-9-E315	Subsection (B), the total coliform level should be lower so that not as much vertical separation is required.	ADEQ agrees and will work with stake holders to consider adopting different performance criteria for coliform bacteria if warranted by scientific studies or experimental data. The rules already make provision for adjusting the vertical separation distance; the significant issue is whether to use total coliform or fecal coliform.	Yes	December 2019
R18-9-E318	The rule should allow indoor wetland applications, require the addition of an onsite system for startup and overflow and that are dependent upon the incorporation of an indoor grease	ADEQ disagrees. The constructed wetland general permit provides performance and design criteria for outside systems where there is a	No	

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	interceptor and a composting toilet. The wetlands approach is incorporated into indoor planters.	discharge. Construction of an indoor wetland system may be subject to local codes.		
R18-9-E319	A pressurized sand lined trench should be given enhanced treatment performance criteria similar to a pad system to keep up with newer PPL criteria that has been considered on recent product listings. The sand lined trench is a nonproprietary product that could have great potential if considered like similar sand-bed products.	ADEQ would work with stake holders to consider adopting different performance criteria if warranted by scientific studies or experimental data.	Yes	December 2019
R18-9-E320	1. Subsection (A)(3): Change total coliform to fecal coliform. 2. Subsection (A)(3): Change total coliform to fecal coliform. 3. Subsection (C): describe what is expected for fail-safe or eliminate the term from rule. ADEQ agrees to review this issue in a future rulemaking. Subsection (C): Specify an acceptable range for either Fecal Coliform or E.coli.	1. ADEQ agrees and will work with stake holders to determine if fecal coliform and/or *E. coli* are more appropriate for assessing performance. 2. ADEQ agrees and will work with stake holders to consider adding UV and ozone disinfection criteria. 3. ADEQ agrees. This comment may refer to the term "nominally free of coliform bacteria" in the current rule. ADEQ will work with stake holders during a future rulemaking to consider defining this term, in conjunction with assessing the appropriateness of adopting fecal coliform and/or *E. coli* as representative organisms.	1. Yes 2. Yes 3. Yes	December 2019
R18-9-E322	1. Eliminate A & B drip field categories. This complicates the use and design and does not follow product manufacturer design standards. 2. Review product manufacturers' recommendations on siting and minimum useable soil.	1. ADEQ agrees and will work with stake holders to determine if the rule can be simplified by eliminating one of the drip categories or in another way. 2. Same as above.	1. Yes 2. Yes 3. Yes	December 2019

Rule Section	Criticism	ADEQ Response	Rule Change Under Consideration	Timeline
	3. Eliminate shaded trench, product manufacturer will not consider this as suitable design.	3. Same as above		
R18-9-E323	1. Allow Aerobic Treatment as acceptable use for larger systems. There is no science behind restricting their usage, and has created an unfair advantage and higher system cost in a state that has consistently allowed ATU usage on large flows and individual permits. 2. Along with a Performance Assurance Plan make the 3.23 a renewable permit as these larger flows require periodic review by service providers and regulators. 3. Subsection (A)(3)(b) Add language that specifically addresses disinfection for systems included in the above flow rates.	1. ADEQ agrees and will work with stakeholders to determine if this change is appropriate, but operating and monitoring issues would need to be addressed. 2. Same as above. 3. Same as above.	1. Yes 2. Yes 3. Yes	December 2019
General Article 3 Comments	1. The 24,000 gpd flow limit unnecessarily requires use of the individual permit program. ADEQ should consider appropriate modified terms and conditions that could apply to Type 4 general permit for sources up to 100,000 gpd. 2. For Type 4 general permit onsite wastewater treatment facilities technologies, less than 24,000 gallons per day design flow, ADEQ should update the generic treatment technology proposal and devise a slightly modified general permit renumbering system and allow substantial flexibility in use of new technologies as they are listed.	1. ADEQ agrees and will work with stakeholders during a future rulemaking to evaluate whether facilities with design flows from 24,000 to 100,000 gallons per day can be permitted differently, while ensuring that health and environmental protections are maintained. 2. ADEQ agrees and will work with stakeholders during a future rulemaking to increase flexibility of the rule	1. Yes 2. Yes	December 2019

R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water
R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility
R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent
R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water
R18-9-720. Enforcement and Penalties

ARTICLE 8. REPEALED

Article 8, consisting of Sections R18-9-801 through R18-9-819, repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

Article 3 consisting of Sections R9-8-311 through R9-8-361 renumbered as Article 8, Sections R18-9-801 through R18-9-819 (Supp. 87-3).

Section
R18-9-801. Repealed
R18-9-802. Repealed
R18-9-803. Repealed
R18-9-804. Repealed
R18-9-805. Repealed
R18-9-806. Repealed
R18-9-807. Repealed
R18-9-808. Repealed
R18-9-809. Repealed
R18-9-810. Repealed
R18-9-811. Repealed
R18-9-812. Repealed
R18-9-813. Repealed
R18-9-814. Repealed
R18-9-815. Repealed
R18-9-816. Repealed
R18-9-817. Repealed
R18-9-818. Repealed
R18-9-819. Repealed

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS

Section
R18-9-A901. Definitions
R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions
R18-9-A903. Prohibitions
R18-9-A904. Effect of a Permit
R18-9-A905. AZPDES Program Standards
R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution
R18-9-A907. Public Notice
R18-9-A908. Public Participation, EPA Review, EPA Hearing
R18-9-A909. Petitions

PART B. INDIVIDUAL PERMITS

Section
R18-9-B901. Individual Permit Application
R18-9-B902. Requested Coverage Under a General Permit
R18-9-B903. Individual Permit Issuance or Denial
R18-9-B904. Individual Permit Duration, Reissuance, and Continuation
R18-9-B905. Individual Permit Transfer
R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits
R18-9-B907. Individual Permit Variances

PART C. GENERAL PERMITS

Section
R18-9-C901. General Permit Issuance
R18-9-C902. Required and Requested Coverage Under an Individual Permit
R18-9-C903. General Permit Duration, Reissuance, and Continuation
R18-9-C904. Change of Ownership or Operator Under a General Permit
R18-9-C905. General Permit Modification and Revocation and Reissuance

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

Section
R18-9-D901. CAFO Designations
R18-9-D902. AZPDES Permit Coverage Requirements
R18-9-D903. No Potential To Discharge Determinations for Large CAFOs
R18-9-D904. AZPDES Permit Coverage Deadlines
R18-9-D905. Closure Requirements

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Article 10, consisting of Sections R18-9-1001 through R18-9-1014 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

Section
R18-9-1001. Definitions
R18-9-1002. Applicability and Prohibitions
R18-9-1003. General Requirements
R18-9-1004. Applicator Registration, Bulk Biosolids
R18-9-1005. Pollutant Concentrations
R18-9-1006. Class A and Class B Pathogen Reduction Requirements
R18-9-1007. Management Practices and General Requirements
R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites
R18-9-1009. Site Restrictions
R18-9-1010. Vector Attraction Reduction
R18-9-1011. Transportation
R18-9-1012. Self-monitoring
R18-9-1013. Recordkeeping
R18-9-1014. Reporting
R18-9-1015. Inspection
Appendix A. Procedures to Determine Annual Biosolids Application Rates

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

In addition to the definitions established in A.R.S. § 49-201, the following terms apply to Articles 1, 2, 3, and 4 of this Chapter:

1. "Aggregate" means a clean graded hard rock, volcanic rock, or gravel of uniform size, between 3/4 inch and 2 1/2 inches in diameter, offering 30 percent or more void space, washed or prepared to be free of fine materials that will impair absorption surface performance, and has a hardness value of three or greater on the Moh's Scale of Hardness (can scratch a copper penny).
2. "Alert level" means a value or criterion established in an individual permit that serves as an early warning indicating a potential violation of a permit condition related to BADCT or the discharge of a pollutant to groundwater.
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, represents the ambient water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual permit or a general permit issued under A.R.S. §§ 49-203, 49-241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" means a standard established under A.R.S. §§ 49-221 and 49-223.
6. "AZPDES" means the Arizona Pollutant Discharge Elimination System, which is the state program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under A.R.S. Title 49, Chapter 2, Article 3.1 and 18 A.A.C. 9, Articles 9 and 10.
7. "BADCT" means the best available demonstrated control technology, process, operating method, or other alternative to achieve the greatest degree of discharge reduction determined for a facility by the Director under A.R.S. § 49-243.
8. "Bedroom" means, for the purpose of determining design flow for an on-site wastewater treatment facility for a dwelling, any room that has:
   a. A floor space of at least 70 square feet in area, excluding closets;
   b A ceiling height of at least 7 feet;
   c. Electrical service and ventilation;
   d. A closet or an area where a closet could be constructed;
   e. At least one window capable of being opened and used for emergency egress; and
   f. A method of entry and exit to the room that allows the room to be considered distinct from other rooms in the dwelling and to afford a level of privacy customarily expected for such a room.
9. "Book net worth" means the net difference between total assets and total liabilities.
10. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.
11. "CMOM Plan" means a Capacity, Management, Operations, and Maintenance Plan, which is a written plan that describes the activities a permittee will engage in and actions a permittee will take to ensure that the capacity of the sewage collection system, when unobstructed, is sufficient to convey the peak wet weather flow through each reach of sewer, and provides for the management, operation, and maintenance of the permittee's sewage collection system.
12. "Design capacity" means the volume of a containment feature at a discharging facility that accommodates all permitted flows and meets all Aquifer Protection Permit conditions, including allowances for appropriate peaking and safety factors to ensure sustained, reliable operation.
13. "Design flow" means the daily flow rate a facility is designed to accommodate on a sustained basis while satisfying all Aquifer Protection Permit discharge limitations and treatment and operational requirements. The design flow either incorporates or is used with appropriate peaking and safety factors to ensure sustained, reliable operation.
14. "Direct reuse site" means an area where reclaimed water is applied or impounded.
15. "Disposal works" means the system for disposing treated wastewater generated by the treatment works of a sewage treatment facility or on-site wastewater treatment facility, by surface or subsurface methods. Disposal works do not include systems for activities regulated under 18 A.A.C. 9, Article 7.
16. *"Drywell" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.* A.R.S. § 49-331(3)
17. "Dwelling" means any building, structure, or improvement intended for residential use or related activity, including a house, an apartment unit, a condominium unit, a townhouse, or a mobile or manufactured home that has been constructed or will be constructed on real property.
18. "Final permit determination" means a written notification to the applicant of the Director's final decision whether to issue or deny an Individual Aquifer Protection Permit.
19. "Groundwater Quality Protection Permit" means a permit issued by the Arizona Department of Health Services or the Department before September 27, 1989 that regulates the discharge of pollutants that may affect groundwater.
20. "Homeowner's association" means a nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
21. "Injection well" means a well that receives a discharge through pressure injection or gravity flow.
22. "Intermediate stockpile" means in-process material not intended for long-term storage that is in transit from one process to another at a mining site. Intermediate stockpile does not include metallic ore concentrate stockpiles or feedstocks not originating at the mining site.
23. "Land treatment facility" means an operation designed to treat and improve the quality of waste, wastewater, or both, by placement wholly or in part on the land surface to perform part or all of the treatment. A land treatment facility includes a facility that performs biosolids drying, processing, or composting, but not land application performed in compliance with 18 A.A.C. 9, Article 10.
24. "Mining site" means a site assigned one or more of the following primary Standard Industrial Classification Codes: 10, 12, 14, 32, and 33, and includes noncontigu-

ous properties owned or operated by the same person and connected by a right-of-way controlled by that person to which the public is not allowed access.

25. "Nitrogen Management Area" means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.
26. "Notice of Disposal" means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.
27. "On-site wastewater treatment facility" means a conventional septic tank system or alternative system installed at a site to treat and dispose of wastewater, predominantly of human origin, generated at that site. An on-site wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.
28. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.
29. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.* A.R.S. § 49-201(26). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.
30. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.
31. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.
32. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.
33. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.
34. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.
35. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in R18-9-701(4), if the gray water is reused according to 18 A.A.C. 9, Article 7.
36. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.
37. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.
38. "Surface impoundment" means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.
39. "Tracer" means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.
40. "Tracer study" means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.
41. "Treatment works" means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.
42. "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD_5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l.
43. *"Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.* A.R.S. § 45-802.01(21).
44. "Waters of the United States" means:
    a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
    b. All interstate waters, including interstate wetlands;
    c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:
        i. That are or could be used by interstate or foreign travelers for recreational or other purposes;
        ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
        iii. That are used or could be used for industrial purposes by industries in interstate commerce;
    d. All impoundments of waters defined as waters of the United States under this definition;
    e. Tributaries of waters identified in subsections (a) through (d);
    f. The territorial sea; and
    g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3).

Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Subsection 4 citation corrected to reflect recodification at 7 A.A.R. 2522 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-104. Transition from Notices of Disposal and Groundwater Quality Protection Permitted Facilities

A person who owns, operates, or operated a facility on or after January 1, 1986 for which a Notice of Disposal was filed or a Groundwater Quality Protection Permit was issued shall, within 90 days from the date on the Director's notification, submit an application for an Aquifer Protection Permit or a closure plan as specified under A.R.S. § 49-252. The person shall obtain a permit for continued operation, closure of the facility, or clean closure approval. Failure to submit an application or closure plan as required terminates continuance of the Notice of Disposal or Groundwater Quality Protection Permit.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-105. Permit Continuance

A. Continuance.

1. Groundwater Quality Protection Permits.
   a. Subject to R18-9-104 and other provisions of this Section, a Groundwater Quality Protection Permit issued before September 27, 1989 is valid according to the terms of the permit until replaced by an Aquifer Protection Permit issued by the Department.
   b. A person who owns or operates a facility to which a Groundwater Quality Protection Permit was issued is in compliance with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3, if the facility:
      i. Meets the conditions of the Groundwater Quality Protection Permit; and
      ii. Is not causing or contributing to the violation of any Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
2. Notice of Disposal. A person who owns or operates a facility for which a Notice of Disposal was filed before September 27, 1989 complies with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3 if the facility is not causing or contributing to the violation of an Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
3. Aquifer Protection Permit application submittal. A person who did not file a Notice of Disposal and does not possess a Groundwater Quality Protection Permit or an Aquifer Protection Permit for an existing facility, but submitted the information required in applicable rules before December 27, 1989, is in compliance with Articles 1, 2, and 3 of this Chapter only if the person submitted an Aquifer Protection Permit application to the Department before January 1, 2001.

B. Applicability. Subsection (A) applies until the Director:

1. Issues an Aquifer Protection Permit for the facility,
2. Denies an Aquifer Protection Permit for the facility,
3. Issues a letter of clean closure approval for the facility under A.R.S. § 49-252, or
4. Determines that the person failed to submit an application under R18-9-104.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended effective November 12, 1996 (Supp. 96-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-106. Determination of Applicability

A. A person who engages or who intends to engage in an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of this Chapter may submit a request, on a form provided by the Department, that the Department determine the applicability of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter to the operation or activity.

B. A person requesting a determination of applicability shall provide the following information and the applicable fee under 18 A.A.C. 14:

1. The name and location of the operation or activity;

2. The name of any person who is engaging or who proposes to engage in the operation or activity;
3. A description of the operation or activity;
4. A description of the volume, chemical composition, and characteristics of materials stored, handled, used, or disposed of in the operation or activity; and
5. Any other information required by the Director to make the determination of applicability.

C. Within 45 days after receipt of a request for a determination of applicability, the Director shall notify in writing the person making the request that the operation or activity:
1. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or facility does not discharge as described under A.R.S. § 49-241;
2. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or activity is exempted by A.R.S. § 49-250 or R18-9-103;
3. Is eligible for a general permit under A.R.S. §§ 49-245.01, 49-245.02 or 49-247 or Article 3 of this Chapter, specifying the particular general permit that would apply if the person meets the conditions of the permit; or
4. Is subject to the permit requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter.

D. If, after issuing a determination of applicability under this Section, the Director concludes that the determination or the information relied upon for a determination is inaccurate, the Director may modify or withdraw its determination upon written notice to the person who requested the determination of applicability.

E. If the Director determines that an operation or activity is subject to the requirements of A.R.S. §§ 49-241 through 49-252, the person who owns or operates the discharging facility shall, within 90 days from receiving the Director's written notification, submit an application for an Aquifer Protection Permit or a closure plan.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-107. Consolidation of Aquifer Protection Permits

A. The Director may consolidate any number of individual permits or the coverage for any facility authorized to discharge under a general permit into a single individual permit, if:
1. The facilities are part of the same project or operation and are located in a contiguous geographic area, or
2. The facilities are part of an area under the jurisdiction of a single political subdivision.

B. All applicable individual permit requirements established in Articles 1 and 2 of this Chapter apply to the consolidation of Aquifer Protection Permits.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-108. Public Notice

A. Individual permits.
1. The Department shall provide the entities specified in subsection (A)(2), with monthly written notification, by regular mail or electronically, of the following:
   a. Individual permit applications,
   b. Temporary permit applications,
   c. Preliminary and final decisions by the Director whether to issue or deny an individual or temporary permit,
   d. Closure plans received under R18-9-A209(B),
   e. Significant permit amendments and "other" permit amendments,
   f. Permit revocations, and
   g. Clean closure approvals.
2. Entities.
   a. Each county department of health, environmental services department, or comparable department;
   b. A federal, state, local agency, or council of government, that may be affected by the permit action; and
   c. A person who requested, in writing, notification of the activities described in subsection (A).
3. The Department may post the information referenced in subsections (A)(1) and (2) on the Department web site: www.azdeq.gov.

B. General permits. Public notice requirements do not apply.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-109. Public Participation

A. Notice of Preliminary Decision.
1. The Department shall publish a Notice of Preliminary Decision regarding the issuance or denial of a significant permit amendment or a final permit determination in one or more newspapers of general circulation where the facility is located.
2. The Department shall accept written comments from the public before a significant permit amendment or a final permit determination is made.
3. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.

B. Public hearing.
1. The Department shall provide notice and conduct a public hearing to address a Notice of Preliminary Decision regarding a significant permit amendment or final permit determination if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information has been brought to the attention of the Department that has not been considered previously in the permitting process.
2. If, after publication of the Notice of Preliminary Decision, the Department determines that a public hearing is necessary, the Department shall schedule a public hearing and publish the Notice of Preliminary Decision at least once, in one or more newspapers of general circulation where the facility is located.
3. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

C. The Department shall respond in writing to all comments submitted during the formal public comment period.

D. At the same time the Department notifies a permittee of a significant permit amendment or an applicant of the final permit determination, the Department shall send, through regular mail or electronically, a notice of the amendment or determination and the summary of response to comments to any person who submitted comments or attended a public hearing on the significant permit amendment or final permit determination.

E. General permits. Public participation requirements do not apply.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-110. Inspections, Violations, and Enforcement

A. The Department shall conduct an inspection of a permitted facility as specified under A.R.S. § 41-1009.

B. Except as provided in R18-9-A308, a person who owns or operates a facility contrary to a provision of Articles 1, 2, and 3 of this Chapter, violates a condition of an Aquifer Protection Permit, or violates a condition of a Groundwater Quality Protection Permit continued under R18-9-105(A)(1) is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-111. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-112. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-113. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-114. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-115. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-116. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-117. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-118. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-119. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-120. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective July 14, 1998 (Supp. 98-3).

R18-9-121. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-122. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-123. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 15, 1996 (Supp. 96-4).

R18-9-124. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-125. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-126. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

in the monitoring frequency required in subsection (B)(4)(b)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(b)(i) or (ii) at the discharge point;

c. An owner or operator may use unit treatment processes, such as chlorination-dechlorination, ultraviolet, and ozone to achieve the pathogen removal performance requirements specified in subsections (B)(4)(a) and (b);

d. The Department may approve soil aquifer treatment for the removal of fecal coliform or *E. coli* bacteria as an alternative to meeting the performance requirement in subsection (B)(4)(a) or (b), if the soil aquifer treatment process will produce a fecal coliform or *E. coli* bacteria concentration less than that required under subsection (B)(4)(a) or (b), in wastewater that percolates to groundwater;

5. Unless governed by A.R.S. § 49-243(I), the performance requirement for each constituent regulated under R18-11-406(B) through (E) is the numeric Aquifer Water Quality Standard;

6. The performance requirement for a constituent regulated under A.R.S. § 49-243(I) is removal to the greatest extent practical regardless of cost.

a. An operator shall minimize trihalomethane compounds generated as disinfection byproducts using chlorination, dechlorination, ultraviolet, or ozone as the disinfection system or using a technology demonstrated to have equivalent or better performance for removing or preventing trihalomethane compounds.

b. For other pollutants regulated by A.R.S. § 49-243(I), an operator shall use one of the following methods to achieve industrial pretreatment:

i. Regulate industrial sources of influent to the sewage treatment facility by setting limits on pollutant concentrations, monitoring for pollutants, and enforcing the limits to reduce, eliminate, or alter the nature of a pollutant before release into a sewage collection system;

ii. Meet the pretreatment requirements of A.R.S. § 49-255.02; or

iii. For sewage treatment facilities without significant industrial input, conduct periodic monitoring to detect industrial discharge; and

7. A maximum seepage rate less than 550 gallons per day per acre for all containment structures within the treatment works. A sewage treatment facility that consists solely of containment structures with no other form of discharge complies with Article 2 Part B by operating below the maximum 550 gallon per day per acre seepage rate.

C. The Director shall incorporate treated wastewater discharge limitations and associated monitoring specified in this Section into the individual permit to ensure compliance with the BADCT requirements.

D. An applicant shall formally request in writing and justify an alternative that allows less stringent performance than that established in this Section, based on the criteria specified in A.R.S. § 49-243(B)(1).

E. If the request specified in subsection (D) involves treatment or disposal works that are a demonstration, experimental, or pilot project, the Director may issue an individual permit that places greater reliance on monitoring to ensure operational capability.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in A.R.S. § 49-201(16), the BADCT shall conform with the following:

1. The designer shall identify one or more design improvements that brings the facility closer to or within the treatment performance requirements specified in R18-9-B204, considering the factors listed in A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h);

2. The designer may eliminate from consideration alternatives identified in subsection (1) that are more expensive than the number of gallons of design flow times $1.00 per gallon; and

3. The designer shall select a design that incorporates one or more of the considered alternatives by giving preference to measures that will provide the greatest improvement toward meeting the treatment performance requirements specified in R18-9-B204.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

For an expansion of a sewage treatment facility, the BADCT shall conform with the following:

1. New facility BADCT requirements in R18-9-B204 apply to the following expansions:

a. An increase in design flow by an amount equal to or greater than the increases specified in R18-9-A211(B)(2)(b); or

b. An addition of a physically separate process or major piece of production equipment, building, or structure that causes a separate discharge to the extent that the treatment performance requirements for the pollutants addressed in R18-9-B204 can practicably be achieved by the addition.

2. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A301. Discharging Under a General Permit

A. Discharging requirements.

1. Type 1 General Permit. A person may discharge under a Type 1 General Permit without submitting a Notice of Intent to Discharge if the discharge is authorized by and meets:
   a. The applicable requirements of Article 3, Part A of this Chapter; and
   b. The specific terms of the Type 1 General Permit established in Article 3, Part B of this Chapter.
2. Type 2 General Permit. A person may discharge under a Type 2 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 2 General Permit established in Article 3, Part C of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B); and
   c. The person submits the applicable fee established in 18 A.A.C. 14.
3. Type 3 General Permit. A person may discharge under a Type 3 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 3 General Permit established in Article 3, Part D of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B);
   c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review and receives a written Discharge Authorization from the Director; and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
4. Type 4 General Permit. A person may discharge under a Type 4 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 4 General Permit established in Article 3, Part E of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B);
   c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review, including any deficiency relating to the construction of the facility;
   d. The person receives a written Discharge Authorization from the Director before the facility discharges; and
   e. The person submits the applicable fee established in 18 A.A.C. 14 or according to A.R.S. §§ 49-107 and 49-112.

B. Notice of Intent to Discharge.
1. A person seeking a Discharge Authorization under a general permit under subsections (A)(2), (3), or (4) shall submit, by certified mail, in person, or by another method approved by the Department, a Notice of Intent to Discharge on a form provided by the Department.
2. The Notice of Intent to Discharge shall include:
   a. The name, address, and telephone number of the applicant;
   b. The name, address, and telephone number of a contact person familiar with the operation of the facility;
   c. The name, position, address, and telephone number of the owner or operator of the facility who has overall responsibility for compliance with the permit;
   d. The legal description of the discharge areas, including the latitude and longitude coordinates;
   e. A narrative description of the facility or project, including expected dates of operation, rate, and volume of discharge;
   f. The additional requirements, if any, specified in the general permit for which the authorization is being sought;
   g. A listing of any other federal or state environmental permits issued for or needed by the facility, including any individual permit, Groundwater Quality Protection Permit, or Notice of Disposal that may have previously authorized the discharge; and
   h. A signature on the Notice of Intent to Discharge certifying that the applicant agrees to comply with all applicable requirements of this Article, including specific terms of the general permit.
3. Receipt of a completed Notice of Intent to Discharge by the Department begins the administrative completeness review for a Type 3 or Type 4 General Permit.

C. Type 3 General Permit authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of the general permit have been met.
2. Discharge Authorization issuance.
   a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of the general permit and the applicable requirements of this Article, the Director shall issue a Discharge Authorization.
   b. The Discharge Authorization authorizes the person to discharge under terms of the general permit and applicable requirements of this Article.
3. Discharge Authorization denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
   a. The reason for the denial with reference to the statute or rule on which the denial is based;
   b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

D. Type 4 General Permit review.
1. Pre-construction phase and facility construction. A person shall not begin facility construction until the Director issues a Construction Authorization.
   a. Inspection. The Department may inspect the facility site before construction to determine that the applicable terms of the general permit will be met.
   b. Review. If the Department determines, based on an inspection or its review of design plans, specifications, or other required documents that the facility does not conform to the requirements of the general permit or other applicable requirements of this Arti-

cle, the Department shall make a written request for additional information to determine whether the facility will meet the requirements of the general permit.

c. Construction Authorization. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design conforms with the requirements of the general permit and other applicable requirements of this Article, the Director shall issue a Construction Authorization to the person seeking to discharge. A Construction Authorization for an on-site wastewater treatment facility shall contain:
   i. The design flow of the facility,
   ii. The characteristics of the wastewater sources contributing to the facility,
   iii. The general permits that apply, and
   iv. A list of the documents that are the basis for the authorization.

d. Construction Authorization denial. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue a Construction Authorization. The notification shall include the information listed in subsections (D)(2)(d).

e. Construction.
   i. A person shall complete construction within two years of receiving a Construction Authorization.
   ii. Construction shall conform with the plans and documents approved by the Department in the Construction Authorization. A change in location, configuration, dimension, depth, material, or installation procedure does not require approval by the Department if the change continues to conform with the specific standard in this Article used as the basis for the original design.
   iii. The person shall record all changes made during construction, including any changes approved under R18-9-A312(G) on the site plan as specified in R18-9-A309(C)(1) or on documents as specified in R18-9-A309(C)(2) or R18-9-E301(E), as applicable.

f. Completion of construction.
   i. After completing construction of the facility, the person seeking to discharge shall submit any applicable documents specified in R18-9-A309(C) with the Request for Discharge Authorization form for an on-site wastewater treatment facility and the Engineer's Certificate of Completion specified in R18-9-E301(E) for a sewage collection system. Receipt of the documents by the Department initiates the post-construction review phase.
   ii. If the Department does not receive the documentation specified in subsection (D)(1)(f)(i) by the end of the two-year construction period, the Notice of Intent to Discharge expires, and the person shall not continue construction or discharge.
   iii. If the Notice of Intent to Discharge expires, the person shall submit a new Notice of Intent to Discharge under subsection (B) and the applicable fee under subsection (A)(4)(e) to begin or continue construction.

2. Post-construction phase.
   a. Inspection. The Department may inspect the facility before issuing a Discharge Authorization to determine whether:
      i. The construction conforms with the design authorized by the Department under subsection (D)(1)(c) and any changes recorded on the site plan as specified in R18-9-A309(C)(1) or other documents as specified in R18-9-A309(C)(2), or R18-9-E301(E), as applicable; and
      ii. Terms of the general permit and applicable terms of this Article are met.
   b. Deficiencies. If the Department identifies deficiencies based on an inspection of the constructed facility or during the review of documents submitted with the request for the Discharge Authorization, the Director shall provide a written explanation of the deficiencies to the person.
   c. Discharge Authorization issuance.
      i. Upon satisfactory completion of construction and documents required under R18-9-A309(C)(1) R18-9-A309(C)(2), or R18-9-E301(E), as applicable, the Director shall issue a Discharge Authorization.
      ii. The Discharge Authorization allows a person to discharge under terms of the general permit and applicable requirements of this Article and the stated terms of the Construction Authorization.
   d. Discharge Authorization denial. If, after receiving evidence of correction submitted by the person seeking to discharge, the Department determines that the deficiencies are not satisfactorily corrected, the Director shall notify the person seeking to discharge of the Director's decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
      i. The reason for the denial with reference to the statute or rule on which the denial is based;
      ii. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
      iii. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A302. Point of Compliance

The point of compliance is the point at which compliance with Aquifer Water Quality Standards is determined.

1. Except as provided in this Section or as stated in a specific general permit, the applicable point of compliance at a facility operating under a general permit is a vertical

plane downgradient of the facility that extends through the uppermost aquifers underlying that facility.

2. The point of compliance is the limit of the pollutant management area.
   a. The pollutant management area is the horizontal plane of the area on which pollutants are or will be placed.
   b. If a facility operating under a general permit is located within a larger pollutant management area established under an individual permit issued to the same person, the point of compliance is the applicable point of compliance established in the individual permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A303. Renewal of a Discharge Authorization

A. Unless a Discharge Authorization under a general permit is transferred, revoked, or expired, a person may discharge under the general permit for the authorization period as specified by the permit type, including any closure activities required by a specific general permit.

B. An authorization to discharge under a Type 1 or Type 4 General Permit is valid for the operational life of the facility.

C. A permittee authorized under a Type 2 or Type 3 General Permit shall submit an application for renewal on a form provided by the Department with the applicable fee established in 18 A.A.C. 14 at least 30 days before the end of the renewal period.
   1. The following are the renewal periods for Type 2 and Type 3 General Permit Discharge Authorizations:
      a. 2.01 General Permit, five years;
      b. 2.02 General Permit, seven years;
      c. 2.03 General Permit, two years;
      d. 2.04 General Permit, five years;
      e. 2.05 General Permit, five years;
      f. 2.06 General Permit, five years; and
      g. Type 3 General Permits, five years.
   2. The renewal period for coverage under a Type 2 General Permit begins on the date the Department receives the Notice of Intent to Discharge.
   3. The renewal period for coverage under a Type 3 General Permit begins on the date the Director issues the written Discharge Authorization.

D. If the Discharge Authorization is not renewed within the renewal period specified in subsection (B)(1), the Discharge Authorization expires.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A304. Notice of Transfer

A. Transfer of authorization under a Type 1 General Permit.
   1. A permittee transferring ownership of a facility covered by a Type 1.01 through 1.08, or 1.10 through 1.12 General Permit is not required to notify the Department of the transfer.
   2. A permittee transferring ownership of an on-site wastewater treatment facility operating under a Type 1.09 General Permit shall follow the requirements under R18-9-A316.
   3. A permittee transferring ownership of a sewage treatment facility operating under a Type 1.09 General Permit shall submit a Notice of Transfer to the Department by certified mail within 15 days after the date that ownership changes.

B. Transfer of authorization under a Type 2, 3, or 4.01 General Permit.
   1. If a change of ownership occurs for a facility covered by a Type 2, 3, or 4.01 General Permit facility, the permittee shall provide a Notice of Transfer to the Department or to the health or environmental agency delegated by the Director to administer Type 4.01 General Permits, by certified mail within 15 days after the date that ownership changes. The Notice of Transfer, on a form approved by the Department, shall include:
      a. Any information that has changed from the original Notice of Intent to Discharge,
      b. Any other transfer requirements specified for the general permit, and
      c. The applicable fee established in 18 A.A.C. 14.
   2. The Department may require a permittee covered by a Type 2, 3, or Type 4.01 General Permit to submit a new Notice of Intent to Discharge and to obtain a new authorization under R18-9-A301(A)(2), (3) and (4), as applicable, if the volume or characteristics of the discharge have changed from the original application.

C. Transfer of a Type 4.02 through 4.23 General Permit. A permittee transferring ownership of an on-site wastewater treatment facility operating under one or more Type 4.02 through 4.23 General Permits shall follow the requirements under R18-9-A316.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A305. Facility Expansion

A. A permittee may expand a facility covered by a Type 2 General Permit if, before the expansion, the permittee provides the Department with the following information by certified mail:
   1. An updated Notice of Intent to Discharge,
   2. A certification signed by the facility owner stating that the expansion continues to meet all the conditions of the applicable general permit, and
   3. The applicable fee established under 18 A.A.C. 14.

B. A permittee may expand a facility covered by a Type 3 or Type 4 General Permit if the permittee submits a new Notice of Intent to Discharge and the Department issues a new Discharge Authorization.
   1. The person submitting the Notice of Intent to Discharge for the expansion may reference the previous Notice of Intent to Discharge if the previous information is identical, but shall provide full and detailed information for any changed items.
   2. The Notice of Intent to Discharge shall include:
      a. Any applicable fee established under 18 A.A.C. 14, and
      b. A certification signed by the facility owner stating that the expansion continues to meet all of the requirements relating to the applicable general permit.
   3. Upon receiving the Notice of Intent to Discharge, the Department shall follow the applicable review and authorization procedures described in R18-9-A301(A)(3) or (4).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R.

235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A306. Closure

A. To satisfy the requirements under A.R.S. § 49-252, a permittee shall close a facility authorized to discharge under a general permit as follows:
1. If the discharge is authorized under a Type 1.01 through 1.08, 1.10, 1.11, 2.05, 2.06, or 4.01 General Permit, closure notification is unnecessary and clean closure is met when:
   a. The permittee removes material that may contribute to a continued discharge; and
   b. The permittee eliminates, to the greatest degree practical, any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance;
2. For a discharge authorized under a Type 2.02, 3.02, 3.05 through 3.07, or 4.23 General Permit, the facility meets clean closure requirements if the permittee provides notice and submits sufficient information for the Department to determine that:
   a. Any material that may contribute to a continued discharge is removed;
   b. The permittee has eliminated to the greatest degree practicable any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance; and
   c. Closure requirements, if any, established in the general permit are met;
3. If the discharge is authorized under a Type 1.12, 2.01, 2.03, 2.04, 3.01, 3.03, or 3.04 General Permit, the permittee shall comply with the closure requirements in the general permit;
4. If the discharge is from an on-site wastewater treatment facility authorized under a Type 1.09 or 4.02 through 4.22 General Permit, the permittee shall comply with the closure requirements in R18-9-A309(D); and
5. If the discharge is from a sewage treatment facility authorized under a Type 1.09 General Permit, the permittee shall comply with the closure requirements under subsection (A)(1).

B. For a facility operating under a general permit and located at a site where an individual area-wide permit has been issued, a permittee may defer some or all closure activities required by this subsection if the Director approves the deferral in writing. The permittee shall complete closure activities no later than the date that closure activities identified in the individual area-wide permit are performed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A307. Revocation of Coverage Under a General Permit

A. After notice and opportunity for a hearing, the Director may revoke coverage under a general permit and require the permittee to obtain an individual permit for any of the following:
1. The permittee fails to comply with the terms of the general permit as described in this Article, or
2. The discharge activity conducted under the terms of the general permit causes or contributes to the violation of an Aquifer Water Quality Standard at the applicable point of compliance.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative discharge of the facilities has violated or will violate an Aquifer Water Quality Standard established under A.R.S. §§ 49-221 and 49-223. Unless the public health or safety is jeopardized, the Director may allow continuation of a discharge until the Department:
1. Issues a single individual permit,
2. Authorizes a discharge under another general permit, or
3. Consolidates the discharges authorized under the general permits by following R18-9-107.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit allowing the discharge is automatically revoked upon issuance of the individual permit and notification under subsection (E) is not required.

D. If the Director revokes coverage under a general permit, the facility shall not discharge unless allowed under subsection (B) or under an individual permit.

E. If coverage under the general permit is revoked under subsections (A) or (B), the Director shall notify the permittee by certified mail of the decision. The notification shall include:
1. A brief statement of the reason for the decision;
2. The effective revocation date of the general permit coverage;
3. A statement of whether the discharge shall cease or whether the discharge may continue under the terms of revocation in subsection (B);
4. Whether the Director requires a person to obtain an individual permit, and if so:
   a. An individual permit application form, and
   b. Identification of a deadline between 90 and 180 days after receipt of the notification for filing the application;
5. The applicant's right to appeal the revocation, the number of days the applicant has to file an appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
6. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A308. Violations and Enforcement For On-site Wastewater Treatment Facilities

A. A person who owns or operates an on-site wastewater treatment facility contrary to the provisions of a Type 4 General Permit is subject to the enforcement actions under A.R.S. § 49-261;

B. A person who violates this Article or a specific term of a general permit for an on-site wastewater treatment facility is subject to enforcement actions under A.R.S. § 49-261.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A309. General Provisions for On-site Wastewater Treatment Facilities

A. General requirements and prohibitions.

1. No person shall discharge sewage or wastewater that contains sewage from an on-site wastewater treatment facility except under an Aquifer Protection Permit issued by the Director.
2. A person shall not install, allow to be installed, or maintain a connection between any part of an on-site wastewater treatment facility and a drinking water system or supply so that sewage or wastewater contaminates the drinking water.
3. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from an on-site wastewater treatment facility.
4. A person shall not use a cesspool for sewage disposal.
5. A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if:
   a. One of the following applies:
      i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
      ii. A county, municipal, or sanitary district ordinance requires connection; or
      iii. The on-site wastewater treatment facility is located within an area identified for connection to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or
   b. A sewer service line extension is available at the property boundary and both of the following apply:
      i. The service connection fee is not more than $6000 for a dwelling or $10 times the daily design flow in gallons for a source other than a dwelling, and
      ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than $3000 for a dwelling or $5 times the daily design flow in gallons for a source other than a dwelling.
6. The Department shall prohibit installation of an on-site wastewater treatment facility if the installation will create an unsanitary condition or environmental nuisance or cause or contribute to a violation of an Aquifer Water Quality Standard.
7. A person shall operate the permitted on-site wastewater treatment facility so that:
   a. Flows to the facility consist of typical sewage and do not include any motor oil, gasoline, paint, varnish, solvent, pesticide, fertilizer, or other material not generally associated with toilet flushing, food preparation, laundry, or personal hygiene;
   b. Flows to the facility from commercial operations do not contain hazardous wastes as defined under A.R.S. § 49-921(5) or hazardous substances;
   c. If the sewage contains a component of nonresidential flow such as food preparation, laundry service, or other source, the sewage is adequately pretreated by an interceptor that complies with R18-9-A315 or another device authorized by a general permit or approved by the Department under R18-9-A312(G);
   d. Except as provided in subsection (A)(7)(c), a sewage flow that does not meet the numerical levels for typical sewage is adequately pretreated to meet the numerical levels before entry into an on-site wastewater treatment facility authorized by this Article;
   e. Flow to the facility does not exceed the design flow specified in the Discharge Authorization;
   f. The facility does not create an unsanitary condition or environmental nuisance, or cause or contribute to a violation of either a Aquifer Water Quality Standard or a Surface Water Quality Standard; and
   g. Activities at the site do not adversely affect the operation of the facility.
8. A person shall control the discharge of total nitrogen from an on-site wastewater treatment facility as follows:
   a. For an on-site wastewater treatment facility operating under the 1.09 General Permit or proposed for construction in a Notice of Intent to Discharge under a Type 4 General Permit and the facility is located within a Nitrogen Management Area, the provisions of R18-9-A317(D) apply;
   b. For an on-site wastewater treatment facility proposed for construction in a Notice of Intent to Discharge under R18-9-E323, the provisions of R18-9-E323(A)(4) apply;
   c. For a subdivision proposed under 18 A.A.C. 5, Article 4, for which on-site wastewater treatment facilities are used for sewage disposal, the permittee shall demonstrate in the geological report required in R18-5-408(E)(1) that total nitrogen loading from the on-site wastewater treatment facilities to groundwater is controlled by providing one of the following:
      i. For a subdivision platted for a single family dwelling on each lot, calculations that demonstrate that the number of lots within the subdivision does not exceed the number of acres contained within the boundaries of the subdivision;
      ii. For a subdivision platted for dwellings that do not meet the criteria specified in subsection (A)(8)(c)(i), calculations that demonstrate that the nitrogen loading over the total area of the subdivision is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the active treatment of the disposal fields, based on a total nitrogen contribution to raw sewage of 0.0333 pounds (15.0 grams) of total nitrogen per day per person; or
      iii. An analysis by another means of demonstration showing that the nitrogen loading to the aquifer due to on-site wastewater treatment facilities within the subdivision does not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate at the applicable point of compliance.
9. Repairs.
   a. A Notice of Intent to Discharge is not required for routine work that maintains a facility.
   b. The following work is not considered routine work and a Notice of Intent to Discharge is required:
      i. Converting a facility from operation only under gravity to one requiring a pump or other powered equipment for treatment or disposal;
      ii. Modifying or replacing a facility operating under the 1.09 General Permit with a different

type of treatment or disposal technology;
iii. Changing the treatment works or disposal works of a facility authorized under one or more Type 4 General Permits to a technology covered by any other Type 4 General Permit;
iv. Extending the disposal works more than 10 feet beyond the footprint of the original disposal works;
v. Reconstructing any part of the disposal works in soil that is inadequate for the treated wastewater flow or strength;
vi. Expanding the footprint of the facility into or within setback buffers established in R18-9-A312(C);
vii. Reconstructing the disposal works so that it does not meet the vertical separation requirements specified in R18-9-A312(E);
viii. Modifying a treatment works or disposal works to accommodate a daily design flow or waste load greater than the daily design flow or waste load applicable to the original facility; or
ix. Replacing the treatment works.
c. Components used in a repair shall meet the design, installation, and operational requirements of this Article.
d. A permittee shall comply with any local ordinance that provides independent permitting requirements for repair work.
e. A person shall not modify the facility so as to create an unsanitary condition or environmental nuisance or cause or contribute to an exceedance of a water quality standard.

10. Cumulative flows. When there is more than one on-site wastewater treatment facility on a property or on a site under common ownership or subject to a larger plan of sale or development, the Director shall determine whether an individual permit is required or whether the applicant qualifies for coverage to discharge under a general permit based on the sum of the design flows from the proposed installation and existing on-site wastewater treatment facilities on the property or site.
a. If the sum of the design flows is less than 3000 gallons per day, the Department will process the application under R18-9-E302 through R18-9-E322, as applicable.
b. If the sum of the design flows is equal to or more than 3000 gallons per day but less than 24,000 gallons per day, the Department will process the application under R18-9-E323.
c. If the sum of the design flows is equal to or more than 24,000 gallons per day, the project does not qualify for coverage under a Type 4 General Permit and the applicant shall submit an application for an individual permit under Article 2 of this Chapter.

B. Notice of Intent to Discharge under a Type 4 General Permit. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information in a format approved by the Department:
1. A site investigation report that summarizes the results of the site investigation conducted under R18-9-A310(B), including:
a. Results from any soil evaluation, percolation test, or seepage pit performance test;
b. Any surface limiting condition identified in R18-9-A310(C)(2); and
c. Any subsurface limiting condition identified in R18-9-A310(D)(2);
2. A site plan that includes:
a. The parcel and lot number, if applicable, the property address or other appropriate legal description, the property size in acres, and the boundaries of the property;
b. A plan of the site drawn to scale, dimensioned, and with a north arrow that shows:
i. Proposed and existing on-site wastewater treatment facilities; dwellings and other buildings; driveways, swimming pools, tennis courts, wells, ponds, and any other paved, concrete, or water feature; down slopes and cut banks with a slope greater than 15 percent; retaining walls; and any other constructed feature that affects proper location, design, construction, or operation of the facility;
ii. Any feature less than 200 feet from the on-site wastewater treatment facility excavation and reserve area that constrains the location of the on-site wastewater treatment facility because of setback limitations specified in R18-9-A312(C);
iii. Topography, delineated with an appropriate contour interval, showing original and post-installation grades;
iv. Location and identification of the treatment and disposal works and wastewater pipelines, the reserve disposal area, and location and identification of all sites of percolation testing and soil evaluation performed under R18-9-A310; and
v. Location of any public sewer if 400 feet or less from the property line;
3. The design flow of the on-site wastewater treatment facility expressed in gallons per day based on Table 1, Unit Design Flows, the expected strength of the wastewater if the strength exceeds the levels for typical sewage, and:
a. For a single family dwelling, a list of the number of bedrooms and plumbing fixtures and corresponding unit flows used to calculate the design flow of the facility; and
b. For a dwelling other than for a single family, a list of each wastewater source and corresponding unit flows used to calculate the design flow of the facility;
4. A list of materials, components, and equipment for constructing the on-site wastewater treatment facility;
5. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department; and
6. For a facility that includes treatment or disposal works permitted under R18-9-E303 through R18-9-E323:
a. Construction quality drawings that show the following:
i. Systems, subsystems, and key components, including manufacturer's name, model number, and associated construction notes and inspection milestones, as applicable;
ii. A title block, including facility owner, revision date, space for addition of the Department's application number, and page numbers;
iii. A plan and profile with the elevations of wastewater pipelines, and treatment and disposal components, including calculations justifying the absorption area, to allow Department verifi-

cation of hydraulic and performance characteristics;

iv. Cross sections showing wastewater pipelines, construction details and elevations of treatment and disposal components, original and finished grades of the land surface, seasonal high water table if less than 10 feet below the bottom of a disposal works or 60 feet below the bottom of a seepage pit, and a soil elevation evaluation to allow Department verification of installation design and performance; and

v. Drainage pattern, drainage controls, and erosion protection, as applicable, for the facility; and

b. A draft operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;

C. Additional requirements for a Discharge Authorization under a Type 4 General Permit.

1. If the entire on-site wastewater treatment facility, including treatment works and disposal works, will be permitted under R18-9-E302, the Director shall issue the Discharge Authorization if:
   a. The site plan accurately reflects the final location and configuration of the components of the treatment and disposal works, and
   b. The applicant certifies on the Request for Discharge Authorization form that the septic tank passed the watertightness test required by R18-9-A314(5)(d).
2. If the on-site wastewater treatment facility is proposed under R18-9-E303 through R18-9-E323, either separately or in any combination with each other or with R18-9-E302, the Director shall issue the Discharge Authorization if the following documents are submitted to the Department:
   a. As-built plans showing changes from construction quality drawings submitted under subsection (B)(6)(a);
   b. A final list of equipment and materials showing changes from the list submitted under subsection (B)(4);
   c. A final operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;
   d. A certification that a service contract for ensuring that the facility is operated and maintained to meet the performance and other requirements of the applicable general permits exists for at least one year following the beginning of the operation of the on-site wastewater treatment facility, including the name of the service provider, if the on-site wastewater treatment facility is permitted under:
      i. R18-9-E304;
      ii. R18-9-E308 through R18-9-E315;
      iii. R18-9-E316, if the facility includes a pump; or
      iv. R18-9-E318 through R18-9-E322;
   e. Other documents, if required by the separate general permits in 18 A.A.C. 9, Article 3, Part E;
   f. A Certificate of Completion signed by the person responsible for assuring that installation of the facility conforms to the design approved under the Construction Authorization under R18-9-A301(D)(1)(c);
   g. The name of the installation contractor and the Registrar of Contractor's license number issued to the installation contractor; and
   h. A certification that any septic tank installed as a component of the on-site wastewater treatment facility passed the watertightness test required by R18-9-A314(5)(d).
3. The Director shall specify in the Discharge Authorization:
   a. The permitted design flow of the facility,
   b. The characteristics of the wastewater sources contributing to the facility, and
   c. A list of the documents submitted to and reviewed by the Department satisfying subsection (C)(2).

D. Closure requirements. A person who permanently discontinues use of an on-site wastewater treatment facility or a cesspool, or is ordered by the Director to close an abandoned facility shall:

1. Remove all sewage from the facility and dispose of the sewage in a lawful manner;
2. Disconnect and remove electrical and mechanical components;
3. Remove or collapse the top of any tank or containment structure.
   a. Punch a hole in the bottom of the tank or containment structure if the bottom is below the seasonal high groundwater table;
   b. Fill the tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material; and
   c. Regrade the surface to provide drainage away from the closed area;
4. Cut and plug both ends of the abandoned sewer drain pipe between the building and the on-site wastewater treatment facility not more than 5 feet outside the building foundation if practical, or cut and plug as close to each end as possible; and
5. Notify the Department within 30 days of closure.

E. Proprietary and other reviewed products.

1. The Department shall maintain a list of proprietary and other reviewed products that may be used for on-site wastewater treatment facilities to comply with the requirements of this Article. The list shall include appropriate information on the applicability and limitations of each product.
2. The list of proprietary and other reviewed products may include manufactured systems, subsystems, or components within the treatment works and disposal works if the products significantly contribute to the treatment performance of the system or provide the means to overcome site limitations. The Department will not list septic tanks, effluent filters or components that do not significantly affect treatment performance or provide the means to overcome site limitations.
3. A person may request that the Department add a product to the list of proprietary and other reviewed products. The request may include a proposed reference design for review. The Department shall ensure that performance values in the list reflect the treatment performance for defined wastewater characteristics. The Department shall assess fees under 18 A.A.C. 14 for product review.

F. Recordkeeping. A permittee authorized to discharge under one or more Type 4 General Permits shall maintain the Discharge Authorization and associated documents for the life of the facility.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A310. Site Investigation for Type 4 On-site Wastewater Treatment Facilities

A. Definition. For purposes of this Section, "clean water" means water free of colloidal material or additives that could affect chemical or physical properties if the water is used for percolation or seepage pit performance testing.

B. Site investigation. An applicant shall ensure that an investigator qualified under subsection (H) conducts a site investigation consisting of a surface characterization under subsection (C) and a subsurface characterization under subsection (D). The applicant shall submit the results in a format prescribed by the Department. The site investigation shall provide sufficient data to:
1. Select appropriate primary and reserve disposal areas for an on-site wastewater treatment facility considering all surface and subsurface limiting conditions in subsections (C)(2) and (D)(2); and;
2. Effectively design and install the selected facility to serve the anticipated development at the site, whether or not limiting conditions exist.

C. Surface characterization.
1. Surface characterization method. The investigator shall characterize the surface of the site where an on-site wastewater treatment facility is proposed for installation using one of the following methods:
   a. The "Standard Practice for Surface Site Characterization for On-site Septic Systems, D5879-95 (2003)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   b. Another method of surface characterization that can, with accuracy and reliability, identify and delineate the surface limiting conditions specified in subsection (C)(2).
2. Surface limiting conditions. The investigator shall determine whether, and if so, where any of the following surface limiting conditions exist:
   a. The surface slope is greater than 15 percent at the intended location of the on-site wastewater treatment facility;
   b. Minimum setback distances are not within the limits specified in R18-9-A312(C);
   c. Surface drainage characteristics at the intended location of the on-site wastewater treatment facility will adversely affect the ability of the facility to function properly;
   d. A 100-year flood hazard zone, as indicated on the applicable flood insurance rate map, is located within the property on which the on-site wastewater treatment facility will be installed;
   e. An outcropping of rock that cannot be excavated exists in the intended location of the on-site wastewater treatment facility or will impair the function of soil receiving the discharge; and
   f. Fill material deposits exist in the intended location of the on-site wastewater treatment facility.

D. Subsurface characterization.
1. Subsurface characterization method. The investigator shall characterize the subsurface of the site where an on-site wastewater treatment facility is proposed for installation using one or more of the following methods:
   a. The following ASTM standard practices, which are incorporated by reference and do not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959:
      i. "Standard Practice for Subsurface Site Characterization of Test Pits for On-site Septic Systems, D5921-96(2003)e1 (2003)," published by the American Society for Testing and Materials; and
      ii. "Standard Practice for Soil Investigation and Sampling by Auger Borings, D1452-80 (2000)," published by the American Society for Testing and Materials;
   b. Percolation testing as specified in subsection (F);
   c. Seepage pit performance testing as specified in subsection (G); or
   d. Another method of subsurface characterization, approved by the Department, that ensures compliance with water quality standards through proper system location, selection, design, installation, and operation.
2. Subsurface limiting conditions. The investigator shall determine whether any of the following limiting conditions exist in the primary and reserve areas of the on-site wastewater treatment facility within a minimum of 12 feet of the land surface or to an impervious soil or rock layer if encountered at a shallower depth:
   a. The soil absorption rate determined under R18-9-A312(D)(2) is:
      i. More than 1.20 gallons per day per square foot, or
      ii. Less than 0.20 gallons per day per square foot;
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation specified in R18-9-A312(E)(1);
   c. Seasonal saturation occurs within surface soils that could affect the performance of the on-site wastewater treatment facility;
   d. One of the following subsurface conditions that may cause or contribute to the surfacing of wastewater:
      i. An impervious soil or rock layer,
      ii. A zone of saturation that substantially limits downward percolation from the disposal works,
      iii. Soil with more than 50 percent rock fragments;
   e. One of the following subsurface conditions that promotes accelerated downward movement of insufficiently treated wastewater:
      i. Fractures or joints in rock that are open, continuous, or interconnected;
      ii. Karst voids or channels; or

iii. Highly permeable materials such as deposits of cobbles or boulders; or

f. A subsurface condition that may convey wastewater to a water of the state and cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4.

3. Applicability of subsurface characterization methods. The investigator shall:

a. For a seepage pit constructed under R18-9-E302, test seepage pit performance using the procedure specified in subsection (G);

b. For an on-site wastewater treatment facility other than a seepage pit, characterize soil by using one or more of the ASTM methods specified in subsection (D)(1)(a) if any of the following site conditions exists:

i. The natural surface slope at the intended location of the on-site wastewater treatment facility is greater than 15 percent;

ii. Bedrock or similar consolidated rock formation that cannot be excavated with a shovel outcrops on the property or occurs less than 12 feet below the land surface;

iii. The native soil at the surface or encountered in a boring, trench, or hole consists of more than 35 percent rock fragments;

iv. The seasonal high water table occurs within 12 feet of the natural land surface as encountered in trenches or borings, or evidenced by well records or hydrologic reports;

v. Seasonal saturation at the natural land surface occurs as indicated by soil mottling, vegetation adapted to near-surface saturated soils, or springs, seeps, or surface water near enough to the intended location of the on-site wastewater treatment facility to have a connection with potential seasonal saturation at the land surface; or

vi. A percolation test yields results outside the limits specified in subsection (D)(2)(a) and (b).

c. Percolation testing. The investigator may perform percolation testing as specified in subsection (F):

i. To augment another method of subsurface characterization if useful to locate or design an on-site wastewater treatment facility, or

ii. As the sole method of subsurface characterization if a subsurface characterization by an ASTM method is not required under subsection (D)(3)(b).

E. If an ASTM method is used for subsurface characterization, the investigator shall conduct subsurface characterization tests at the site to provide adequate, credible, and representative information to ensure proper location, selection, design, and installation of the on-site wastewater treatment facility. The investigator shall:

1. Select at least two test locations in the primary area and one test location in the reserve area to conduct the tests;

2. Perform the characterization at each test location at appropriate depths to:

a. Establish the wastewater absorption capacity of the soil under R18-9-A312(D), and

b. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment; and

3. Submit with the site investigation report:

a. A log of soil formations for each test location with information on soil type, texture, and classification; percentage of rock; structure; consistence; and mottles;

b. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and

c. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(b), sufficient to allow location and design of the on-site wastewater treatment facility.

F. Percolation testing method for subsurface characterization.

1. Planning and preparation. The investigator shall:

a. Select at least two locations in the primary area and at least one location in the reserve area for percolation testing, to provide adequate and credible information to ensure proper location, selection, design, and installation of a properly working on-site wastewater treatment facility;

b. Perform percolation testing at each location at intervals in the soil profile sufficient to:

i. Establish the wastewater absorption capability of the soil under R18-9-A312(D), and

ii. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment. The investigator shall perform percolation tests at multiple depths if there is an indication of an obvious change in soil characteristics that affect the location, selection, design, installation, or disposal performance of the on-site wastewater treatment facility;

c. Excavate percolation test holes in undisturbed soil at least 12 inches deep with dimensions of 12 inches by 12 inches, if square, or a diameter of 15 inches, if round. The investigator shall not alter the structure of the soil during the excavation;

d. Place percolation test holes away from site or soil features that yield unrepresentative or misleading data pertaining to the location, selection, design, installation, or performance of the on-site wastewater treatment facility;

e. Scarify smeared soil surfaces within the percolation test holes and remove any loosened materials from the bottom of the hole; and

f. Use buckets with holes in the sides to support the sidewalls of the percolation test hole, if necessary. The investigator shall fill any voids between the walls of the hole and the bucket with pea gravel to reduce the impact of the enlarged hole.

2. Presoaking procedure. The investigator shall:

a. Fill the percolation test hole with clean water to a depth of 12 inches above the bottom of the hole;

b. Observe the decline of the water level in the hole and record time in minutes for the water to completely drain away;

c. Repeat the steps specified in subsection (F)(2)(a) and (b) if the water drains away in less than 60 minutes.

i. If the water drains away the second time in less than 60 minutes, the investigator shall repeat the steps specified in subsections (F)(2)(a) and (b).

ii. If the water drains away a third time in less than 60 minutes, the investigator shall perform the

percolation test by following subsection (F)(3); and

d. Add clean water to the hole after 60 minutes and maintain the water at a minimum depth of 9 inches for at least four more hours if it takes 60 minutes or longer for the water to drain away. The investigator shall protect the hole from precipitation and runoff, and perform the percolation test specified in subsection (F)(3) between 16 and 24 hours after presoaking.

3. Conducting the test. The investigator shall:
   a. Conduct the percolation test before soil hydraulic conditions established by the presoaking procedure substantially change. The investigator shall remove loose materials in the percolation test hole to ensure that the specified dimensions of the hole are maintained and the infiltration surfaces are undisturbed native soil;
   b. Fill the test hole to a depth of six inches above the bottom with clean water;
   c. Observe the decline of the water level in the test hole and record the time in minutes for the water level to fall exactly 1 inch from a fixed reference point. The investigator shall:
      i. Immediately refill the hole with clean water to a depth of 6 inches above the bottom, and determine and record the time in minutes for the water level to fall exactly 1 inch,
      ii. Refill the hole again with clean water to a depth of 6 inches above the bottom and determine and record the time in minutes for the water to fall exactly 1 inch, and
      iii. Ensure that the method for measuring water level depth is accurate and does not significantly affect the percolation rate of the test hole;
   d. If the percolation rate stabilizes for three consecutive measurements by varying no more than 10 percent, use the highest percolation rate value of the three measurements. If three consecutive measurements indicate that the percolation rate results are not stabilizing or the percolation rate is between 60 and 120 minutes per inch, the investigator shall use an alternate method based on a graphical solution of the test data to approximate the stabilized percolation rate;
   e. Record the percolation rate results in minutes per inch; and
   f. Submit the following information with the site investigation report:
      i. A log of the soil formations encountered for all percolation tests including information on texture, structure, consistence, percentage of rock fragments, and mottles, if present;
      ii. Whether and which test hole was reinforced with a bucket;
      iii. The locations, depths, and bottom elevations of the percolation test holes on the site investigation map;
      iv. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
      v. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(a), sufficient to allow location and design of the on-site wastewater treatment facility.

G. Seepage pit performance testing method for subsurface characterization. The investigator shall test seepage pits described in R18-9-E302 as follows:

1. Planning and Preparation. The investigator shall:
   a. Identify the disposal areas at the site and drill a test hole at least 18 inches in diameter to the depth of the proposed seepage pit, at least 30 feet deep, and
   b. Scarify soil surfaces within the test hole and remove loosened materials from the bottom of the hole.
2. Presoaking procedure. The investigator shall:
   a. Fill the bottom 6 inches of the test hole with gravel, if necessary, to prevent scouring;
   b. Fill the test hole with clean water up to 3 feet below the land surface;
   c. Observe the decline of the water level in the hole and determine the time in hours and minutes for the water to completely drain away;
   d. Repeat the procedure if the water drains away in less than four hours; If the water drains away the second time in less than four hours, the investigator shall conduct the seepage pit performance test by following subsection (G)(3);
   e. Add water to the hole and maintain the water at a depth that leaves at least the top 3 feet of hole exposed to air for at least four more hours if the water drains away in four or more hours; and
   f. Not remove the water from the hole before the seepage pit performance test if there is standing water in the hole after at least 16 hours of presoaking.
3. Conducting the test. The investigator shall:
   a. Fill the test hole with clean water up to 3 feet below land surface;
   b. Observe the decline of the water level in the hole and determine and record the vertical distance to the water level from a fixed reference point every 10 minutes. The investigator shall ensure that the method for measuring water level depth is accurate and does not significantly affect the rate of fall of the water level in the test hole;
   c. Measure the decline of the water level continually until three consecutive 10-minute measurements indicate that the infiltration rates are within 10 percent. If measurements indicate that infiltration is not approaching a steady rate or if the rate is close to a numerical limit specified in R18-9-A312(E)(1), the investigator shall use, an alternate method based on a graphical solution of the test data to approximate the final stabilized infiltration rate;
   d. Percolation test rate. Calculate the stabilized infiltration rate for a seepage pit determined by the test hole procedure specified in subsection (G)(1)(a) using the formula P = (15 / DS) x IS to determine an equivalent percolation test rate. Once "P" is determined, the investigator shall use R18-9-A312(D)(2)(a) to establish the design SAR for wastewater treated under R18-9-E302 and to calculate the required minimum sidewall area for the seepage pit using the equation specified in R18-9-E302(C)(5)(k).
      i. "P" is the percolation test rate (minutes per inch) tabulated in the first column of the table in R18-9-A312(D)(2)(a),
      ii. "DS" is the diameter of the seepage pit test hole in inches, and
      iii. "IS" is the seepage pit stabilized infiltration

rate (minutes per inch) determined by the procedure specified in R18-9-A310(F)(3)(c);

e. Submit the following information with the site investigation report:
   i. The results of the seepage pit performance testing including data, calculations, and findings on a form provided by the Department;
   ii. The log of the test hole indicating lithologic characteristics and points of change;
   iii. The location of the test hole on the site investigation map;
   iv. A determination of depth to groundwater below the land surface by borings, published groundwater data, subdivision reports, or relevant well data.

f. Fill the test hole so that groundwater quality and public safety are not compromised if the seepage pit is drilled elsewhere or if a seepage pit cannot be sited at the location because of unfavorable test results.

H. Qualifications. An investigator shall not perform a site investigation under this Section unless the investigator has knowledge and competence in the subject area and is licensed in good standing or otherwise qualified in one of the following categories:
1. Arizona-registered professional engineer,
2. Arizona-registered geologist,
3. Arizona-registered sanitarian,
4. A certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section, or
5. Qualifies under another category designated in writing by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A311. Facility Selection for Type 4 On-site Wastewater Treatment Facilities

A. A person shall select, design, and install an on-site wastewater treatment facility that is appropriate for the site's geographic location, setback limitations, slope, topography, drainage and soil characteristics, wastewater infiltration capability, depth to the seasonal high water table, and any surface or subsurface limiting condition.
1. A person may use on-site treatment and disposal technologies covered by a Type 4 General Permit alone or in combination with another Type 4 General Permit to overcome site limitations.
2. An applicant may submit a single Notice of Intent to Discharge for an on-site wastewater treatment facility consisting of components or technologies covered by multiple general permits if the information submittal requirements of all the general permits are met.
3. The Director shall issue a single Construction Authorization under R18-9-A301(D)(1) and a single Discharge Authorization under R18-9-A301(D)(2) for an on-site wastewater treatment facility that consists of components or technologies covered by multiple general permits.

B. A person may install a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a site if the site investigation conducted under R18-9-A310 indicates that no limiting condition identified under R18-9-A310(C) or R18-9-A310(D) exists at the site.
1. A person may install a seepage pit only in valley-fill sediments in a basin-and-range alluvial basin and only if the seepage pit performance test results meet the criteria specified in R18-9-A312(E).
2. The person shall specify in the Notice of Intent to Discharge that no limiting conditions described in R18-9-A310(C) and (D) were identified at the site.

C. If any surface or subsurface limiting condition is identified in the site investigation report, an applicant may propose installation of a septic tank and disposal works system described in R18-9-E302 only if:
1. The applicant submits information under R18-9-A312(G) that describes:
   a. How the design of the septic tank and disposal works system specified in R18-9-E302 was modified to overcome limiting conditions;
   b. How the modified design meets the criteria of R18-9-A312(G)(3); and
   c. A site-specific SAR under R18-9-A312(D)(2)(a) or (b), as applicable; and
2. None of the following surface or subsurface limiting conditions are identified at the site:
   a. An outcropping of rock that cannot be excavated or will impair the function of soil receiving the discharge exists in the intended location of the on-site wastewater treatment facility, as described in R18-9-A310(C)(2)(e);
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation distance, as described in R18-9-A310(D)(2)(c); or
   c. A subsurface condition that promotes accelerated downward movement of insufficiently treated wastewater as described in R18-9-A310(D)(2)(e).

D. If a site can accommodate a septic tank and disposal works system described in R18-9-E302, the applicant shall not install a treatment works or disposal works described in R18-9-E303 through R18-9-E322 unless the applicant submits a statement to the Department with the Notice of Intent to Discharge acknowledging the following:
1. The applicant is aware that although a septic tank and disposal works system described in R18-9-E302 is appropriate for the site, the applicant desires to install a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322; and
2. The applicant is aware that a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322 may result in higher capital, operation, and maintenance costs than a septic tank and disposal works system described in R18-9-E302.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A312. Facility Design for Type 4 On-site Wastewater Treatment Facilities

A. General design requirements. An applicant shall ensure that the person designing an on-site wastewater treatment facility:
1. Signs the design documents submitted as part of the Notice of Intent to Discharge to obtain a Construction

Authorization, including plans, specifications, drawings, reports, and calculations; and

2. Locates and designs the on-site wastewater treatment facility project using good design judgment and relies on appropriate design methods and calculations.

B. Design considerations and flow determination. An applicant shall ensure that the person designing the on-site wastewater treatment facility shall:

1. Design the facility to satisfy a 20-year operational life;
2. Design the facility based on the provisions of one or more of the general permits in R18-9-E302 through R18-9-E322 for facilities with a design flow of less than 3000 gallons per day, and R18-9-E323 for facilities with a design flow of 3000 gallons per day to less than 24,000 gallons per day;
3. Design the facility based on the facility's design flow and wastewater characteristics as specified in R18-9-A309(B)(3);
4. For on-site wastewater treatment facilities permitted under R18-9-E303 through R18-9-E323, apply the following design requirements, as applicable:
   a. Include the power source and power components in construction drawings if electricity or another type of power is necessary for facility operation;
   b. If a hydraulic analysis is required under subsection (E), perform the analysis based on the location and dimensions of the bottom and sidewall surfaces of the disposal works that are identified in the design documentation;
   c. Design components, piping, ports, seals, and appurtenances to withstand installation loads, internal and external operational loads, and buoyant forces. Design ports for resistance against movement, and cap or cover openings for protection from damage and entry by rodents, mosquitoes, flies, or other organisms capable of transporting a disease-causing organism;
   d. Design tanks, liners, ports, seals, piping to and within the facility, and appurtenances for watertightness under all operational conditions;
   e. Provide adequate storage capacity above high operating level to:
      i. Accommodate a 24-hour power or pump outage, and
      ii. Contain wastewater that is incompletely treated or cannot be released by the disposal works to the native soil;
   f. If a fixed media process is used, provide in the construction drawings the media material, installation specification, media configuration, and wastewater loading rate of the media at the daily design flow;
   g. Provide a fail-safe wastewater control or operational process, if required by the general permit to prevent discharge of inadequately treated wastewater; and
   h. Reference design. If using a reference design on file with the Department, indicate the reference design within the information submitted with the Notice of Intent to Discharge.

C. Setbacks. The following setbacks apply unless the Department:

1. Specifies alternative setbacks under Article 3, Part E of this Chapter;
2. Approves a different setback under the procedure specified in subsection (G); or
3. Establishes a more stringent setback on a site- or area-specific basis to ensure compliance with water quality standards.

Features Requiring Setbacks	Setback For An On-Site Wastewater Treatment Facility, Including Reserve Area (In Feet)	Special Provisions
1. Building	10	Includes porches, decks, and steps (covered or uncovered), breezeways, roofed patios, carports, covered walks, and similar structures and appurtenances.
2. Property line shared with any adjoining lot or parcel not served by a common drinking water system* or an existing water well	50	A person may reduce the setback to a minimum of 5 feet from the property line if: a. The owners of any affected undeveloped adjacent properties agree, as evidenced by an appropriately recorded document, to limit the location of any new well on their property to at least 100 feet from the proposed treatment works and primary and reserve disposal works; and b. The arrangements and documentation are approved by the Department.
3. All other property lines	5	None
4. Public or private water supply well	100	None
5. Perennial or intermittent stream	100	Measured horizontally from the high water line of the peak streamflow from a 10-year, 24-hour rainfall event.
6. Lake, reservoir, or canal	100	Measured horizontally from the high water line from a 10-year, 24-hour rainfall event at the lake or reservoir.

7. Drinking water intake from a surface water source (includes an open water body, downslope spring or a well tapping streamside saturated alluvium)	200	Measured horizontally from the on-site wastewater treatment facility to the structure or mechanism for withdrawing raw water such as a pipe inlet, grate, pump, intake or diversion box, spring box, well, or similar structure.
8. Wash or drainage easement with a drainage area of more than 20 acres	50	Measured horizontally from the nearest edge of the defined natural channel bank or drainage easement boundary. A person may reduce the setback to 25 feet if natural or constructed erosion protection is approved by the appropriate flood plain administrator.
9. Water main or branch water line	10	None
10. Domestic service water line	5	Measured horizontally between the water line and the wastewater pipe, except that the following are allowed: a. A water line may cross above a wastewater pipe if the crossing angle is between 45 and 90 degrees and the vertical separation distance is 1 foot or more. b. A water line may parallel a wastewater pipe with a horizontal separation distance of 1 foot to 5 feet if the bottom of the water line is 1 foot or more above the top of the wastewater pipe and is in a separate trench or on a bench in the same trench.
11. Downslopes or cut banks greater than 15 percent, culverts, and ditches from:		
a. Treatment works components	10	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface.
b. Trench, bed, chamber technology, or gravelless trench with:		Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
i. No limiting subsurface condition specified in R18-9-A310(D)(2),	20	
ii. A limiting subsurface condition.	50	
c. Subsurface drip lines.	3	Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
12. Driveway	5	Measured horizontally to the nearest edge of an on-site wastewater treatment facility excavation. A person may place a properly reinforced and protected wastewater treatment facility, except for disposal works, at any location relative to a driveway if access openings, risers, and covers carry the design load and are protected from inflow.
13. Swimming pool excavation	5	Except if soil loading or stability concerns indicate the need for a greater separation distance.
14. Easement (except drainage easement)	5	None
15. Earth fissures	100	None
* A "common drinking water system" means a system that currently serves or is under legal obligation to serve the property and may include a drinking water utility, a well-sharing agreement, or other viable water supply agreement.		

D. Soil absorption rate (SAR) and disposal works sizing.

1. An applicant shall determine the soil absorption area by dividing the design flow by the applicable soil absorption rate. If soil characterization and percolation test methods yield different SAR values or if multiple applications of the same approach yield different values, the designer of

the disposal works shall use the lowest SAR value unless a higher SAR value is proposed and justified to the Department's satisfaction in the Notice of Intent to Discharge.

2. The SAR used to calculate disposal works size for systems described in R18-9-E302 is as follows:
   a. The SAR by percolation testing as described in R18-9-A310(F) is determined as follows:

Percolation Rate from Percolation Test (minutes per inch)	**SAR, Trench, Chamber, and Pit (gal/day/ft^2)**	**SAR, Bed (gal/day/ft^2)**
Less than 1.00	A site-specific SAR is required	A site-specific SAR is required
1.00 to less than 3.00	1.20	0.93
3.00	1.10	0.73
4.00	1.00	0.67
5.00	0.90	0.60
7.00	0.75	0.50
10.0	0.63	0.42
15.0	0.50	0.33
20.0	0.44	0.29
25.0	0.40	0.27
30.0	0.36	0.24
35.0	0.33	0.22
40.0	0.31	0.21
45.0	0.29	0.20
50.0	0.28	0.19
55.0	0.27	0.18
55.0+ to 60.0	0.25	0.17
60.0+ to 120	0.20	0.13
Greater than 120	A site-specific SAR is required	A site-specific SAR is required

   b. The SAR using the soil evaluation method described in R18-9-A310(E) is determined by answering the questions in the following table. The questions are read in sequence starting with "A." The first "yes" answer determines the SAR.

Sequence of Soil Characteristics Questions	**SAR, Trench, Chamber, and Pit gal/day/ft^2**	**SAR, Bed gal/day/ft^2**
A. Is the horizon gravelly coarse sand or coarser?	A site-specific SAR is required	A site-specific SAR is required
B. Is the structure of the horizon moderate or strongly platy?	A site-specific SAR is required	A site-specific SAR is required
C. Is the texture of the horizon sandy clay loam, clay loam, silty clay loam, or finer and the soil structure weak platy?	A site-specific SAR is required	A site-specific SAR is required
D. Is the moist consistency stronger than firm or any cemented class?	A site-specific SAR is required	A site-specific SAR is required
E. Is the texture sandy clay, clay, or silty clay of high clay content and the structure massive or weak?	A site-specific SAR is required	A site-specific SAR is required
F. Is the texture sandy clay loam, clay loam, silty clay loam, or silty loam and the structure massive?	A site-specific SAR is required	A site-specific SAR is required
G. Is the texture of the horizon loam or sandy loam and the structure massive?	0.20	0.13
H. Is the texture sandy clay, clay, or silty clay of low clay content and the structure moderate or strong?	0.20	0.13
I. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure weak?	0.20	0.13
J. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure moderate or strong?	0.40	0.27
K. Is the texture sandy loam, loam, or silty loam and the structure weak?	0.40	0.27
L. Is the texture sandy loam, loam, or silt loam and the structure moderate or strong?	0.60	0.40
M. Is the texture fine sand, very fine sand, loamy fine sand, or loamy very fine sand?	0.40	0.27
N. Is the texture loamy sand or sand?	0.80	0.53
O. Is the texture coarse sand?	1.20	A site-specific SAR is required

3. For an on-site wastewater treatment facility described in a general permit other than R18-9-E302, the SAR is dependent on the ability of the facility to reduce the level of TSS and BOD_5 and is calculated using the following formula:

$$SAR_a = \left[\left(\frac{11.39}{\sqrt[3]{TSS + BOD_5}} - 1.87\right) SAR^{1.13} + 1\right] SAR$$

   a. "SAR_a" is the adjusted soil absorption rate for disposal works design in gallons per day per square foot,
   b. "TSS" is the total suspended solids in wastewater delivered to the disposal works in milligrams per liter,
   c. "BOD_5" is the five-day biochemical oxygen demand of wastewater delivered to the disposal works in milligrams per liter, and
   d. "SAR" is the soil absorption rate for septic tank effluent determined by the subsurface characterization method described in R18-9-A310.
4. An applicant shall ensure that the facility is designed so that the area of the intended installation is large enough to allow for construction of the facility and for future replacement or repair and is at least as large as the following:
   a. For a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works. A reserve area is not required for a lot in a subdivision approved before 1974 if the lot conforms to its original approved configuration;
   b. For other than a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works.
5. An applicant shall ensure that the subsurface disposal works is designed to achieve the design flow established in R18-9-A309(B)(3) through proper hydraulic function, including conditions of seasonally cold and wet weather.

E. Vertical separation distances.
1. Minimum vertical separation to the seasonal high water table for a disposal works described in R18-9-E302 receiving septic tank effluent. For a disposal works described in R18-9-E302 receiving septic tank effluent, the minimum vertical separation distance between the lowest point in the disposal works and the seasonal high water table is dependent on the soil absorption rate and is determined as follows:

Soil Absorption Rate (gallons per day per square foot)			**Minimum Vertical Separation Between The Bottom Of The Disposal Works And The Seasonal High Water Table (feet)**	
Trench and Chamber	Bed	Seepage Pit	Trench, Chamber, and Bed	Seepage Pit
1.20+	0.93+	1.20+	Not allowed for septic tank effluent	Not Allowed
0.63+ to 1.20	0.42 to 0.93	0.63+ to 1.20	10	60
0.20 to 0.63	0.13 to 0.42	0.36 to 0.63	5	60
Less than 0.20	Less than 0.13	Less than 0.36	Not allowed for septic tank effluent	Not Allowed

2. Minimum vertical separation to the seasonal high water table for treatment and disposal works described in R18-9-E303 through R18-9-E322. If the minimum vertical separation distance to the seasonal high water table for a disposal works receiving septic tank effluent specified in subsection (E)(1) is not met, the applicant shall comply with the following:
   a. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml) delivered to native soil at the bottom of the disposal works. The applicant shall use the following table to select works that achieve a reduced total coliform concentration corresponding to the available vertical separation distance between the bottom of the disposal works and the seasonal high water table:

Available Vertical Separation Distance Between the Bottom of The Disposal Works and the Seasonal High Water Table (feet)		**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Natural Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
For SAR*, 0.20 to 0.63	**For SAR*, 0.63+ to 1.20**	
5	10	8**
4	8	7
3.5	7	6
3	6	5
2.5	5	4
2	4	3
1.5	3	2
1	2	1
0	0	0***

* Soil absorption rate from percolation testing or soil characterization, in gallons per square foot per day.
** Nominal value for a standard septic tank and disposal field (10^8 colony forming units per 100 ml).
*** Nominally free of coliform bacteria.

   b. Include a hydraulic analysis with the Notice Of Intent To Discharge, based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater downward and laterally without surfacing for the site conditions at the disposal works.
3. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(d) that may cause or contribute to surfacing of wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(d) exists at the location of the disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of acceptable native soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 4 feet thick, and
      ii. The zone of soil is sufficiently permeable to conduct wastewater released from the disposal works vertically downward and laterally without causing surfacing of the wastewater as documented by a hydraulic analysis submitted with the Notice of Intent to Discharge that is based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b);
   b. The subsurface limiting condition is thin enough to allow placement of a disposal works into acceptable native soil beneath the subsurface limiting condition if the following criteria are met:
      i. The bottom of the subsurface limiting condition is not deeper than 10 feet below the land surface, and
      ii. The vertical separation distance from the bottom of the disposal works to the seasonal high water table complies with subsection (E)(1) or (2), as applicable; or
   c. If the disposal works is placed above the subsurface limiting condition and the depth to the subsurface limiting condition is less than 4 feet below the bottom of the disposal works, the design for the on-site wastewater treatment facility shall comply with all of the following:
      i. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a

reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml), delivered to acceptable native soil at the bottom of the disposal works, as follows:

Available Vertical Separation Distance from the Bottom of the Disposal Works to the Subsurface Limiting Condition (feet)	**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Acceptable Native Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
3.5	7
3	6
2.5	5
2	4
1.5	0*
1	0*
0.5	0*
0	0*

* Nominally free of coliform bacteria.

ii. If the SAR of the native soil into which the disposal works is placed is not more than 0.63 gallons per day per square foot, include a hydraulic analysis with the Notice of Intent to Discharge, based on the location and dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing for the site conditions at the disposal works; and

iii. If a disinfection device under R18-9-E320 is proposed but is not used with surface disposal of wastewater under R18-9-E321 or "Category A" drip irrigation disposal under R18-9-E322, provide a justification with the Notice of Intent to Discharge stating why the selected type of disposal works is favored over disposal under R18-9-E321 or R18-9-E322.

4. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(e) that promotes accelerated downward movement of insufficiently treated wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(e) exists at the location of the proposed disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of naturally occurring soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 2 feet thick, and
      ii. The SAR of the soil is not less than 0.20 gallons per day per square foot nor more than 1.20 gallons per day per square foot; or
   b. The on-site wastewater treatment facility employs one or more technologies described in R18-9-E303 through R18-9-E322 that produces treated wastewater that meets a total coliform concentration of 1,000,000 ($Log_{10}6$) colony forming units per 100 milliliters, 95th percentile.

F. Materials and manufactured system components.
1. Materials. An applicant shall use aggregate if no specification for disposal works material is provided in this Article.
2. Manufactured components. If manufactured components are used, an applicant shall design, install, and operate the on-site wastewater treatment facility following the manufacturer's specifications. The applicant shall ensure that:
   a. Treatment and containment components, mechanical equipment, instrumentation, and controls have monitoring, inspection, access and cleanout ports or covers, as appropriate, for monitoring and service;
   b. Treatment and containment components, pipe, fittings, pumps, and related components and controls are durable, watertight, structurally sound, and capable of withstanding stress from installation and operational service; and
   c. Distribution lines for disposal works are constructed of clay tile laid with open joints, perforated clay pipe, perforated high density polyethylene pipe, perforated ABS pipe, or perforated PVC pipe if the pipe is suitable for wastewater disposal use and sufficient openings are available for distribution of the wastewater into the trench or bed area.
3. Electronic components. When electronic components are used, the applicant shall ensure that:
   a. Instructions and a wiring diagram are mounted on the inside of a control panel cover;
   b. The control panel is equipped with a multimode operation switch, red alarm light, buzzer, and reset button;
   c. The multimode operation switch operates in the automatic position for normal system operation; and
   d. An anomalous condition is indicated by a glowing alarm light and sounding buzzer. The continued glowing of the alarm light after pressing the reset button shall signal the need for maintenance or repair of the system at the earliest practical opportunity.
4. If a conflict exists between this Article and the manufacturer's specifications, the requirements of this Article apply. Except for the requirements in subsection (D) and (E), which always apply, if the conflict voids a manufacturer's warranty, the applicant may submit a request under subsection (G) justifying use of the manufacturer's specifications.

G. Alternative design, setback, installation, or operational features. When an applicant submits a Notice of Intent to Discharge, the applicant may request that the Department review and approve a feature of improved or alternative technology, design, setback, installation, or operation that differs from a general permit requirement in this Article.
1. The applicant shall make the request for an improved or alternative feature of technology, design, setback, installation, or operation on a form provided by the Department and include:
   a. A description of the requested change;

b. A citation to the applicable feature or technology, design, setback, installation, or operational requirement for which the change is being requested; and
c. Justification for the requested change, including any necessary supporting documentation.

2. The applicant shall submit the appropriate fee specified under 18 A.A.C. 14 for each requested change. For purposes of calculating the fee, a requested change that is applied multiple times in a similar manner throughout the facility is considered a single request if submitted for concurrent review.
3. The applicant shall provide sufficient information for the Department to determine that the change achieves equal or better performance compared with the general permit requirement, or addresses site or system conditions more satisfactorily than the requirements of this Article.
4. The Department shall review and may approve the request for change.
5. The Department shall deny the request for the change if the change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.
6. The Department shall deny the request for the change if the change:
   a. Fails to achieve equal or better performance compared to the general permit requirement;
   b. Fails to address site or system conditions more satisfactorily than the general permit requirement;
   c. Is insufficiently justified based on the information provided in the submittal;
   d. Requires excessive review time, research, or specialized expertise by the Department to act on the request; or
   e. For any other justifiable cause.
7. The Department may approve a reduced setback for a facility authorized to discharge under one or more of the general permits in R18-9-E303 through R18-9-E322, either separately or in combination with a septic tank system authorized under R18-9-E302, if the applicant demonstrates that:
   a. The treatment performance is significantly better than that provided under R18-9-E302(B),
   b. The wastewater loading rate is reduced, or
   c. Surface or subsurface characteristics ensure that reduced setbacks are protective of human health or water quality.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (E)(1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A313. Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities

A. Facility installation. In addition to installation requirements in the general permit, the applicant shall ensure that the following tasks are performed, as applicable:
1. The facility is installed as described in design documents submitted with the Notice of Intent to Discharge;
2. Components are installed on a firm foundation that supports the components and operating loads;
3. The site is prepared to protect native soil beneath the soil absorption area and in adjacent areas from compaction, prevent smeared absorption surfaces, minimize disturbances from grubbing, and otherwise preclude damage to the disposal area that would impair performance;
4. Components are protected from damage at the construction site and installed in conformance with the manufacturer's instructions if consistent with this Article;
5. Treatment media are placed to achieve uniform density, prevent differential settling, produce a level inlet surface unless otherwise specified by the manufacturer, and avoid introduction of construction contaminants;
6. Backfill is placed to prevent damage to geotextile, liners, tanks, and other components;
7. Soil cover is shaped to shed rainfall away from the backfill areas and prevent ponding of runoff; and
8. Anti-buoyancy measures are implemented during construction if temporary saturated backfill conditions are anticipated during construction.

B. Operation and maintenance. In addition to operation and maintenance requirements in the general permit or specified in the operation and maintenance manual, the permittee shall ensure that the following tasks are performed, as applicable:
1. Pump accumulated residues, inspect and clean wastewater treatment and distribution components, and manage residues to protect human health and the environment;
2. Clean, backwash, or replace effluent filters according to the manufacturer's instructions, and manage residues to protect human health and the environment;
3. Inspect and clean the effluent baffle screen and pump tank, and properly dispose of cleaning residue;
4. Clean the dosing tank effluent screen, pump switches, and floats, and properly dispose of cleaning residue;
5. Flush lateral lines and return flush water to the pretreatment headworks;
6. Inspect, remove and replace, if necessary, and properly dispose of filter media;
7. Rod pressurized wastewater delivery lines and secondary distribution lines (for dosing systems), and return cleaning water to the pretreatment headworks;
8. Inspect and clean pump inlets and controls and return cleaning water to the pretreatment headworks;
9. Implement corrective measures if anomalous ponding, dryness, noise, odor, or differential settling is observed;
10. Inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for:
    a. Influent wastewater quality;
    b. The pressurized dosing system;
    c. The aggregate infiltration bed and mound system;
    d. Wastewater delivery and the engineered pad;
    e. The pressurized delivery system, filter, underdrain, and native soil absorption system;
    f. Saturation condition status in peat and other media; and
    g. Treatment system components;
11. Inspect tanks, liners, ports, seals, piping, and appurtenances for watertightness under all operational conditions;
12. Manage vegetation in areas that contain components subject to physical impairment or damage due to root invasion or animals;
13. Maintain drainage, berms, protective barriers, cover materials, and other features; and
14. Maintain the usefulness of the reserve area to allow for repair or replacement of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R.

235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A314. Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A person shall not install a septic tank in an on-site wastewater treatment facility unless the tank meets the following requirements:

1. The tank is:
   a. Designed to produce a clarified effluent and provide adequate space for sludge and scum accumulations;
   b. Watertight and constructed of solid durable materials not subject to excessive corrosion or decay;
   c. Manufactured with at least two compartments unless two separate structures are placed in series. The tank is designed so that:
      i. The inlet compartment of any septic tank not placed in series is nominally 67 percent to 75 percent of the total required capacity of the tank,
      ii. Septic tanks placed in series are considered a unit and meet the same criteria as a single tank,
      iii. The liquid depth of the septic tank is at least 42 inches, and
      iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than 3 times the width;
   d. Manufactured with at least two access openings to the tank interior, each at least 20 inches in diameter. The tank is designed so that:
      i. One access opening is located over the inlet end of the tank and one access opening is located over the outlet end;
      ii. Whenever a first compartment exceeds 12 feet in length, another access opening is provided over the baffle wall; and
      iii. Access openings and risers are constructed to ensure accessibility within 6 inches below finished grade;
   e. Manufactured so that the sewage inlet and wastewater outlet openings are not smaller than the connecting sewer pipe. The tank is designed so that:
      i. The vertical leg of round inlet and outlet fittings is at least 4 inches but not smaller than the connecting sewer pipe, and
      ii. A baffle fitting has the equivalent cross-sectional area of the connecting sewer pipe and not less than a 4 inch horizontal dimension if measured at the inlet and outlet pipe inverts;
   f. Manufactured so that the inlet and outlet pipe or baffle extends 4 inches above and at least 12 inches below the water surface when the tank is installed according to the manufacturer's instructions consistent with this Chapter. The invert of the inlet pipe is at least 2 inches above the invert of the outlet pipe;
   g. Manufactured so that the inlet and outlet fittings or baffles and compartment partitions have a free vent area equal to the required cross-sectional area of the connected sewer pipe to provide free ventilation above the water surface from the disposal works or seepage pit through the septic tank, house sewer, and stack to the outer air;
   h. Manufactured so that the open space extends at least 9 inches above the liquid level and the cover of the septic tank is at least 2 inches above the top of the inlet fitting vent opening;
   i. Manufactured so that partitions or baffles between compartments are of solid durable material (wooden baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located at the midpoint of the liquid level of the baffle. If a horizontal slot is used, the slot shall be no more than 6 inches in height;
   j. Structurally designed to withstand all anticipated earth or other loads. The tank is designed so that:
      i. All septic tank covers are capable of supporting an earth load of 300 pounds per square foot; and
      ii. If the top of the tank is greater than 2 feet below finish grade, the septic tank and cover are capable of supporting an additional load of 150 pounds per square foot for each additional foot of cover;
   k. Manufactured or installed so that the influent and effluent ends of the tank are clearly and permanently marked on the outside of the tank with the words "INLET" or "IN," and "OUTLET" or "OUT," above or to the right or left of the corresponding openings; and
   l. Clearly and permanently marked with the manufacturer's name or registered trademark, or both, the month and year of manufacture, the maximum recommended depth of earth cover in feet, and the design liquid capacity of the tank. The tank is manufactured to protect the markings from corrosion so that they remain permanent and readable for the operational life of the tank.
2. Materials used to construct or manufacture septic tanks.
   a. A septic tank cast-in-place at the site of use shall be protected from corrosion by coating the tank with a bituminous coating, by constructing the tank using a concrete mix that incorporates 15 percent to 18 percent fly ash, or by any other Department-approved means. The tank is designed so that:
      i. The coating extends at least 4 inches below the wastewater line and covers all of the internal area above that point; and
      ii. A septic tank cast-in-place complies with the "Building Code Requirements for Structural Concrete and Commentary ACI 318-02/318R-02 (2002)," and the "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350/350R-01 (2001)," published by the American Concrete Institute. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from American Concrete Institute, P.O. Box 9094, Farmington Hills, MI 48333-9094.
   b. A steel septic tank shall have a minimum wall thickness of No. 12 U.S. gauge steel and be protected from corrosion, internally and externally, by a bituminous coating or other Department-approved means.
   c. A prefabricated concrete septic tank shall meet the "Standard Specification for Precast Concrete Septic

Tanks, C1227-03," published by the American Society for Testing and Materials. This information is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International West.

d. A septic tank manufactured using fiberglass or polyethylene shall meet the "Material and Property Standards for Prefabricated Septic Tanks, IAPMO PS 1-2004," published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from International Association of Plumbing & Mechanical Officials, 20001 E. Walnut Drive, South Walnut, CA 91789-2825.

3. Conformance with design, materials, and manufacturing requirements.
   a. If any conflict exists between this Article and the information incorporated by reference in subsection (2), the requirements of this Article apply.
   b. The Department may approve use of alternative construction materials under R18-9-A312(G). Tanks constructed of wood, block, or bare steel are prohibited.
   c. The Department may inspect septic tanks at the site of manufacturing to verify compliance with subsections (1) and (2).
   d. The septic tank sale documentation includes:
      i. A certificate attesting that the septic tank conforms with the design, materials, and manufacturing requirements in subsections (1) and (2); and
      ii. Instructions for handling and installing the septic tank.
4. The septic tank's daily design flow is determined as follows:
   a. For a single family dwelling:
      i. The design liquid capacity of the septic tank and the septic tank's daily design flow are determined based on the number of bedrooms and fixture count as follows:

Criteria for Septic Tank Size and Design Flow			
Number of Bedrooms	**Fixture Count**	**Minimum Design Liquid Capacity (gallons)**	**Design Flow (gal/day)**
1	7 or less	1000	150
	More than 7	1000	300
2	14 or less	1000	300
	More than 14	1000	450
3	21 or less	1000	450
	More than 21	1250	600
4	28 or less	1250	600
	More than 28	1500	750
5	35 or less	1500	750
	More than 35	2000	900
6	42 or less	2000	900
	More than 42	2500	1050
7	49 or less	2500	1050
	More than 49	3000	1200
8	56 or less	3000	1200
	More than 56	3000	1350

      ii. Fixture count is determined as follows:

Residential Fixture Type	Fixture Units	Residential Fixture Type	Fixture Units
Bathtub	2	Sink, bar	1
Bidet	2	Sink, kitchen (including dishwasher	2
Clothes washer	2	Sink, service	3
Dishwasher (Separate from kitchen)	2	Utility tub or sink	2
Lavatory, single	1	Water closet, 1.6 gallons per flush (gpf)	3
Lavatory, double in master bedroom	1	Water closet, >1.6 to 3.2 gpf	4
Shower, single stall	2	Water closet, greater than 3.2 gpf	6

   b. For other than a single family dwelling, the design liquid capacity of a septic tank in gallons is 2.1 times the daily design flow into the tank as determined from Table 1, Unit Design Flows. If the wastewater strength exceeds that of typical sewage, additional tank volume is required.
   c. A person may place two septic tanks in series to meet the septic tank design liquid capacity requirements if the capacity of the first tank is at least 67 percent of the total required tank capacity and the capacity of the second tank is at least 33 percent of the total required tank capacity.
5. The following requirements regarding new or replacement septic tank installation apply:
   a. Permanent surface markers for locating the septic tank access openings are provided for maintenance;
   b. A septic tank installed under concrete or pavement has the required access openings extended to grade;
   c. A septic tank effluent filter is installed on the septic tank. The filter shall:
      i. Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and
      ii. Be constructed of materials that are resistant to

corrosion and erosion, sized to accommodate hydraulic and organic loading, and removable for cleaning and maintenance; and

d. The septic tank is tested for watertightness after installation by the water test described in subsections (5)(d)(i) and (5)(d)(ii) and repaired or replaced, if necessary.

i. The septic tank is filled with clean water, as specified in R18-9-A310(A), to the invert of the outlet and the water left standing in the tank for 24 hours and:

(1) After 24 hours, the tank is refilled to the invert, if necessary;

(2) The initial water level and time is recorded; and

(3) After one hour, water level and time is recorded.

ii. The tank passes the water test if the water level does not drop over the one-hour period. Any visible leak of flowing water is considered a failure. A damp or wet spot that is not flowing is not considered a failure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A315. Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A. Interceptor requirement. An applicant shall ensure that an interceptor as required by R18-9-A309(A)(7)(c) or necessary due to excessive amounts of grease, garbage, sand, or other wastes in the sewage is installed between the sewage source and the on-site wastewater treatment facility.

B. Interceptor design. An applicant shall ensure that:

1. An interceptor has not less than two compartments with fittings designed for grease retention and capable of removing excessive amounts of grease, garbage, sand, or other wastes. Applicable structural and materials requirements prescribed in R18-9-A314 apply;
2. Interceptors are located as close to the source as possible and are accessible for servicing. The applicant shall ensure that access openings for servicing are at grade level and gas-tight;
3. The interceptor size for grease and garbage from non-residential kitchens is calculated using by the following equation: Interceptor Size (in gallons) = M × F × T × S.
   a. "M" is the number of meals per peak hour;
   b. "F" is the waste flow rate from Table 1, Unit Design Flows.
   c. "T" is the estimated retention time:
      i. Commercial kitchen waste, dishwasher or disposal: 2.5 hours; or
      ii. Single service kitchen with utensil wash disposal: 1.5 hours;
   d. "S" is the estimated storage factor:
      i. Fully equipped commercial kitchen, 8-hour operation: 1.0;
      ii. Fully equipped commercial kitchen, 16-hour operation: 2.0;
      iii. Fully equipped commercial kitchen, 24-hour operation: 3.0; or
      iv. Single service kitchen, 1.5;
4. The interceptor size for silt and grease from laundries and laundromats is calculated using the following equation: Interceptor Size (in gallons) = M × C × F × T × S.
   a. "M" is the number of machines;
   b. "C" is the machine cycles per hour (assume 2);
   c. "F" is the waste flow rate from Table 1, Unit Design Flows;
   d. "T" is the estimated retention time (assume 2); and
   e. "S" is the estimated storage factor (assume 1.5 that allows for rock filter).

C. The applicant may calculate the size of an interceptor using different factor values than those given in subsections (B)(3) and (4) based on the values justified by the applicant in the Notice of Intent to Discharge submitted to the Department for the on-site wastewater treatment facility.

D. The Department may require installation of a sampling box if the volume or characteristics of the waste will impair the performance of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities

A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304.

B. Within six months before the date of property transfer, the person who is transferring a property served by an on-site wastewater treatment facility shall retain an inspector to perform a transfer of ownership inspection of the on-site wastewater treatment facility who meets the following qualifications:

1. Possesses working knowledge of the type of facility and the inspection process;
2. Holds a certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section by July 1, 2006; and
3. Holds a license in one of the following categories:
   a. An Arizona-registered engineer;
   b. An Arizona-registered sanitarian;
   c. An owner of a vehicle with a human excreta collection and transport license issued under 18 A.A.C. 13, Article 11 or an employee of the owner of the vehicle;
   d. A contractor licensed by the Registrar of Contractors in one of the following categories:
      i. Residential license B-4 or C-41;
      ii. Commercial license A, A-12, or L-41; or
      iii. Dual license KA or K-41;
   e. A wastewater treatment plant operator certified under 18 A.A.C 5, Article 1; or
   f. A person qualifying under another category designated by the Department.

C. The inspector shall complete a Report of Inspection on a form approved by the Department, sign it, and provide it to the person transferring the property. The Report of Inspection shall:

1. Address the physical and operational condition of the on-site wastewater treatment facility and describe observed deficiencies and repairs completed, if any;
2. Indicate that each septic tank or other wastewater treatment container on the property was pumped or otherwise serviced to remove, to the maximum extent possible, solid, floating, and liquid waste accumulations, or that pumping or servicing was not performed for one of the following reasons:

a. A Discharge Authorization for the on-site wastewater treatment facility was issued and the facility was put into service within 12 months before the transfer of ownership inspection,
b. Pumping or servicing was not necessary at the time of the inspection based on the manufacturer's written operation and maintenance instructions, or
c. No accumulation of floating or settled waste was present in the septic tank or wastewater treatment container; and

3. Indicate the date the inspection was performed.

D. Before the property is transferred, the person transferring the property shall provide to the person to whom the property is transferred:
1. The completed Report of Inspection; and
2. Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment facility.

E. The person to whom the property is transferred shall complete a Notice of Transfer on a form approved by the Department and send the form with the applicable fee specified in 18 A.A.C. 14 within 15 calendar days after the property transfer to:
1. The Department for transfer of a property with an on-site wastewater treatment facility for which construction was completed before January 1, 2001; or
2. The health or environmental agency delegated by the Director to administer the on-site wastewater treatment facility program for transfer of a property with an on-site wastewater treatment facility constructed on or after January 1, 2001.

F. If the Department issued a Discharge Authorization for the on-site wastewater treatment facility but the facility was not put into service before the property transfer, an inspection of the facility is not required and the transferee shall complete the Notice of Transfer form as specified in subsection (E).

G. Effective date.
1. The owner of an on-site wastewater treatment facility operating under a Type 4 General Permit shall comply with this Section by November 12, 2005.
2. The owner of any on-site wastewater treatment facility other than a facility identified in subsection (G)(1) shall comply with this Section by July 1, 2006.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2002 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A317. Nitrogen Management Area

A. The Director may designate a new Nitrogen Management Area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes and not covered under an individual permit, modify the boundaries or requirements of a Nitrogen Management Area, or rescind designation of a Nitrogen Management Area.
1. If existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of the Aquifer Water Quality Standard for nitrate at a point or points of current or reasonably foreseeable use of the aquifer, the Director shall use the following criteria to determine whether to designate the area as a Nitrogen Management Area:
a. Population of the area;
b. The degree to which the area is unsewered;
c. Gross areal nitrogen loading, calculated as the amount of nitrogen discharged into the subsurface by use of on-site wastewater treatment facilities, divided by the land area under consideration for designation as a Nitrogen Management Area;
d. Population growth rate of area;
e. Existing contamination of groundwater by nitrogen species;
f. Existing and potential impact to groundwater by sources of nitrogen other than on-site wastewater treatment facilities;
g. Characteristics of the vadose zone and aquifer;
h. Location, number, and areal extent of existing and potential sources of nitrogen;
i. Location and characteristics of existing and potential drinking water supplies; and
j. Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.

2. The Director may modify the boundaries or requirements of a Nitrogen Management Area or rescind designation of a Nitrogen Management Area based on:
a. A material change to one or more criterion specified in subsection (A)(1); or
b. The adoption by a local agency of a master plan to substantially sewer the area as soon as possible, but with a completion deadline within 10 years, unless a completion deadline of more than 10 years is approved by the Director.

B. Preliminary designation, modification, or rescission.
1. The Director shall provide a report to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the Department's proposed action to designate, modify, or rescind a Nitrogen Management Area as follows:
a. If the Department proposes to designate a Nitrogen Management Area, the Department shall provide a report discussing each criterion specified in subsection (A)(1).
b. If the Department proposes to modify the boundaries or requirements of a Nitrogen Management Area or rescind the designation of a Nitrogen Management Area, the Department shall provide a report discussing applicable criteria in subsections (A)(1) and (2).

2. The town, city, county, or sanitary district receiving the Director's report may provide written comments to the Department within 120 days to dispute the factual information presented in the report and supply any information supporting the comments.
3. The Director shall evaluate the comments and supporting information obtained under subsection (B)(2) and either designate, modify, or rescind the Nitrogen Management Area or withdraw the proposal.

C. Final designation.
1. If the Director designates or modifies the Nitrogen Management Area, the Department shall:
a. Issue or modify the Nitrogen Management Area designation and any special provisions established for the area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes but not covered under an individual permit. The Department shall provide notice to the mayors and members of the Board of Supervisors of all towns, cities, and coun-

ties and the directors of all sanitary districts affected by the determination;

b. Maintain the designation and a map showing the boundaries of the Nitrogen Management Area at the Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, Arizona 85007 and on the Department's web site at www.azdeq.gov; and

c. Provide, upon request, a copy of the Nitrogen Management Area designation and a map of the area.

2. If the Director withdraws the preliminary Nitrogen Management Area designation or rescinds the Nitrogen Management Area designation, the Director shall issue a determination stating the decision and post it on the Department's web site at www.azdeq.gov.

D. Nitrogen Management Area requirements. Within a Nitrogen Management Area:

1. The Department shall issue a Construction Authorization, under R18-9-A301(D)(1)(c), for an on-site wastewater treatment facility only if the applicant proposes, in the Notice of Intent to Discharge, to employ one or more of the technologies allowed under R18-9-E302 through R18-9-E322 that achieves a discharge level containing not more than 15 mg/l of total nitrogen.
2. An agricultural operation shall use the best control measure necessary to reduce nitrogen discharge when implementing the best management practices developed under 18 A.A.C. 9, Article 4. The Director may require the owner or operator to reassess the performance of the impoundment liner systems constructed under R18-9-403 before November 12, 2005.
3. A person shall comply with any special provision established for the Nitrogen Management Area, as applicable, for the person's facility.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. TYPE 1 GENERAL PERMITS

R18-9-B301. Type 1 General Permit

A. A 1.01 General Permit allows any discharge of wash water from a sand and gravel operation, placer mining operation, or other similar activity, including construction, foundation, and underground dewatering, if only physical processes are employed and only hazardous substances at naturally occurring concentrations in the sand, gravel, or other rock material are present in the discharge.

B. A 1.02 General Permit allows any discharge from hydrostatic tests of a drinking water distribution system and pipelines not previously used, if all the following conditions are met:

1. The quality of the water used for the test does not exceed an Aquifer Water Quality Standard or for non-drinking water pipelines, if reclaimed water is used, the reclaimed water meets Class A+ Reclaimed Water Quality Standards under A.A.C. R18-11-303 or Class B+ Reclaimed Water Quality Standards under A.A.C. R18-11-305;
2. The discharge is not to a water of the United States, unless the discharge is under an AZPDES permit; and
3. The test site is restored to its natural grade.

C. A 1.03 General Permit allows any discharge from hydrostatic tests of a pipeline, tank, or appurtenance previously used for transmission of fluid, other than those previously used for drinking water distribution systems, if all the following conditions are met:

1. All liquid discharge is contained in an impoundment lined with flexible geomembrane. The liquid is evaporated or removed from the impoundment and taken to a treatment works or landfill authorized to accept the material within:
   a. 60 days of the hydrostatic test if the liner is 10 mils, or
   b. 180 days of the hydrostatic test if the liner is 30 mils or greater;
2. The liner is placed over a layer, at least 3 inches thick, of well-sorted sand or finer grained material, or over an underliner that provides protection equal to or better than sand or finer grained material and the calculated seepage is less than 550 gallons per acre per day;
3. The liner is removed and disposed of at an approved landfill unless the liner can be reused at another test location without a reduction in integrity;
4. The test site is restored to its natural grade; and
5. If the test waters are removed using a method not specified in subsection (C)(1), including a discharge under an AZPDES permit, the test waters meet Aquifer Water Quality Standards and the specific method is approved by the Department before the discharge.

D. A 1.04 General Permit allows any discharge from a facility that, for water quality sampling, hydrologic parameter testing, well development, redevelopment, or potable water system maintenance and repair purposes, receives water, drilling fluids, or drill cuttings from a well if the discharge is to the same aquifer in approximately the same location from which the water supply was originally withdrawn, or the discharge is under an AZPDES permit.

E. A 1.05 General Permit allows a discharge to an injection well, surface impoundment, and leach line only if the discharge is filter backwash from a potable water treatment system, condensate from a refrigeration unit, overflows from an evaporative cooler, heat exchange system return water, or swimming pool filter backwash and the discharge is less than 1000 gallons per day. The 1.05 General Permit allows a discharge of those sources to a navigable water if the discharge is authorized by an AZPDES permit.

F. A 1.06 General Permit allows the burial of mining industry off-road motor vehicle waste tires at the mine site in a manner consistent with the cover requirements in R18-13-1203.

G. A 1.07 General Permit allows the operation of dockside facilities and watercraft if the following conditions are met:

1. Docks that service watercraft equipped with toilets provide sanitary facilities at dockside for the disposal of sewage from watercraft toilets. No wastewater from sinks, showers, laundries, baths, or other plumbing fixtures at a dockside facility is discharged into waters of the state;
2. Docks that service watercraft have conveniently located toilet facilities for men and women;
3. No boat, houseboat, or other type of watercraft is equipped with a marine toilet constructed and operated to discharge sewage directly or indirectly into a water of the state, nor is any container of sewage placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of the state by a person;
4. Watercraft with marine toilets constructed to allow sewage to be discharged directly into waters of the state are locked and sealed to prevent usage. Chemical or other type marine toilets with approved storage containers are permitted if dockside disposal facilities are provided; and
5. No bilge water or wastewater from sinks, showers, laundries, baths, or other plumbing fixtures on houseboats or other watercraft is discharged into waters of the state.

H. A 1.08 General Permit allows for any earth pit privy, fixed or transportable chemical toilet, incinerator toilet or privy, or pail

or can-type privy if allowed by a county health or environmental department under A.R.S. Title 36 or a delegation agreement under A.R.S. § 49-107.

I. A 1.09 General Permit allows:
1. The operation of:
   a. A sewage treatment facility with flows less than 20,000 gallons per day and approved by the Department before January 1, 2001, and
   b. An on-site wastewater treatment facility with flows less than 20,000 gallons per day operating before January 1, 2001;
2. The person who owns or operates a facility under subsections (I)(1)(a) or (b) to operate the facility if the following conditions are met:
   a. The discharge from the facility does not cause or contribute to a violation of a water quality standard;
   b. The owner or operator does not expand the facility to accommodate flows above the design flow or 20,000 gallons per day, whichever is less;
   c. The facility only treats typical sewage;
   d. The facility does not treat flows from commercial operations using hazardous substances or creating hazardous wastes, as defined in A.R.S. § 49-921(5);
   e. The discharge from the facility does not create any environmental nuisance condition listed in A.R.S. § 49-141; or
   f. The owner or operator does not alter the treatment or disposal characteristics of the original facility, except as allowed under R18-9-A309(A)(9)(a).

J. A 1.10 General Permit allows the operation of a sewage collection system installed before January 1, 2001 that serves downstream from the point where the daily design flow is 3000 gallons per day or that includes a manhole, force main, or lift station serving more than one dwelling regardless of flow, if:
1. The system complies with the performance standards in R18-9-E301(B),
2. No sewage is released from the sewage collection system to the land surface, and
3. The system is not operating under the 2.05 General Permit.

K. A 1.11 General Permit allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3000 gallons per day to the building drains, or a single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral, or manhole, regardless of daily design flow, if all of the following are met:
1. The system does not cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4;
2. No sewage is released from the sewage collection system to the land surface;
3. No environmental nuisance condition listed in A.R.S. § 49-141 is created;
4. The system does not include a manhole, force main, or lift station serving more than one dwelling;
5. Applicable local administrative requirements for review and approval of design and construction are followed;
6. The performance standards specified in R18-9-E301(B) are met using:
   a. Local building and construction codes,
   b. Relevant design and construction standards specified in R18-9-E301, and
   c. Appropriate operation and maintenance;
7. The system flows directly into one of the following downstream facilities:
   a. An on-site wastewater treatment facility;
   b. A sewage treatment facility operating under an individual permit; or
   c. A sewage collection system operating under a 1.10, 2.05, or 4.01 General Permit; and
8. The system is not operating under a 2.05 General Permit.

L. A 1.12 General Permit allows the discharge of wastewater resulting from washing concrete from trucks, pumps, and ancillary equipment to an impoundment if the following conditions are met:
1. The person holds an AZPDES Construction General Permit authorizing the concrete washout activities;
2. The Stormwater Pollution Prevention Plan required by the Construction General Permit issued according to 18 A.A.C. 9, Article 9, Part C, for the construction activity addresses the concrete washout activities;
3. The vegetation at the soil base of the impoundment is cleared, grubbed, and compacted to uniform density not less than 95 percent. If the impoundment is located above grade, the berms or dikes are compacted to a uniform density not less than 95 percent;
4. If groundwater is less than 20 feet below land surface, the impoundment is lined with a synthetic liner at least 30 mils thick;
5. The impoundment is located at least 50 feet from any storm drain inlet, open drainage facility, or watercourse and 100 feet from any water supply well;
6. The impoundment is designed and operated to maintain adequate freeboard to prevent overflow or discharge of wastewater;
7. The concrete washout wastewater from any wash pad is routed to the impoundment;
8. The impoundment receives only concrete washout wastewater;
9. The annual average daily flow of wastewater to the impoundment is less than 3000 gallons per day; and
10. The following closure requirements are met.
    a. The facility is closed by removing and appropriately disposing of any liquids remaining in the impoundment,
    b. The area is graded to prevent ponding of water, and
    c. Closure activities are completed before filing of the Notice of Termination under the AZPDES Construction General Permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

A. A 2.01 General Permit allows for a drywell that drains an area where hazardous substances are used, stored, loaded, or treated.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an

Arizona-registered professional engineer or geologist that a site investigation has concluded that:

a. Analytical results from sampling the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
b. The settling chamber does not contain sediments that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5-foot increments starting from 5 feet below ground surface and extending to 10 feet below the base of the drywell injection pipe; or
d. If coarse grained lithology prevents the collection of representative soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance;

3. Design information to demonstrate that the requirements in subsection (C) are satisfied; and
4. A copy of the Best Management Practices Plan described in subsection (D)(5).

C. Design requirements. An applicant shall:

1. Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;
2. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
3. Locate the bottom of the drywell hole at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to at least 10 feet above the elevation of saturated conditions before constructing the drywell in the borehole;
4. Ensure that the drywell design or drainage area design includes a method to remove, intercept, or collect pollutants that may be present at the operation with the potential to reach the drywell. The applicant may include a flow control or pretreatment device, such as an interceptor, sump, or another device or structure designed to remove, intercept, or collect pollutants. The applicant may use flow control or pretreatment devices listed under R18-9-C304(D)(1) or (2) to satisfy the design requirements of this subsection;
5. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey; and
6. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns, the location of floor drains and French drains plumbed to the drywell, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas.

D. Operational and maintenance requirements.

1. A permittee shall operate the drywell only for the disposal of stormwater. The permittee shall not release industrial process waters or wastes in the drywell or drywell retention basin drainage area.
2. The permittee shall implement a Best Management Practices Plan for operation of the drywell and control of pollutants in the drywell drainage area.
3. The permittee shall keep the Best Management Practices Plan on-site or at the closest practical place of work and provide the plan to the Department upon request.
4. The permittee may substitute any Spill Prevention Containment and Control Plan, facility response plan, or an AZPDES Stormwater Pollution Prevention Plan that meets the requirements of this subsection for a Best Management Practices Plan. If the permittee submits a substitute for the Best Management Practices Plan, the permittee shall identify the conditions within the substitute plan that satisfy the requirements of subsection (D).
5. The Best Management Practices Plan shall include:
   a. A site plan showing surface drainage patterns and the location of floor drains, water supply, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas. The site plan shall show surface grading details designed to prevent drainage and spills of hazardous substances from leaving the drainage area and entering the drywell;
   b. A design plan showing details of drywell design and drainage design, including flow control or pretreatment devices, such as interceptors, sumps, and other devices and structures designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell;
   c. Procedures to prevent and contain spills and minimize discharges to the drywell;
   d. Operational practices that include routine inspection and maintenance of the drywell and associated pretreatment and flow-control devices, periodic inspection of waste storage facilities, and proper handling of hazardous substances to prevent discharges to the drywell. Routine inspection and maintenance shall include:
      i. Replacing the adsorbent material in the skimmers, if installed, when the adsorbent capacity is reached;
      ii. Maintaining valves and associated piping for a drywell injection and treatment system;
      iii. Maintaining magnetic caps and mats, if installed;
      iv. Removing sludge from the oil/water separator, if installed, and replacing the filtration or adsorption material to maintain treatment capacity;
      v. Removing sediment from the catch basin inlet filters and retention basin to maintain required storage capacity; and
   e. Procedures for periodic employee training on practices required by the Best Management Practices Plan specific to the drywell and prevention of unauthorized discharges.
6. The permittee shall implement waste management practices to prohibit and prevent discharges, other than those exempted in A.R.S. § 49-250(B)(23), in the drywell drainage area, including:
   a. Maintaining an up-to-date inventory of generated wastes and waste products;
   b. Disposing or recycling all wastes or solvents through a company licensed to handle the material;
   c. Where possible, collecting and storing waste in waste receptacles located outside the drywell drain-

age area. If the permittee collects and stores the waste within the drywell drainage area, the permittee shall collect and store the waste in properly designed receptacles; and

d. Using a licensed waste hauler to transport waste off-site to a permitted waste disposal facility.

E. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and the flow-control and treatment systems, and remove sediment annually or when 25 percent of the effective capacity is filled, whichever comes first, to restore capacity and ensure that the drywell functions properly. The permittee shall characterize the sediments that are removed from the drywell after inspection and dispose of the sediments according to local, state, and federal requirements; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that the treatment system is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

F. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, the location of water supply wells, monitor wells, underground storage tanks, and places where hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including any flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and methods proposed to prevent and contain hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, maintenance, and waste management practices;
5. Drywell sediment waste characteristics and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

G. Spills.

1. In the event of a spill, the permittee shall:
   a. Notify the Department within 24 hours of any spill of hazardous or toxic substance that enters the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of a hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the drywell injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample the soil in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. Based on the results of subsection (G)(1)(d), the Director may require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

H. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under A.R.S. § 49-201(19) at a mining site.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge under R18-9-A301(B), an applicant shall

submit the construction and operation specifications used to satisfy the requirements in subsection (C)(1).

C. Design and operational requirements.
1. An applicant shall design, construct, and operate the stockpile so that it does not impound water. An applicant may rely on stormwater run-on controls or facility design features, such as drains, or both.
2. An applicant shall direct storm runoff contacting the stockpile to a mine pit or a facility covered by an individual or general permit.
3. A permittee shall maintain any engineered feature of the facility in good working condition.
4. A permittee shall visually inspect the facility at least quarterly and repair any defect as soon as practical.
5. A permittee shall not add hazardous substances to the stockpiled material.

D. Closure requirements. In addition to the closure requirements in R18-9-A306, the following apply:
1. If an intermediate stockpile covered under a 2.02 General Permit is permanently closed, a permittee shall remove any remaining material, to the greatest extent practical, and regrade the area to prevent impoundment of water.
2. The permittee shall submit a narrative description of closure measures to the Department within 30 days after closure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C303. 2.03 General Permit: Hydrologic Tracer Studies

A. A 2.03 General Permit allows for a discharge caused by the performance of tracer studies.
1. The 2.03 General Permit does not authorize the use of any hazardous substance, radioactive material, or any substance identified in A.R.S. § 49-243(I) in a tracer study.
2. A permittee shall complete a single tracer test within two years of the Notice of Intent to Discharge.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A narrative description of the tracer test including the type and amount of tracer used;
2. A Material Safety Data Sheet for the tracer; and
3. Unless the injection or distribution is within the capture zone of an established passive containment system meeting the requirements of A.R.S. § 49-243(G), the following information:
   a. A narrative description of the impacts that may occur if a solution migrates outside the test area, including a list of downgradient users, if any;
   b. The anticipated effects and expected concentrations, if possible to calculate; and
   c. A description of the monitoring, including types of tests and frequency.

C. Design and operational requirements. A permittee shall:
1. Ensure that injection into a well inside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed the total depth of the influence of the hydrologic sink;
2. Ensure that injection into a well outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed rock fracture pressures during injection of the tracer;
3. Not add a substance to a well that is not compatible with the well's construction;
4. Ensure that a tracer is compatible with the construction materials at the impoundment if a tracer is placed or collected in an existing impoundment;
5. For at least two years, monitor quarterly a well that is hydraulically downgradient of the test site for the tracer if a tracer is used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) and less than 85 percent of the tracer is recovered. The permittee may adjust this period with the consent of the Department if the permittee shows that the hydraulic gradient causes the tracer to reach the monitoring point in a shorter or longer period of time;
6. Ensure that a tracer does not leave the site in concentrations distinguishable from background water quality; and
7. Monitor the amount of tracer used and recovered and submit a report summarizing the test and results to the Department within 30 calendar days of test completion.

D. Recordkeeping. A permittee shall retain the following information at the site where the facility is located for at least three years after test completion and make it available to the Department upon request.
1. Test protocols,
2. Material Safety Data Sheet information,
3. Recovery records, and
4. A copy of the report submitted to the Department under subsection (C)(7).

E. Closure requirements.
1. If a tracer was used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G), a permittee shall account for any tracer not recovered through attenuation, modeling, or monitoring.
2. The permittee shall achieve closure immediately following the test, or if the test area is within a pollutant management area defined in an individual permit, at the conclusion of operations.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

A. A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.
1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under the 2.04 General Permit.
2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only motor fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, including service bays, are not covered under the 2.04 General Permit.
3. Definition. For purposes of this Section, "hazardous substances" means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies such as those

used for cleaning windshields, but not degreasers, engine cleaners, or similar products.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:

1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
   a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
   d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. Design requirements.

1. An applicant shall:
   a. Include a flow control or pretreatment device identified in subsections (D)(1) or (2), or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
   b. Calculate the volume of runoff generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell;
   c. Follow local codes and regulations to meet retention periods for removing standing water;
   d. Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank;
   e. Locate the bottom of the drywell injection pipe at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to a level at least 10 feet above the elevation at which saturated conditions were encountered in the borehole before constructing the drywell in the borehole;
   f. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey and record the location on the site plans;
   g. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
   h. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains and French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas; and
   i. Prepare design plans showing details of drywell design and drainage design, including one or a combination of pre-approved technologies described in subsections (D)(1) and (2) designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell.
2. For an existing drywell, an applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the depth of the drywell borehole and injection pipe, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.

D. Flow control and pretreatment. A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:

1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.
   a. Normally closed manual or automatic valve. The permittee shall leave a normally closed valve in a closed position except when stormwater is allowed to enter the drywell;
   b. Raised drywell inlet. The permittee shall:
      i. Raise the drywell inlet at least six inches above the bottom of the retention basin or other storage structure, or install a six-inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and
      ii. Ensure that the storage capacity is at least 110 percent of the volume of the design storm event required by the local jurisdiction and the estimated volume of a potential motor fuel spill based on the facility's past incident reports or incident reports for other facilities that are similar in design;
   c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or a storm event when the mat or cap is temporarily removed to allow stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;
   d. Primary sump, interceptor, or settling chamber. The permittee may use a primary sump, interceptor, or settling chamber only in combination with another flow control or pre-treatment technology.
      i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor, or chamber before allowing stormwater to enter the drywell.
      ii. The permittee shall install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell; install

the drywell injection pipe in a separate chamber and connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.

iii. The permittee may install fuel hydrocarbon detection sensors in the sump, interceptor, or settling chamber that use flow control to prevent fuel from discharging into the drywell;

2. Pretreatment. The permittee shall prevent the bypass of motor fuels and hazardous substances from the pretreatment system to the drywell during periods of high flow.
   a. Catch basin inlet filter. The permittee shall:
      i. Install a catch basin inlet filter to fit inside a catchment drain to prevent motor fuels and hazardous substances from entering the drywell,
      ii. Ensure that a motor fuel spill or a spill during a high rainfall does not bypass the system and directly release to the drywell injection pipe, and
      iii. Combine the catch basin inlet filter with a flow control technology to prevent contaminated stormwater from entering the drywell injection pipe;
   b. Combined settling chamber and an oil/water separator.
      i. The permittee shall install a system that incorporates a catch basin inlet, a settling chamber, and an oil/water separator.
      ii. The permittee may incorporate a self-sealing mechanism, such as fuel hydrocarbon detection sensors that activate a valve to cut off flow to the drywell inlet.
   c. Combined settling chamber and oil/water separator, and filter/adsorption. The permittee shall:
      i. Allow for adequate collection and treatment capacity for solid and liquid separation; and
      ii. Allow a minimum treated outflow from the system to the drywell inlet of 20 gallons per minute. If a higher outflow rate is anticipated, the applicant shall design a larger collection system with storage capacity.
   d. Passive skimmer.
      i. If a passive skimmer is used, the permittee shall install sufficient hydrocarbon adsorbent materials, such as pads and socks, or suspend the materials on top of the static water level in a sump or other catchment to absorb the entire volume of expected or potential spill.
      ii. The permittee may use a passive skimmer only in combination with another flow control or pre-treatment technology.

E. Operation and maintenance. A permittee shall:
1. Operate the drywell only for the subsurface disposal of stormwater;
2. Remove or treat any motor fuel or hazardous substance spills;
3. Replace the adsorbent material in skimmers, if installed; when the adsorbent capacity is reached;
4. Maintain valves and associated piping;
5. Maintain magnetic caps and mats, if installed;
6. Remove sludge from the oil/water separator and replace the filtration or adsorption materials to maintain treatment capacity;
7. Remove sediment from the catch basin inlet filters and retention basins to maintain required storage capacity;
8. Remove accumulated sediment from the settling chamber annually or when 25 percent of the effective settling capacity is filled, whichever occurs first; and
9. Provide new employee training within one month of hire and annual employee training on how to maintain and operate flow control and pretreatment technology used in the drywell.

F. Inspection. A permittee shall:
1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and in the flow control and treatment systems to ensure that the drywell is functioning properly; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that it is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

G. Recordkeeping. A permittee shall maintain, for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:
1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and specific methods proposed for motor fuel and hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, and maintenance;
5. Drywell sediment waste characterization and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

H. Spills.
1. In the event of a spill, a permittee shall:
   a. Notify the Department within 24 hours of any spill of motor fuel or hazardous or toxic substances that enters into the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of motor fuel or hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine

whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
i. Submit the results to the Department within 60 days of the date of the spill; and
ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.

2. The Director may, based on the results of subsection (H)(1)(d), require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

I. Closure and decommissioning requirements.
1. A permittee shall:
a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
c. Remove the settling chamber;
d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
a. The reason for the closure;
b. The drywell registration number;
c. The general permit reference number;
d. The materials and methods used to close the drywell;
e. The name of the contractor who performed the closure;
f. The completion date;
g. Any sampling data;
h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4096, effective September 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C305. 2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System

A. Definition. For purposes of this Section, "imminent and substantial threat to public health or the environment" means when:
1. The volume of a release is more than 2000 gallons; or
2. The volume of a release is more than 50 gallons but less than 2000 gallons and any one of the following apply:
a. The release entered onto a recognized public area and members of the public were present during the release or before the release was mitigated;
b. The release occurred on a public or private street and pedestrians were at risk of being splashed by vehicles during the release or before the release was mitigated;
c. The release entered a perennial stream, an intermittent stream during a time of flow, a waterbody other than an ephemeral stream, a normally dry detention or sedimentation basin, or a drywell;
d. The release occurred within an occupied building due to a condition in the permitted sewage collection system; or
e. The release occurred within 100 feet of a school or a public or private drinking water supply well.

B. A 2.05 General Permit allows a permittee to manage, operate, and maintain a sewage collection system under the terms of a CMOM Plan that complies with subsection (D). The Department considers a sewage collection system operating in compliance with an AZPDES permit that incorporates provisions for capacity, management, operation, and maintenance of the system to comply with the provisions of the 2.05 General Permit regardless of whether a Notice of Intent to Discharge for the system was submitted to the Department.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and ownership of any downstream sewage collection system and sewage treatment facility that receives sewage from the applicant's sewage collection system;
2. A map of the service area for which general permit coverage is sought, showing streets and sewage service boundaries for the sewage collection system;
3. A statement indicating that the CMOM Plan is in effect and the principal officer or ranking elected official of the sewage collection system has approved the plan; and
4. A statement indicating whether a local ordinance requires an on-site wastewater treatment facility to hookup to the sewage collection system.

D. CMOM Plan.
1. A permittee shall continuously implement a CMOM Plan for the sewage collection system under the permittee's ownership, management, or operational control. The CMOM Plan shall include information to comply with subsection (E)(1) and instructions on:
a. How to properly manage, operate, and maintain all parts of the sewage collection system that are owned or managed by the permittee or under the permittee's operational control, to meet the performance requirements in R18-9-E301(B);
b. How to maintain sufficient capacity to convey the base flows and peak wet weather flow of a 10-year, 24-hour storm event for all parts of the collection system owned or managed by the permittee or under the permittee's operational control;
c. All reasonable and prudent steps to minimize infiltration to the sewage collection system;
d. All reasonable and prudent steps to stop all releases from the collection system owned or managed by the permittee or under the permittee's operational control; and
e. The procedure for reporting releases described in subsection (F).
2. The permittee shall maintain and update the CMOM Plan for the duration of this general permit and make it available for Department and public review.

3. If the Department requests the CMOM Plan and upon review finds that the CMOM Plan is deficient, the Department shall:
   a. Notify the permittee in writing of the specific deficiency and the reason for the deficiency, and
   b. Establish a deadline of at least 60 days to allow the permittee to correct the deficiency and submit the amended provision to the Department for approval.

E. Sewage release response determination. If the sewage collection system releases sewage, the Director shall consider any of the following factors in determining compliance:
1. Sufficiency of the CMOM Plan.
   a. The level of detail provided by the CMOM Plan is appropriate for the size, complexity, and age of the system;
   b. The level of detail provided by the CMOM Plan is appropriate considering geographic, climatic, and hydrological factors that may influence the sewage collection system;
   c. The CMOM Plan provides schedules for the periodic preventative maintenance of the sewage collection system, including cleaning of all reaches of the sewage collection system below a specified pipe diameter.
      i. The CMOM Plan may allow inspection of sewer lines by Closed Circuit Television (CCTV) and postponement of cleaning to the next scheduled cleaning cycle if the CCTV inspection indicated that cleaning of a reach of the sewer is not needed.
      ii. The CMOM Plan may specify inspection and cleaning schedules that differ according to pipe diameter or other characteristics of the sewer;
   d. The CMOM Plan identifies components of the sewage collection system that have insufficient capacity to convey, when properly maintained, the peak wet weather flow of a 10-year, 24-hour storm event. For those identified components, a capital improvement plan exists for achieving sufficient wet weather flow capacity within ten years of the effective date of permit coverage;
   e. The CMOM Plan includes an overflow emergency response plan appropriate to the size, complexity, and age of the sewage collection system considering geographic, climatic, and hydrological factors that may influence the system;
   f. The CMOM Plan establishes a procedure to investigate and enforce against any commercial or industrial entity whose flows to the sewage collection system have caused or contributed to a release;
   g. The CMOM Plan adequately addresses management of flows from upstream sewage collection systems not under the ownership, management, or operational control of the permittee; or
   h. Any other factor necessary to determine if the CMOM Plan is sufficient;
2. Compliance with the CMOM Plan.
   a. The permittee's response to releases as established in the overflow emergency response plan, including whether:
      i. Maintenance staff responds to and arrive at the release within the time period specified in the plan;
      ii. Maintenance staff follow all written procedures to remove the cause of the release;
      iii. Maintenance staff contain, recover, clean up, disinfect, and otherwise mitigate the release of sewage; and
      iv. Required notifications to the Department, public health agencies, drinking water suppliers, and the public are provided;
   b. The permittee's activities and timeliness in:
      i. Implementing specified periodic preventative maintenance measures;
      ii. Implementing the capital improvement plan; and
      iii. Investigating and enforcing against an upstream sewage collection system, not under the ownership and operational control of the permittee, if those systems are impediments to the proper management of flows in the permittee's sewage collection system; or
   c. Any other factor necessary to determine CMOM Plan compliance;
3. Compliance with the reporting requirements in subsection (F) and the public notice requirements in subsection (G); or
4. The release substantially endangers public health or the environment.

F. Reporting requirements.
1. Sewage releases.
   a. A permittee shall report to the Department, by telephone, facsimile, or on the applicable notification form on the Department's Internet web site, any release that is an imminent and substantial threat to public health or the environment as soon as practical, but no later than 24 hours of becoming aware of the release.
   b. A permittee shall submit a report to the Department within five business days after becoming aware of a release that is an imminent and substantial threat to public health or the environment. The report shall include:
      i. The location of the release;
      ii. The sewage collection system component from which the release occurred;
      iii. The date and time the release began, was stopped, and when mitigation efforts were completed;
      iv. The estimated number of persons exposed to the release, the estimated volume of sewage released, the reason the release is considered an imminent and substantial threat to public health or the environment if the volume is 2000 gallons or less, and where the release flowed;
      v. The efforts made by the permittee to stop, contain, and clean up the released material;
      vi. The amount and type of disinfectant applied to mitigate any associated public health or environmental risk; and
      vii. The cause of the release or effort made to determine the cause and any effort made to help prevent a future reoccurrence.
2. Annual report. The permittee shall:
   a. Submit an annual report to the Department postmarked no later than March 1. The report shall:
      i. Tabulate all releases of more than 50 gallons from the permitted sewage collection system;
      ii. Provide the date of any release that is an imminent and substantial threat to public health or the environment; and
      iii. For other reportable releases under subsection

(F)(2)(a)(i), provide the information in subsection (F)(1)(b);

b. Provide an amended map of the service area boundaries if, during the calendar year, any area was removed from the service area or if any area was added to the service area that the permittee wishes to include under the 2.05 General Permit and associated CMOM Plan.

G. Public notice. The permittee shall:

1. Post a notice, in a format approved by the Department, at any location where there were more than three reportable releases under subsection (F)(2)(a) from the sewage collection system during any 12-month period,
2. Include within the notice a warning that identified the releases or potential releases at the location and potential health hazards from any release,
3. Post the notice at a place where the public is likely to come in contact with the release, and
4. Maintain the postings until no releases from the location are reported for at least 12 months from the last release and the permittee followed all actions specified in the CMOM Plan to prevent releases at that location during the period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C306. 2.06 General Permit: Fish Hatchery Discharge to a Perennial Surface Water

A. A 2.06 General Permit allows a fish hatchery to discharge to a perennial surface water if Aquifer Water Quality Standards are met at the point of discharge and the fish hatchery is operating under a valid AZPDES permit.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall provide:

1. The applicable AZPDES permit number;
2. A description of the facility; and
3. A laboratory report characterizing the wastewater discharge, including the analytical results for all numeric Aquifer Water Quality Standards under R18-11-406.

C. Design and operational requirements. An applicant shall:

1. Collect a representative sample of the discharge to demonstrate compliance with all numeric Aquifer Water Quality Standards and make the results available to the Department upon request, and
2. Maintain a record of the average and daily flow rates and make it available to the Department upon request.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART D. TYPE 3 GENERAL PERMITS

R18-9-D301. 3.01 General Permit: Lined Impoundments

A. A 3.01 General Permit allows a lined surface impoundment and a lined secondary containment structure. A permittee shall:

1. Ensure that inflow to the lined surface impoundment or lined secondary containment structure does not contain organic pollutants identified in A.R.S. § 49-243(I);
2. Ensure that inflow to the lined surface impoundment or lined secondary containment structure is from one or more of the following sources:
   a. Evaporative cooler overflow, condensate from a refrigeration unit, or swimming pool filter backwash;
   b. Wastewater that does not contain sewage, temporarily stored for short periods of time due to process upsets or rainfall events, provided the wastewater is promptly removed from the facility as required under subsection (D)(5). Facilities that continually contain wastewater as a normal function of facility operations are not covered under this general permit;
   c. Stormwater runoff that is not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act;
   d. Emergency fire event water;
   e. Wastewater from air pollution control devices at asphalt plants if the wastewater is routed through a sedimentation trap or sump and an oil/water separator before discharge;
   f. Non-contact cooling tower blowdown and non-contact cooling water, except discharges from electric generating stations with more than 100 megawatts generating capacity;
   g. Boiler blowdown;
   h. Wastewater derived from a potable water treatment system, including clarification sludge, filtration backwash, lime and lime-softening sludge, ion exchange backwash, and reverse osmosis spent waste;
   i. Wastewater from food washing;
   j. Heat exchanger return water;
   k. Wastewater from industrial laundries;
   l. Hydrostatic test water from a pipeline, tank, or appurtenance previously used for transmission of fluid;
   m. Wastewater treated through an oil/water separator before discharge; and
   n. Cooling water or wastewater from food processing.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. A listing and description of all sources of inflow;
2. A representative chemical analysis of each expected source of inflow. If a sample is not available before facility construction, a permittee shall provide the chemical analysis of each inflow to the Department within 60 days of each inflow to the facility;
3. A narrative description of how the conditions of this general permit are satisfied. The narrative shall include a Quality Assurance/Quality Control program for liner installation, impoundment maintenance and repair, and impoundment operational procedures; and
4. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design and installation requirements. An applicant shall:

1. Design and construct surface water controls to:
   a. Ensure that the impoundment or secondary containment structure maintains, using design volume or mechanical systems, normal operating volumes, if any, and any inflow from the 100-year, 24-hour storm event. The facility shall maintain at least 2 feet of freeboard or an alternative level of freeboard

that the applicant demonstrates is reasonable, considering the size of the impoundment and meteorologic and other site-specific factors; and

b. Direct any surface water run-on from the 100-year 24-hour storm event around the facility if not intended for capture by facility;

2. Ensure that the facility design accommodates any significant geologic hazard, addressing static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
3. Ensure that site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound; and
4. Comply with the following impoundment lining requirements:
   a. If a synthetic liner is used, ensure that the liner is at least a 30-mil geomembrane liner or a 60-mil liner if High Density Polyethylene, or an alternative, that the liner's calculated seepage rate is less than 550 gallons per acre per day, and:
      i. Anchor the liner by securing it in an engineered anchor trench;
      ii. Ensure that the liner is ultraviolet resistant if it is regularly exposed to sunlight; and
      iii. Ensure that the liner is constructed of a material that is chemically compatible with the wastewater or impounded solution and is not affected by corrosion or degradation;
   b. If a soil liner is used:
      i. Ensure that it resists swelling, shrinkage, and cracking and that the liner's calculated seepage rate is less than 550 gallons per acre per day;
      ii. Ensure that the soil is at least 1-foot thick and compacted to a uniform density of 95 percent to meet the "Standard Test Method for Laboratory Compaction Characteristics of Soil Using Standard Effect (12,400 ft-lbf/ft^3), D698-00ae1," (2000) published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
      iii. Upon installation, protect the soil liner to prevent desiccation; and
   c. For new facilities, develop and implement a construction Quality Assurance/Quality Control program that addresses site and subgrade preparation, inspection procedures, field testing, laboratory testing, and final inspection after construction of the liner to ensure functional integrity.

D. Operational requirements. A permittee shall:
1. Maintain sufficient freeboard to manage the 100-year, 24-hour storm event including at least 2 feet of freeboard under normal operating conditions. Management of the 100-year, 24-hour storm event may be through design, pumping, or a combination of both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for damage to the liner and for accumulation of residual material at least monthly. The operator shall conduct an inspection within 72 hours after the facility receives a significant volume of stormwater inflow;
4. Repair damage to the liner by following the Quality Assurance/Quality Control Plan required under subsection (B)(3); and
5. Remove all inflow from the impoundment as soon as practical, but no later than 60 days after a temporary event, for facilities designed to contain inflow only for temporary events, such as process upsets.

E. Recordkeeping. A permittee shall maintain at the site, the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The construction Quality Assurance/Quality Control program documentation; and
6. Records of any inflow into the impoundment other than those permitted by this Section.

F. Reporting requirements.
1. If the liner leaks, as evidenced by a drop in water level not attributable to evaporation, or if the berm breaches or an impoundment is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4).

G. Closure requirements. The permittee shall notify the Department of the intent to close the facility permanently. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
1. Remove liquids and any solid residue on the liner and dispose appropriately;
2. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
3. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall define the lateral and vertical extent of contamination and, within 60 days of the exceedance, notify the Department and submit an action plan for achieving clean closure for the Department's approval before implementing the plan;
4. If there is no evidence of holes, tears, or defective seams that could have leaked:
   a. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   b. Remove and dispose of the liner elsewhere if the impoundment is bermed, and

c. Grade the facility to prevent the impoundment of water; and

5. Notify the Department within 60 days following closure that the action plan was implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:

1. Liquid fraction. The discharge meets:
   a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
   b. The discharge meets one of the following criteria for microbiological contaminants:
      i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of *E. coli* bacteria is not more than 1/100 ml, or
      ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of *E. coli* bacteria is less than 126/100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and
2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in A.R.S. § 49-201(19).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. A characterization of the discharge, including a representative chemical and biological analysis of expected discharges and all source waters; and
2. The design capacity of any impoundment covered by this general permit.

C. Impoundment design and siting requirements. An applicant shall:

1. Ensure that the depth to the static groundwater table is greater than 20 feet;
2. Not locate the area of discharge immediately above karstic or fractured bedrock, unless the discharge meets the microbial limits specified in subsection (A)(1)(b)(i);
3. Maintain a minimum horizontal setback of 100 feet between the facility and any water supply well;
4. Design and construct an impoundment to maintain, using design volume or mechanical systems, normal operating volumes and any inflow from the 100-year, 24-hour storm event. The applicant shall:
   a. Divert any surface water run-on from the 100-year, 24-hour storm event around the facility if not intended for capture by facility design; and
   b. Design the facility to maintain 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering meteorological factors, the size of the impoundment, and other site-specific factors; or
   c. Discharge to surface water under the conditions of an AZPDES permit; and
5. Manage off-site disposal of sludge according to A.R.S. Title 49, Chapter 4.

D. Operational requirements.

1. Inorganic chemical, organic chemical, and pesticide monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A).
   b. If the concentration of any pollutant exceeds the numeric Aquifer Water Quality Standard, the permittee shall submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency for that pollutant to quarterly.
   c. If, in the quarterly sampling, the condition in subsection (D)(1)(b) continues for two consecutive quarters, the permittee shall submit an application for an individual permit.
2. Microbiological contaminant monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A)(1)(b).
   b. If the concentration of any pollutant exceeds the limits established in subsection (A)(1)(b), the permittee shall submit a report to the Department with a proposal for mitigation and increase monitoring frequency for that pollutant to monthly.
   c. If, in the monthly sampling, the condition in subsection (D)(2)(b) continues for three consecutive months, the permittee shall submit an application for an individual permit.

E. Recordkeeping. A permittee shall maintain at the site, the following information, if applicable for the disposal method, for at least 10 years, and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Water quality data collected under subsection (D);
4. Standard operating procedures; and
5. Records of any discharge other than those identified under subsection (B).

F. Reporting requirements. The permittee shall:

1. Report unauthorized flows into the impoundment to the Department within five days of discovery, and
2. Submit the report required in subsections (D)(1)(b) or (2)(b) within 30 days of receiving the analytical results.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes

A. A 3.03 General Permit allows a facility to discharge water from washing vehicle exteriors and vehicle equipment. The 3.03 General Permit does not authorize:

1. Discharge water that typically results from the washing of vehicle engines unless the discharge is to a lined surface impoundment;
2. Direct discharges of sanitary sewage, vehicle lubricating oils, antifreeze, gasoline, paints, varnishes, solvents, pesticides, or fertilizers;

3. Discharges resulting from washing the interior of vessels used to transport fuel products or chemicals, or washing equipment contaminated with fuel products or chemicals; or
4. Discharges resulting from washing the interior of vehicles used to transport mining concentrates that originate from the same mine site, unless the discharge is to a lined surface impoundment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a narrative description of the facility and a design of the disposal system and wash operations.

C. Design, installation, and testing requirements. An applicant shall:
1. Design and construct the wash pad:
   a. To drain and route wash water to a sump or similar sediment-settling structure and an oil/water separator or a comparable pretreatment technology;
   b. Of concrete or material chemically compatible with the wash water and its constituents; and
   c. To support the maximum weight of the vehicle or equipment being washed with an appropriate safety factor;
2. Not use unlined ditches or natural channels to convey wash water;
3. Ensure that a surface impoundment meets the requirements in R18-9-D301(C)(1) through (3). The applicant shall ensure that berms or dikes at the impoundment can withstand wave action erosion and are compacted to a uniform density not less than 95 percent;
4. Ensure that a surface impoundment required for wash water described in subsection (A)(1) meets the design and installation requirements in R18-9-D301(C);
5. If wash water is received by an unlined surface impoundment or engineered subsurface disposal system, the applicant shall:
   a. Ensure that the annual daily average flow is less than 3000 gallons per day;
   b. Maintain a minimum horizontal setback of 100 feet between the impoundment or subsurface disposal system and any water supply well;
   c. Ensure that the bottom of the surface impoundment or subsurface disposal system is at least 50 feet above the static groundwater level and the intervening material does not consist of karstic or fractured bedrock;
   d. Ensure that the wash water receives primary treatment before discharge through, at a minimum, a sump or similar structure for settling sediments or solids and an oil/water separator or a comparable pretreatment technology designed to reduce oil and grease in the wastewater to 15 mg/l or less;
   e. Withdraw the separated oil from the oil/water separator using equipment such as adjustable skimmers, automatic pump-out systems, or level sensing systems to signal manual pump-out; and
   f. If a subsurface disposal system is used, design the system to prevent surfacing of the wash water.

D. Operational requirements. The permittee shall:
1. Inspect the oil/water separator before operation to ensure that there are no leaks and that the oil/water separator is in operable condition;
2. Inspect the entire facility at least quarterly. The inspection shall, at a minimum, consist of a visual examination of the wash pad, the sump or similar structure, the oil/water separator, and all surface impoundments;
3. Visually inspect each surface impoundment at least monthly, to ensure the volume of wash water is maintained within the design capacity and freeboard limitation;
4. Repair damage to the integrity of the wash pad or impoundment liner as soon as practical;
5. Maintain the oil/water separator to achieve the operational performance of the separator;
6. Remove accumulated sediments in all surface impoundments to maintain design capacity; and
7. Use best management practices to minimize the introduction of chemicals not typically associated with the wash operations. Only biodegradable surfactant or soaps are allowed. The permittee shall not use products that contain chemicals in concentrations likely to cause a violation of an Aquifer Water Quality Standard at the applicable point of compliance.

E. Monitoring requirements.
1. If wash water is discharged to an unlined surface impoundment or other area for subsurface disposal, the permittee shall monitor the wash water quarterly at the point of discharge for pH and for the presence of C_{10} through C_{32} hydrocarbons using a Department of Health Services certified method.
2. If pH is not between 6.0 and 9.0 or the concentration of C_{10} through C_{32} hydrocarbons exceeds 50 mg/l, the permittee shall, within 30 days of the monitorings, submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency to monthly.
3. If the condition in subsection (E)(2) persists for three consecutive months, the permittee shall submit, within 90 days, an application for an individual permit.

F. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure; and
3. The Material Safety Data Sheets for the chemicals used in the wash operations and any required monitoring results.

G. Closure requirements. A permittee shall comply with the closure requirements specified in R18-9-D301(G) if a liner has been used. If no liner is used the permittee shall remove and appropriately dispose of any liquids and grade the facility to prevent impoundment of water.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites

A. A 3.04 General Permit allows discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites.
1. The following discharges are allowed under the 3.04 General Permit:
   a. Seepage from tailing impoundments, unleached rock piles, or process areas;
   b. Process solution temporarily stored for short periods of time due to process upsets or rainfall, provided the solution is promptly removed from the facility as required under subsection (D);

c. Stormwater runoff not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act; and
d. Wash water specific to sand and gravel operations not covered by R18-9-B301(A).

2. Facilities that continually contain process solution as a normal function of facility operations are not eligible for coverage under the 3.04 General Permit. If a normal process solution contains a pollutant regulated under A.R.S. § 49-243(I) the 3.04 General Permit does not apply if the pollutant will compromise the integrity of the liner.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. A description of the sources of inflow to the facility. An applicant shall include a representative chemical analysis of expected sources of inflow to the facility unless a sample is not available, before facility construction, in which case the applicant shall provide a chemical analysis of solution present in the facility to the Department within 90 days after the solution first enters the facility;
2. Documentation demonstrating that the facility design and operation under subsections (C) and (D) have been reviewed by a mining engineer or an Arizona-registered professional engineer before submission to the Department; and
3. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design, construction, and installation requirements. An applicant shall:

1. Design and construct the impoundment or secondary containment structure as specified under R18-9-D301(C)(1);
2. Ensure that conveyance systems are capable of handling the peak flow from the 100-year storm;
3. Construct the liner as specified in R18-9-D301(C)(4)(a);
4. Develop and implement a Quality Assurance/Quality Control program that meets or exceeds the liner manufacturer's guidelines. The program shall address site and subgrade preparation, inspection procedures, field testing, laboratory testing, repair of seams during installation, and final inspection of the completed liner for functional integrity;
5. If the facility is located in the 100-year flood plain, design the facility so it is protected from damage or flooding as a result of a 100-year, 24-hour storm event;
6. Design and manage the facility so groundwater does not come into contact with the liner;
7. Ensure that the facility design addresses any significant geologic hazard relating to static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
8. Ensure that the site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound;
9. Ensure that the liner is anchored by being secured in an engineered anchor trench. If regularly exposed to sunlight, the applicant shall ensure that the liner is ultraviolet resistant; and
10. Use compacted clay subgrade in areas with shallow groundwater conditions.

D. Operational requirements. The permittee shall:

1. Maintain the freeboard required in subsection (C)(1) through design, pumping, or both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for cracks, tears, perforations and residual build-up at least monthly. The operator shall conduct and document an inspection after the facility receives significant volumes of stormwater inflow;
4. Report cracks, tears, and perforations in the liner to the Department, and repair them as soon as practical, but no later than 60 days under normal operating conditions, after discovery of the crack, tear, or perforation;
5. For facilities that temporarily contain a process solution due to process upsets, remove the process solution from the facility as soon as practical, but no later than 60 days after cessation of the upset; and
6. For facilities that temporarily contain a process solution due to rainfall, remove the process solution from the facility as soon as practical.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The Quality Assurance/Quality Control program required under subsection (C)(4); and
6. Records of any unauthorized flows into the impoundment.

F. Reporting requirements.

1. If the liner is breached, as evidenced by a drop in water level not attributable to evaporation, or if the impoundment breaches or is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3).

G. Closure requirements.

1. The permittee shall notify the Department of the intent to close the facility permanently.
2. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
   c. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall, within 60 days

notify the Department and submit an action plan for the Department's approval before implementing the plan;

d. If there is no evidence of holes, tears, or defective seams that could have leaked:

i. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,

ii. Remove and dispose of the liner elsewhere if the impoundment is bermed, and

iii. Grade the facility to prevent the impoundment of water; and

3. Notify the Department within 60 days following closure that the action plan has been implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D305. 3.05 General Permit: Disposal Wetlands

A. A 3.05 General Permit allows discharges of reclaimed water into constructed or natural wetlands, including waters of the United States, waters of the state, and riparian areas, for disposal. This general permit does not apply if the purpose of the wetlands is to provide treatment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the name and individual permit number of the facility providing the reclaimed water.

C. Design requirements. An applicant shall:

1. Ensure that the reclaimed water released into the wetland meets numeric and narrative Aquifer Water Quality Standards for all parameters except for coliform bacteria and is Class A+ reclaimed water. A+ reclaimed water is wastewater that has undergone secondary treatment established under R18-9-B204(B)(1), filtration, and meets a total nitrogen concentration under R18-9-B204(B)(3) and fecal coliform limits under R18-9-B204(B)(4);

2. Maintain a minimum horizontal separation of 100 feet between any water supply well and the maximum wetted area of the wetland;

3. Post signs at points of access and every 250 feet along the perimeter of the wetland stating, "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER. DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol; and

4. Ensure that wetland siting is consistent with local zoning and land use requirements.

D. Operational requirements.

1. A permittee shall manage the wetland to minimize vector problems.

2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the wetland. The Best Management Practices Plan shall include:

a. A site plan showing the wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;

b. Management of flows into and through the wetland to minimize erosion and damage to vegetation;

c. Management of visitation and use of the wetlands by the public;

d. A management plan for vector control;

e. A plan or criteria for enhancing or supplementing of wetland vegetation; and

f. Management of shallow groundwater conditions on existing on-site wastewater treatment facilities.

3. The permittee shall perform quarterly inspections to review bank integrity, erosion evidence, the condition of signage and vegetation, and correct any problem noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available; and

2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the wetland, including the volume of inflow to the wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites

A. A 3.06 General Permit allows the operation of constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a design, including information on the quality of the influent, the treatment process to be used, the expected quality of the wastewater, and the nutrients and other constituents that will indicate wetland performance.

C. Design, construction, and installation. An applicant shall:

1. Ensure that:

a. Water released into the treatment wetland is compatible with construction materials and vegetation;

b. Water released from the treatment wetland:

i. Meets numeric Aquifer Water Quality Standards,

ii. Has a pH between 6.0 and 9.0, and

iii. Has a sulfate concentration less than 1000 mg/l; and

c. Water released from the treatment wetland complies with and is released under an individual permit and an AZPDES Permit, if required;

2. Construct the treatment wetland with a liner, using a low-hydraulic conductivity synthetic liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:

a. Ensure that, if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;

b. Anchor the liner along the perimeter of the treatment wetland; and

c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;

3. Design the treatment wetland for optimum:

a. Sizing appropriate for the anticipated treatment,

b. Cell configuration,

c. Vegetative species composition, and

d. Berm configuration;
4. Construct and locate the treatment wetland so that it:
a. Maintains physical integrity during a 100-year, 24-hour storm event; and
b. Operates properly during a 25-year, 24-hour storm event;
5. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table; and
6. If public access to the treatment wetland is anticipated or encouraged, post signs at points of access and every 250 feet along the perimeter of the treatment wetland stating, "CAUTION. THESE WETLANDS CONTAIN MINE DRAINAGE WATER. DO NOT DRINK." The permittee shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol.

D. Operational requirements.
1. The permittee shall monitor the water leaving the treatment wetlands at least quarterly for the standards specified in subsection (C)(1)(b). Monitoring shall include nutrients or other constituents used as indicators of treatment wetland performance.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the treatment wetland. The Best Management Practices Plan shall include:
a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
b. A contingency plan to address problems, including treatment performance, wash-out and vegetation die-off, and a plan to apply for an individual permit if the treatment wetland is unable to achieve the treatment standards in subsection (C)(1)(b) on a continued basis;
c. Management of flows into and through the treatment wetland to minimize erosion and damage to vegetation;
d. A description of the measures for restricting access to the treatment wetlands by the public;
e. A management plan for vector control; and
f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.
3. The permittee shall perform quarterly inspections to review the bank and liner integrity, erosion evidence, and the condition of signage and vegetation, and correct any problems noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements.
1. If preliminary laboratory results indicate that the quality of the water leaving the treatment wetlands does not meet the standards specified in subsection (C)(1)(b), the permittee may request that the laboratory re-analyze the sample before reporting the results to the Department. The permittee shall:
a. Conduct verification sampling within 15 days of receiving final laboratory results,
b. Conduct verification sampling only for parameters that are present in concentrations greater than the standards specified in subsection (C)(1)(b), and
c. Notify the Department in writing within five days of receiving final laboratory results.
2. If the final laboratory result confirms that the quality of the water leaving the treatment wetlands does not meet the standards in subsection (C)(1)(b), the permittee shall implement the contingency plan required by subsection (D)(2)(b) and notify the Department that the plan is being implemented.
3. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland, including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

A. A 3.07 General Permit allows constructed wetlands that receive with the intent to treat, discharges of reclaimed water that meet the secondary treatment level requirements specified in R18-9-B204(B)(1).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and individual permit number of any facility that provides the reclaimed water to the treatment wetland;
2. The name and individual permit number of any facility that receives water released from the treatment wetland;
3. The design of the treatment wetland construction and management project, including information on the quality of the influent, the treatment process, and the expected quality of the wastewater;
4. A Best Management Practices Plan that includes:
a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
b. A contingency plan to address any problem, including treatment performance, wash-out, and vegetation die-off;
c. A management plan for flows into and through the treatment wetland to minimize erosion and damage to vegetation;
d. A description of the measures for restricting access to the treatment wetlands by the public;
e. A management plan for vector control; and
f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.

C. Design requirements. An applicant shall:
1. Release water from the treatment wetland under an individual permit and an AZPDES permit, if required. The applicant shall release water from the treatment wetland only to a direct reuse site if the site is permitted to receive reclaimed water of the quality generated under the individual permit specified in subsection (B)(1);
2. Construct and locate the treatment wetland so that it:
a. Maintains physical integrity during a 100-year, 24-hour storm event; and

b. Operates properly during a 25-year, 24-hour storm event;

3. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table;
4. Maintain a minimum horizontal separation of 100 feet between a water supply well and the maximum wetted area of the treatment wetland;
5. Maintain the setbacks specified in R18-9-B201(I) for no noise, odor, or aesthetic controls between the property boundary at the site and the maximum wetted area of the treatment wetland;
6. Fence the treatment wetland area to prevent unauthorized access;
7. Post signs at points of access stating "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER, DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol;
8. Construct the treatment wetland with a liner using low hydraulic conductivity liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
9. Calculate the size and depth of the treatment wetland so that the rate of flow allows adequate treatment detention time. The applicant shall design the treatment wetland with at least two parallel treatment cells to allow for efficient system operation and maintenance;
10. Ensure that the treatment wetland vegetation includes cattails, bulrush, common reed, or other species of plants with high pollutant treatment potential to achieve the intended water quality identified in subsection (B)(3); and
11. Ensure that construction and operation of the treatment wetlands is consistent with local zoning and land use requirements.

D. Operational requirements. The permittee shall:
1. Implement the Best Management Practices Plan approved under subsection (B);
2. Monitor wastewater leaving the treatment wetland to ensure that discharge water quality meets the expected wastewater quality specified in subsection (B)(3). The permittee shall ensure that analyses of wastewater samples are conducted by a laboratory certified by the Department of Health Services, following the Department's Quality Assurance/Quality Control requirements;
3. Follow the prescribed measures as required in the contingency plan under subsection (B)(4)(b) and submit a written report to the Department within five days if verification sampling demonstrates that an alert level or discharge limit is exceeded;
4. Inspect the treatment wetlands at least quarterly for bank and liner integrity, erosion evidence, and condition of signage and vegetation, and correct any problem discovered; and
5. Ensure that the treatment wetland is operated by a certified operator under 18 A.A.C. 5, Article 1.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART E. TYPE 4 GENERAL PERMITS

R18-9-E301. 4.01 General Permit: Sewage Collection Systems

A. A 4.01 General Permit allows for construction and operation of a new sewage collection system or expansion of an existing sewage collection system involving new construction as follows:
1. A sewage collection system or portion of a sewage collection system that serves downstream from the point where the daily design flow is 3000 gallons per day based on Table 1, Unit Design Flows, except a gravity sewer line conveying sewage from a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow;
2. A sewage collection system that includes a manhole; or
3. A sewage collection system that includes a force main or lift station serving more than one dwelling.

B. Performance. An applicant shall design, construct, and operate a sewage collection system so that the sewage collection system:
1. Provides adequate wastewater flow capacity for the planned service area;
2. Minimizes sedimentation, blockage, and erosion through maintenance of proper flow velocities throughout the system;
3. Prevents releases of sewage to the land surface through appropriate sizing, capacities, and inflow and infiltration prevention measures throughout the system;
4. Protects water quality through minimization of exfiltration losses from the system;
5. Provides for adequate inspection, maintenance, testing, visibility, and accessibility;
6. Maintains system structural integrity; and
7. Minimizes septic conditions in the sewage collection system.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information:
1. A statement on a form approved by the Director, signed by the owner or operator of the sewage treatment facility that treats or processes the sewage from the proposed sewage collection system.
   a. The statement shall affirm that the additional volume of wastewater delivered to the facility by the proposed sewage collection system will not cause any flow or effluent quality limits of the individual permit for the facility to be exceeded.

b. If the facility is classified as a groundwater protection permit facility under A.R.S. § 49-241.01(C), or if no flow or effluent limits are applicable, the statement shall affirm that the design flow of the facility will not be exceeded;

2. If the proposed sewage collection system delivers wastewater to a downstream sewage collection system under different ownership or control, a statement on a form approved by the Director, signed by the owner or operator of the downstream sewage collection system, affirming that the downstream system can maintain the performance required by subsection (B) when receiving the increased flows;
3. A general site plan showing the boundaries and key aspects of the project;
4. Construction quality drawings that provide overall details of the site and the engineered works comprising the project including:
   a. The plans and profiles for all sewer lines, manholes, force mains, depressed sewers, and lift stations with sufficient detail to allow Department verification of design and performance characteristics;
   b. Relevant cross sections showing construction details and elevations of key components of the sewage collection system to allow Department verification of design and performance characteristics, including the slope of each gravity sewer segment stated as a percentage; and
   c. Drainage features and controls, and erosion protection as applicable, for the components of the project; and
   d. Horizontal and vertical location of utilities within the area affected by the sewer line construction;
5. Documentation of design flows for significant components of the sewage collection system and the basis for calculating the design flows;
6. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department. The applicant may submit the drawings in a Department-approved electronic format; and
7. Design documents, including plans, specifications, drawings, reports, and calculations that are signed, dated, and sealed by an Arizona-registered professional engineer. The designer shall use good engineering judgment by following engineering standards of practice, and rely on appropriate engineering methods, calculations, and guidance.

D. Design requirements.

1. General Provisions. An applicant shall design and construct a new sewage collection system or an expansion of an existing sewage collection system involving new construction, according to the requirements of this general permit. An applicant shall:
   a. Base design flows for components of the system on unit flows specified in Table 1, Unit Design Flows.
   b. Design gravity sewer lines and all other sewage collection system components, including, manholes, force mains, lift stations, depressed sewers, and appurtenant devices and structures to accommodate maximum sewage flows as follows:
      i. Any point in a sewer main when flowing full can accommodate a peak wet weather flow calculated by multiplying the sum of the upstream sources of flow from Table 1, Unit Design Flows by a dry weather peaking factor based on upstream population, as tabulated below, and adding a wet weather infiltration and inflow rate based on either a percentage of peak dry weather flow or a gallons per acre rate of flow;

Upstream Population	Dry Weather Peaking Factor
100	3.62
200	3.14
300	2.90
400	2.74
500	2.64
600	2.56
700	2.50
800	2.46
900	2.42
1000	2.38
1001 to 10,000	$PF = (6.330 \times p^{-0.231}) + 1.094$
10,001 to 100,000	$PF = (6.177 \times p^{-0.233}) + 1.128$
More than 100,000	$PF = (4.500 \times p^{-0.174}) + 0.945$
PF = Dry Weather Peaking Factor p = Upstream Population	

      ii. For a lift station serving less than 600 single family dwelling units (d.u.), use either of the following methods to size the pumps for peak dry weather flow in gallons per minute and add an allowance for wet weather flow and infiltration:
         (1) Peak dry weather flow = $17\ d.u.^{0.42}$, or
         (2) Peak dry weather flow = $11.2\ (population)^{0.42}$
      iii. If justified by the applicant, the Department may accept lower unit flow values in the served area due to significant use of low-flow fixtures, hydrographs of actual flows, or other factors;
   c. Use the "Uniform Standard Specifications for Public Works Construction" (revisions through 2004) and the "Uniform Standard Details for Public Works Construction" (revisions through 2004) published by the Maricopa Association of Governments, and the "Standard Specifications for Public Improvements," (2003 Edition), and "Standard Details for Public Improvements," (2003 Edition), published jointly by Pima County Wastewater Management and the City of Tucson, as the applicable design and construction criteria, unless the Department approves alternative design standards or specifications. An applicant in a county other than Maricopa and Pima shall use design and construction criteria from either the Maricopa Association of Governments or the Pima County Wastewater Management and the City of Tucson for the facility unless alternative criteria are designated by the Department.
      i. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material.
      ii. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained

from the Maricopa Association of Governments, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona 85003, or on the web at http://www.mag.maricopa.gov/archive/Newpages/on-line.htm; or from Pima County Wastewater Management, 201 N. Stone Avenue, Tucson, Arizona 85701-1207, or on the web at http://www.pima.gov/wwm/stddet;

d. Ensure that sewage collection system components are separated from drinking water distribution system components as specified in 18 A.A.C. 5, Article 5;

e. Ensure that sewage collection system components are separated from reclaimed water system components as specified in 18 A.A.C. 9, Article 6; and

f. Request review and approval of an alternative to a design feature specified in this Section by following the requirements in R18-9-A312(G).

2. Gravity sewer lines. An applicant shall:

a. Ensure that any sewer line that runs between manholes, if not straight, is of constant horizontal curvature with a radius of curvature not less than 200 feet;

b. Cover each sewer line with at least 3 feet of earth cover meeting the requirements of subsection (D)(2)(h). The applicant shall:

i. Include at least one note specifying this requirement in construction plans;

ii. If site-specific limitations prevent 3 feet of earth cover, provide the maximum cover attainable, construct the sewer line of ductile iron pipe or other design of equivalent or greater tensile and compressive strength, and note the change on the construction plans; and

iii. Ensure that the design of the pipe and joints can withstand crushing or shearing from any expected static and live load to protect the structural integrity of the pipe. Construction plans shall note locations requiring these measures;

c. If sewer lines cross or are constructed in floodways;

i. Place the lines at least 2 feet below the level of the 100-year storm scour depth and calculated 100-year bed degradation and construct the lines using ductile iron pipe or pipe with equivalent tensile strength, compressive strength, shear resistance, and scour protection.

ii. If it is not possible to maintain the 2 feet of clearance specified in subsection (D)(2)(c)(i), using the process described in R18-9-A312(G), provide a design that ensures that the sewer line will withstand any lateral and vertical load for the scour and bed degradation conditions specified in subsection (D)(2)(c)(i);

iii. Ensure that sewer lines constructed in a floodway extend at least 10 feet beyond the boundary of the 100-year storm scouring;

iv. If a sewer line is constructed in a floodway and is longer than the applicable maximum manhole spacing distance in subsection (D)(3)(a), using the process described in R18-9-A312(G), provide a design that ensures the performance standards in subsection (B) are met; and

v. Note locations requiring these measures on the construction plans;

d. Ensure that each sewer line is 8 inches in diameter or larger except the first 400 feet of a dead end sewer line with no potential for extension may be 6 inches in diameter if the design flow criteria specified in subsections (D)(1)(a) and (D)(1)(b) are met and the sewer line is installed with a slope sufficient to achieve a velocity of at least 3 feet per second when flowing full. If the line is extended, the applicant seeking the extension shall replace the entire length with larger pipe to accommodate the new design flow unless the applicant demonstrates with engineering calculations that using the existing 6-inch pipe will accommodate the design flow;

e. Design sewer lines with at least the minimum slope calculated from Manning's Formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second when flowing full.

i. An applicant may request a smaller minimum slope under R18-9-A312(G) if the smaller slope is justified by a quarterly program of inspections, flushings, and cleanings.

ii. If a smaller minimum slope is requested, the applicant shall not specify a slope that is less than 50 percent of that calculated from Manning's formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second.

iii. The ratio of flow depth in the pipe to the diameter of the pipe shall not exceed 0.75 in peak dry weather flow conditions;

f. Design sewer lines to avoid a slope that creates a sewage velocity greater than 10 feet per second. The applicant shall construct any sewer line carrying a flow with a normal velocity of greater than 10 feet per second using ductile iron pipe or pipe with equivalent erosion resistance, and structurally reinforce the receiving manhole or sewer main;

g. Design and install sewer lines, connections, and fittings with materials that meet or exceed manufacturer's specifications consistent with this Chapter to:

i. Limit inflows, infiltration, and exfiltration;

ii. Resist corrosion in the ambient electrochemical environment;

iii. Withstand anticipated static and live loads; and

iv. Provide internal erosion protection;

h. Indicate trenching and bedding details applicable for each pipe material and size in the design plans. Unless the Department approved alternative design standards or specifications under subsection (D)(1)(c), the applicant shall place and bed the sewer lines in trenches following the specifications in "Trench Excavation, Backfilling, and Compaction" (Section 601) revised 2004, published by the Maricopa Association of Governments; and "Rigid Pipe Bedding for Sanitary Sewers" (WWM 104) revised July 2002, and "Flexible Pipe Bedding for Sanitary Sewers" (WWM 105) revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

i. Perform a deflection test of the total length of all sewer lines made of flexible materials to ensure that the installation meets or exceeds the manufacturer's recommendations and record the results;

j. Test each segment of the sewer line for leakage using the applicable method below and record the results:

i. "Standard Test Method for Installation of

Acceptance of Plastic Gravity Sewer Lines Using Low-Pressure Air, F1417-92(1998)," published by the American Society for Testing and Materials;

ii. "Standard Practice for Testing Concrete Pipe Sewer Lines by Low-Pressure Air Test Method, C924-02 (2002)," published by the American Society for Testing and Materials;

iii. "Standard Test Method for Low-Pressure Air Test of Vitrified Clay Pipe Lines, C828-03 (2003)," published by the American Society for Testing and Materials;

iv. "Standard Test Method for Hydrostatic Infiltration Testing of Vitrified Clay Pipe Lines, C1091-03a (2003)," published by the American Society for Testing Materials;

v. "Standard Practice for Infiltration and Exfiltration Acceptance Testing of Installed Precast Concrete Pipe Sewer Lines, C969-02 (2002)," published by the American Society for Testing Material; or

vi. "Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications, D2321-00 (2000)," published by the American Society for Testing Materials; or

vii. The material listed in subsections (D)(2)(j)(i) through (vi) is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;

k. Test the total length of the sewer line for uniform slope by lamp lighting, remote camera or similar method approved by the Department, and record the results; and

l. Minimize the planting within the disturbed area of new sewage collection system construction of plant species having roots that are likely to reach and damage the sewer or impair the operation of the sewer or visual and vehicular access to any manhole.

3. Manholes.

a. An applicant shall install manholes at all grade changes, size changes, alignment changes, sewer intersections, and at any location necessary to comply with the following spacing requirements:

Sewer Pipe Diameter (inches)	Maximum Manhole Spacing (feet)
Less than 8	400
8 to less than 18	500
18 to less than 36	600
36 to less than 60	800
60 or greater	1300

b. The Department shall allow greater manhole spacing if the applicant follows the procedure provided in R18-9-A312(G) and provides documentation showing the operator possesses or has available specialized sewer cleaning equipment suitable for the increased spacing.

c. The applicant shall ensure that manhole design is consistent with "Pre-cast Concrete Sewer Manhole" #420-1, revised January 1, 2004 and #420-2, revised January 1, 2001, "Offset Manhole for 8" – 30" Pipe" #421 (1998), and "Sewer Manhole and Cover Frame Adjustment" #422, revised January 1, 2001, published by the Maricopa Association of Governments; and "Manholes and Appurtenant Items" (WWM 201 through WWM 211, except WWM 204, 205, and 206), revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

d. The applicant shall not locate manholes in areas subject to more than incidental runoff from rain falling in the immediate vicinity unless the manhole cover assembly is designed to restrict or eliminate stormwater inflow.

e. The applicant shall test each manhole using one of the following test protocols:

i. Watertightness testing by filling the manhole with water. The applicant shall ensure that the drop in water level following presoaking does not exceed 0.0034 of total manhole volume per hour;

ii. Negative air pressure testing using the "Standard Test Method for Concrete Sewer Manholes by Negative Air Pressure (Vacuum) Test, C1244-02e1 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007, or obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or

iii. Holiday testing of a lined manhole constructed with uncoated rebar using the "High-Voltage Electrical Inspection of Pipeline Coatings, RP0274-2004 (2004)," published by the National Association of Corrosion Engineers (NACE International). This material is incorporated by reference as modified below, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or obtained from NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906. The following substitutions apply:

(1) Where the word "metal" is used in the standard, use the word "surface" instead; and

(2) Where the words "pipe" or "pipeline" are used, use the word "manhole" instead.

f. The applicant shall perform manhole testing under subsection (D)(3)(e) after installation of the manhole cone or top riser to verify watertightness integrity of the manhole from the top of the cone or riser down.

i. Upon satisfactory test results, the applicant shall install the manhole ring and any spacers, complete the joints, and seal the manhole to a watertight condition.

ii. If the applicant can install the manhole cone or top riser, spacers, and ring to final grade without disturbance or adjustment by later construction, the applicant may perform the testing from the top of the manhole ring on down.

g. The applicant shall locate a manhole to provide adequate visibility and vehicular maintenance accessibility following construction.

4. Force mains. An applicant may install a force main if it meets the following design, installation, and testing requirements. The applicant shall:
   a. Design force mains to maintain a minimum flow velocity of 3 feet per second and a maximum flow velocity of 7 feet per second. The applicant may design for sustained periods of flow above 7 feet per second, if the applicant justifies the design using the process specified in R18-9-A312(G);
   b. Ensure that force mains have the appropriate valves and controls required to prevent drainback to the lift station. If drainback is necessary during cold weather to prevent freezing, the control system may allow manual or automatic drainback;
   c. Incorporate air release valves or other appropriate components in force mains at all high points along the line to eliminate air accumulation. If engineering calculations provided by the applicant demonstrate that air will not accumulate in a given high point under typical flow conditions, the Department shall waive the requirement for an air release valve;
   d. Design restrained joints or thrust blocks on force mains to accommodate water hammer, surge control, and to prevent excessive movement of the force main. Submitted construction plans shall show restrained joint or thrust block locations and details;
   e. If a force main is proposed to discharge directly to a sewage treatment facility without entering a flow equalization basin, include in the Notice of Intent to Discharge a statement from the owner or operator of the sewage treatment facility that the design is acceptable;
   f. Design a force main to withstand a pressure of 50 pounds per square inch or more above the design working pressure for two hours and test upon completion to ensure no leakage;
   g. Supply flow to a force main using a lift station that meets the requirements of subsection (D)(5); and
   h. Ensure that force mains are designed to control odor.
5. Lift stations. An applicant shall:
   a. Secure a lift station to prevent tampering and affix on its exterior, or on the nearest vertical object if the lift station is entirely below grade, at least one warning sign that includes the 24-hour emergency phone number of the owner or operator of the collection system;
   b. Protect lift stations from physical damage from a 100-year flood event. An applicant shall not construct a lift station in a floodway;
   c. Lift station wet well design.
      i. Ensure that the minimum wet well volume in gallons is 1/4 of the product of the minimum pump cycle time, in minutes, and the total pump capacity, in gallons per minute;
      ii. Protect the wet well against corrosion to provide at least a 20-year operational life;
      iii. Ensure that wet well volume does not allow the sewage retention time to exceed 30 minutes unless the sewage is aerated, chemicals are added to prevent or eliminate hydrogen sulfide formation, or adequate ventilation is provided. Notwithstanding these measures, the applicant shall not allow the septic condition of the sewage to adversely affect downstream collection systems or sewage treatment facility performance;
      iv. Ensure that excessively high or low levels of sewage in the wet well trigger an audible or visible alarm at the wet well site and at the system control center;
      v. Ensure that a wet well designed to accommodate more than 5000 gallons per day has a horizontal cross-sectional area of at least 20 square feet; and
      vi. Ensure that lift stations are designed to prevent odor from emanating beyond the lift station site;
   d. Equip a lift station wet well with at least two pumps. The applicant shall ensure that:
      i. The pumps are capable of passing a 2.5-inch sphere or are grinder pumps;
      ii. The lift station is capable of operating at design flow with any one pump out of service; and
      iii. Piping, valves, and controls are arranged to allow independent operation of each pump;
   e. Not use suction pumps if the sewage lift is more than 15 feet. The applicant shall ensure that other types of pumps are self-priming and that pump water brake horsepower is at least 0.00025 times the product of the required discharge, in gallons per minute, and the required total dynamic head, in feet; and
   f. For lift stations receiving an average flow of more than 10,000 gallons per day, include a standby power source and redundant wastewater level controls in the lift station design that will provide immediate service and remain available for 24 hours per day if the main power source or controls fail.
6. Depressed sewers. An applicant shall:
   a. Size the depressed sewer to attain a minimum velocity of 3 feet per second through all barrels of the depressed sewer when the flow equals or exceeds the design daily peak dry weather flow,
   b. Design the depressed sewer to convey the sewage flow through at least two parallel pipes at least 6 inches in diameter,
   c. Include an inlet and outlet structure at each end of the inverted sewer,
   d. Design the depressed sewer so that the barrels are brought progressively into service as flow increases to its design value, and
   e. Design the depressed sewer to minimize release of odors to the atmosphere.

E. Additional Discharge Authorization requirements. An applicant shall:
1. Supply a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department that provides the following:
   a. Confirmation that the project was completed in compliance with the requirements of this Chapter, as described in the plans and specifications corresponding to the Construction Authorization issued by the Director, or with changes that are reflected in as-built plans submitted with the Engineer's Certificate of Completion;

b. As-built plans, if required, that are properly identified and numbered; and
c. Satisfactory field test results from deflection, leakage, and uniform slope testing;
2. Provide any other relevant information required by the Department to determine that the facility conforms to the terms of the 4.01 General Permit; and
3. Provide a signed certification on a form approved by the Department that:
a. Confirms that an operation and maintenance manual exists for the sewage collection system;
b. Confirms that the operation and maintenance manual addresses components of operation and maintenance specified on the certification form;
c. Provides the 24-hour emergency number of the owner or operator of the sewage collection system; and
d. Provides an address where the operation and maintenance manual is maintained and confirms that the manual is available for inspection at that address by the Department on request.

F. Operation and maintenance requirements. The permittee shall:
1. Operate the new sewage collection system or expansion of an existing sewage collection system involving new construction using the operation and maintenance manual certified by the owner or operator in subsection (E)(3), to meet the performance standards specified in subsection (B), unless the permittee is operating the sewage collection system under a CMOM Plan under the general permit established in R18-9-C305;
2. Ensure that the sewage collection system is operated according to the operator certification requirements in 18 A.A.C. 5, Article 1; and
3. For safety during operation and maintenance of lift station and other confined space components of the sewage collection system, follow all applicable state and federal confined space entry requirements.

G. Recordkeeping. A person owning or operating a facility permitted under this Section shall maintain the documents listed in subsection (E) for the life of the facility and make them available to the Department upon request.

H. Repairs.
1. A Notice of Intent to Discharge is not required for sewage collection system repairs. Repairs include work performed in response to deterioration or damage of existing structures, devices, and appurtenances with the intent to maintain or restore the system to its original design flow and operational characteristics. Repairs do not include changes in vertical or horizontal alignment.
2. Components used in the repair shall meet the design, installation, and operational requirements of this Section.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E302. 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow

A. A 4.02 General Permit allows for the construction and operation of a system with less than 3000 gallons per day design flow consisting of a septic tank dispensing wastewater to an approved means of disposal described in this Section. Only gravity flow of wastewater from the septic tank to the disposal works is authorized by this general permit.
1. The standard septic tank and disposal works design specified in the 4.02 General Permit serves sites where no site limitations are identified by the site investigation conducted under R18-9-A310.
2. If site conditions allow, this general permit authorizes the discharge of wastewater from a septic tank meeting the requirements of R18-9-A314 to one of the following disposal works:
a. Trench,
b. Bed,
c. Chamber technology, or
d. Seepage pit.

B. Performance. An applicant shall design a system consisting of a septic tank and one of the disposal works listed in subsection (A)(2) so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Design and installation requirements.
1. General provisions. In addition to the applicable requirements in R18-9-A312, the applicant shall:
a. Ensure that the septic tank meets the requirements specified in R18-9-A314;
b. Before placing aggregate or disposal pipe in a prepared excavation, remove all smeared or compacted surfaces from trenches by raking to a depth of 1 inch and removing loose material. The applicant shall:
i. Place aggregate in the trench to the depth and grade specified in subsection (C)(2);
ii. Place the drain pipe on aggregate and cover it with aggregate to the minimum depth specified in subsection (C)(2); and
iii. Cover the aggregate with landscape filter material, geotextile, or similar porous material to prevent filling of voids with earth backfill;
c. Use a grade board stake placed in the trench to the depth of the aggregate if the disposal pipe is constructed of drain tile or flexible pipe that will not maintain alignment without continuous support;
d. Disposal pipe. If two or more disposal pipes are installed, install a distribution box approved by the Department of sufficient size to receive all lateral lines and flows at the head of each disposal works and:
i. Ensure that the inverts of all outlets are level and the invert of the inlet is at least 1 inch above the outlets;
ii. Design distribution boxes to ensure equal flow and install the boxes on a stable level surface such as a concrete slab or native or compacted soil; and
iii. Protect concrete distribution boxes from corrosion by coating them with an appropriate bituminous coating, constructing the boxes with concrete that has a 15 to 18 percent fly ash content, or by using other equivalent means;
e. Construct all lateral pipes running from a distribution box to the disposal works with watertight joints and ensure that multiple disposal laterals, wherever practical, are of uniform length;

f. Lay pipe connections between the septic tank and a distribution box on natural ground or compact fill and construct the pipe connections with watertight joints;
g. Construct steps within distribution line trenches or beds, if necessary, to maintain a level disposal pipe on sloping ground. The applicant shall construct the lines between each horizontal section with watertight joints and install them on natural or unfilled ground; and
h. Ensure that a disposal works consisting of trenches, beds, chamber technology, or seepage pits is not paved over or covered by concrete or any material that can reduce or inhibit possible evaporation of wastewater through the soil to the land surface or oxygen transport to the soil absorption surfaces.

2. Trenches.
a. The applicant shall calculate the trench absorption area as the total of the trench bottom area and the sum of both trench sidewall areas to a maximum depth of 48 inches below the bottom of the disposal pipe.
b. The applicant shall ensure that trench bottoms and disposal pipe are level. The applicant shall calculate trench sizing from the soil absorption rate specified under R18-9-A312(D) and the design flow established in R18-9-A312(B).
c. The following design criteria for trenches apply:

Trenches	**Minimum**	**Maximum**
1. Number of trenches	1 (2 are recommended)	No Maximum
2. Length of trench[1]	----	100 feet
3. Bottom width of trench	12 inches	36 inches
4. Trench absorption area (sq. ft. of absorption area per linear foot of trench)	No Minimum	11 sq. ft.
5. Depth of cover over aggregate surrounding disposal pipe	9 inches	24 inches[2]
6. Thickness of aggregate material over disposal pipe	2 inches	2 inches
7. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
8. Slope of disposal pipe	Level	Level
9. Disposal pipe diameter	3 inches	4 inches
10. Spacing of trenches (measured between nearest sidewalls)	2 times effective depth[3] or five feet, whichever is greater	No Maximum

Notes:
1. If unequal trench lengths are used, proportional distribution of wastewater is required.
2. For more than 24 inches, Standard Dimensional Ratio 35 or equivalent strength pipe is required.
3. The effective depth is the distance between the bottom of the disposal pipe and the bottom of the trench bed.

d. The applicant may substitute clean, durable, crushed, and washed recycled concrete for aggregate if noted in design documents and the trench absorption area calculation excludes the trench bottom.

3. Beds. An applicant shall:
a. If a bed is installed, use the soil absorption rate specified in R18-9-A312(D) for "SAR, Bed. The applicant may, in computing the bed bottom absorption area, include the bed bottom and the perimeter sidewall area not more than 36 inches below the disposal pipe;
b. Comply with the following design criteria for beds:

Gravity Beds	**Minimum**	**Maximum**
1. Number of disposal pipes	2	No Maximum
2. Length of bed	No Minimum	100 feet
3. Distance between disposal pipes	4 feet	6 feet
4. Spacing of beds measured between nearest sidewalls	2 times effective depth[1] or 5 feet, whichever is greater	No Maximum
5. Width of bed	10 feet	12 feet
6. Distance from disposal pipe to sidewall	3 feet	3 feet
7. Depth of cover over disposal pipe	9 inches	14 inches
8. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
9. Thickness of aggregate material over disposal pipe	2 inches	2 inches
10. Slope of disposal pipe	Level	Level
11. Disposal pipe diameter	3 inches	4 inches

Note:
1. The effective depth is the distance between the bottom of the disposal pipe and the bottom of the bed.

4. Chamber technology. An applicant shall:
a. Calculate an effective chamber absorption area to size the disposal works area and determine the number of chambers needed. The effective absorption area of each chamber is calculated as follows:

$$A = (1.8 \times B \times L) + (2 \times V \times L)$$

i. "A" is the effective absorption area of each chamber,
ii. "B" is the exterior width of the bottom of the chamber,
iii. "V" is the vertical height of the louvered sidewall of the chamber, and
iv. "L" is the length of the chamber;
b. Calculate the disposal works size and number of chambers from the effective absorption area of each chamber and the soil absorption rates specified in R18-9-A312(D);
c. Ensure that the sidewall of the chamber provides at least 35 percent open area for sidewall credit and that the design and construction minimizes the movement of fines into the chamber area. The applicant shall not use filter fabric or geotextile against the sidewall openings.

5. Seepage pits. If allowed by R18-9-A311(B)(1), the applicant shall:
a. Design a seepage pit to comply with R18-9-A312(E)(1) for minimum vertical separation distance;
b. Ensure that multiple seepage pit installations are served through a distribution box approved by the Department or connected in series with a watertight connection laid on undisturbed or compacted soil. The applicant shall ensure that the outlet from the pit

has a sanitary tee with the vertical leg extending at least 12 inches below the inlet;

c. Ensure that each seepage pit is circular and has an excavated diameter of 4 to 6 feet. If multiple seepage pits are installed, ensure that the minimum spacing between seepage pit sidewalls is 12 feet or three times the diameter of the seepage pit, whichever is greater. The applicant may use the alternative design procedure specified in R18-9-A312(G) for a proposed seepage pit more than 6 feet in diameter;

d. For a gravel filled seepage pit, backfill the entire pit with aggregate. The applicant shall ensure that each pit has a breather conductor pipe that consists of a perforated pipe at least 4 inches in diameter, placed vertically within the backfill of the pit. The pipe shall extend from the bottom of the pit to within 12 inches below ground level;

e. For a lined, hollow seepage pit, lay a concrete liner or a liner of a different protective material in the pit on a firm foundation and fill excavation voids behind the liner with at least 9 inches of aggregate;

f. For the cover of a lined seepage pit, use an approved one or two piece reinforced concrete slab with a minimum compressive strength of 2500 pounds per square inch. The applicant shall ensure that the cover:

i. Is at least 5 inches thick and designed to support an earth load of at least 400 pounds per square foot;

ii. Has a 12-inch square or diameter minimum access hole with a plug or cap that is coated on the underside with an protective bituminous seal, constructed of concrete with 15 percent to 18 percent fly ash content, or made of other nonpermeable protective material; and

iii. Has a 4 inch or larger inspection pipe placed vertically not more than 6 inches below ground level;

g. Ensure that the top of the seepage pit cover is 4 to 18 inches below the surface of the ground;

h. Install a vented inlet fitting in every seepage pit to prevent flows into the seepage pit from damaging the sidewall. An applicant may use a 1/4 bend fitting placed through an opening in the top of the slab cover if a one or two piece concrete slab cover inlet is used;

i. Bore seepage pits five feet deeper than the proposed pit depth to verify underlying soil characteristics and backfill the five feet of overdrill with low permeability drill cuttings or other suitable material;

j. Backfill seepage pits that terminate in gravelly, coarse sand zones five feet above the beginning of the zone with low permeability drill cuttings or other suitable material;

k. Determine the minimum sidewall area for a seepage pit from the design flow and the soil absorption rate derived from the testing procedure described in R18-9-A310(G). The effective absorption surface for a seepage pit is the sidewall area only. The sidewall area is calculated using the following formula:

$$A = 3.14 \times D \times H$$

i. "A" is the minimum sidewall area in square feet needed for the design flow and soil absorption rate for the installation,

ii. "D" is the diameter of the proposed seepage pit in feet,

iii. "H" is the vertical height in feet in the seepage pit through which wastewater infiltrates native soil. The applicant shall ensure that H is at least 10 feet for any seepage pit.

D. Operation and maintenance. The permittee shall follow the applicable operation and maintenance requirements in R18-9-A313.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E303. 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

A. A 4.03 General Permit allows for the use of a composting toilet with less than 3000 gallons per day design flow.

1. Definition. For purposes of this Section, "composting toilet" means a manufactured turnkey or kit form treatment technology that receives human waste from a waterless toilet directly into an aerobic composting chamber where dehydration and biological activity reduce the waste volume and the content of nutrients and harmful microorganisms to an appropriate level for later disposal at the site or by other means.
2. An applicant may use a composting toilet if:
   a. Limited water availability prevents use of other types of on-site wastewater treatment facilities,
   b. Environmental constraints prevent the discharge of wastewater or nutrients to a sensitive area,
   c. Inadequate space prevents use of other systems,
   d. Severe site limitations exist that make other forms of treatment or disposal unacceptable, or
   e. The applicant desires maximum water conservation.
3. A permittee may use a composting toilet only if:
   a. Wastewater is managed as provided in this Section and, if gray water is separated and reused, the gray water reuse complies with18 A.A.C. 9, Article 7; and
   b. Soil conditions support subsurface disposal of all wastewater sources.

B. Restrictions.

1. A permittee shall ensure that no more than 50 persons per day use the composting toilet.
2. A composting toilet shall only receive human excrement unless the manufacturer's specifications allow the deposit of kitchen or other wastes into the toilet.

C. Performance. An applicant shall ensure that:

1. The composting toilet provides containment to prevent the discharge of toilet contents to the native soil except leachate, which may drain to the wastewater disposal works described in subsection (F);
2. The composting toilet limits access by vectors to the contained waste; and
3. Wastewater is disposed into the subsurface to prevent any wastewater from surfacing.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit the following information:

1. Composting toilet.
   a. The name and address of the composting toilet system manufacturer;
   b. A copy of the manufacturer's warranty, and the specifications for installation operation, and maintenance;

c. The product model number;
d. Composting rate, capacity, and waste accumulation volume calculations;
e. Documentation of listing by a national listing organization indicating that the composting toilet meets the stated manufacturer's specifications for loading, treatment performance, and operation, unless the composting toilet is listed under R18-9-A309(E) or is a component of a reference design approved by the Department;
f. The method of vector control;
g. The planned method and frequency for disposing the composted human excrement residue; and
h. The planned method for disposing of the drainage from the composting unit; and

2. Wastewater.
a. The number of bedrooms in the dwelling or persons served on a daily basis, as applicable, and the corresponding design flow of the disposal works for the wastewater;
b. The results from soil evaluation or percolation testing that adequately characterize the soils into which the wastewater will be dispersed and the locations of soil evaluation and percolation testing on the site plan; and
c. The design for the disposal works in subsection (F), including the location of the interceptor, the location and configuration of the trench or bed used for wastewater dispersal, the location of connecting wastewater pipelines, and the location of the reserve area.

E. Design requirements for a composting toilet. An applicant shall ensure that:
1. The composting chamber is watertight, constructed of solid durable materials not subject to excessive corrosion or decay, and is constructed to exclude access by vectors;
2. The composting chamber has airtight seals to prevent odor or toxic gas from escaping into the building. The system may be vented to the outside;
3. The capacity of the chamber and rate of composting are calculated based on:
a. The lowest monthly average chamber temperature; or
b. The yearly average chamber temperature, if the composting toilet is designed to compost on a yearly cycle or longer; and
4. The composting system provides adequate storage of all waste produced during the months when the average temperature is below 55°F, unless a temperature control device is installed to increase the composting rate and reduce waste volume.

F. Design requirements for the disposal works.
1. Interceptor. An applicant shall ensure that the design complies with the following:
a. Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
b. The interceptor is designed to remove grease, oil, fibers, and solids to ensure long-term performance of the trench or bed used for subsurface dispersal;
c. The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
d. Minimum interceptor size is based on design flow.
i. For a dwelling, the following apply:

No. of Bedrooms	Design Flow (gallons per day)	Minimum Interceptor Size (gallons)	
		Kitchen Wastewater Only (All gray water sources are collected and reused)	Combined Non-Toilet Wastewater (Gray water is not separated and reused)
1 (7 fixture units or less)	90	42	200
1-2 (greater than 7 fixture units)	180	84	400
3	270	125	600
4	330	150	700
5	380	175	800
6	420	200	900
7	460	225	1000

ii. For other than a dwelling, minimum interceptor size in gallons is 2.1 times the design flow from Table 1, Unit Design Flows.
2. Dispersal of wastewater. An applicant shall ensure that the design complies with the following:
a. A trench or bed is used to disperse the wastewater into the subsurface;
b. Sizing of the trench or bed is based on the design flow of wastewater as determined in subsection (F)(1)(d) and an SAR determined under R18-9-A312(D);
c. The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
d. Other aspects of trench or bed design follow R18-9-E302, as applicable.
3. Setback distances. Setback distances are no less than 1/4 of the setback distances specified in R18-9-A312(C), but not less than 5 feet, except the setback distance from wells is 100 feet.

G. Operation and maintenance requirements. A permittee shall:
1. Composting toilet.
a. Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
b. Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;
c. Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;
d. If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;
e. Ensure that only human waste, paper approved for septic tank use, and the amount of bulking material required for proper maintenance is introduced to the composting chamber. The permittee shall remove all

other materials or trash. If allowed by the manufacturer's specifications the permittee may add, other nonliquid compostable food preparation residues to the toilet;

f. Ensure that any liquid end product is:
   i. Sprayed back onto the composting waste material;
   ii. Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or
   iii. Is drained to the interceptor described in subsection (F);

g. Remove and dispose of composted waste as necessary, using a person who licensed a vehicle under 18 A.A.C. 13, Article 11 if the waste is not placed in a disposal area for burial or used on-site as mulch;

h. Before ending use for an extended period take measures to ensure that moisture is maintained to sustain bacterial activity and free liquids in the chamber do not freeze; and

i. After an extended period of non-use, empty the composting chamber of solid end product and inspect all mechanical components to verify that the mechanical components are operating as designed;

2. Wastewater Disposal Works.
   a. Ensure that the interceptor is maintained regularly according to manufacturer's instructions to prevent grease and solid wastes from impairing performance of the trench or bed used for dispersal of wastewater, and
   b. Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.

H. Reference design.
1. An applicant may use a composting toilet that achieves the performance requirements in subsection (C) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E304. 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.04 General Permit allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "pressure distribution system" means a tank, pump, controls, and piping that conducts wastewater under pressure in controlled amounts and intervals to a bed or trench or other means of distribution authorized by a general permit for an on-site wastewater treatment facility.
2. An applicant may use a pressure distribution system if a gravity flow system is unsuitable, inadequate, unfeasible, or cost prohibitive because of site limitations or other conditions, or if needed to optimally distribute wastewater.

B. Performance. An applicant shall ensure that a pressure distribution system:
1. Disperses wastewater so that:
   a. Loading rates are optimized for the intended purpose, and
   b. The wastewater is delivered under pressure and evenly distributed within the disposal works, and
2. Prevents ponding on the land surface.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit:
1. A copy of operation, maintenance, and warranty materials for the principal components; and
2. A copy of dosing specifications, including pump curves, dispersing component details, and float control settings.

D. Design requirements.
1. Pumps. An applicant shall ensure that pumps used in the on-site wastewater treatment facility:
   a. Are rated for wastewater service by the manufacturer and certified by Underwriters Laboratories;
   b. Achieve the minimum design flow rate and total dynamic head requirements for the particular site; and
   c. Incorporate a quick disconnect using compression-type unions for pressure connections. The applicant shall ensure that:
      i. Quick-disconnects are accessible in the pressure piping, and
      ii. A pump has adequate lift attachments for removal and replacement of the pump and switch assembly without entering the dosing tank or process chamber.
2. Switches, controls, alarms, timers, and electrical components. An applicant shall ensure that:
   a. Switches and controls accommodate the minimum and maximum dose capacities of the distribution network design. The applicant shall not use pressure diaphragm level control switches;
   b. Fail-safe controls that can be tested in the field are used to prevent discharge of inadequately treated wastewater. The applicant shall include counters or flow meters if critical to control functions, such as timed dosing;
   c. Control panels and alarms:
      i. Are mounted in an exterior location visible from the dwelling,
      ii. Provide manual pump switch and alarm test features, and
      iii. Include written instructions covering standard operation and alarm events;
   d. Audible and visible alarms are used for all critical control functions, such as pump failures, treatment failures, and excess flows. The applicant shall ensure that:
      i. The visual portion of the signal is conspicuous from a distance 50 feet from the system and its appurtenances;
      ii. The audible portion of the signal is between 70 and 75 db at 5 feet and is discernible from a distance of 50 feet from the system and its appurtenances; and
      iii. Alarms, test features, and controls are on a non-dedicated electrical circuit associated with a frequently used household lighting fixture and separate from the dedicated circuit for the pump;
   e. All electrical wiring complies with the National Electrical Code, 2005 Edition, published by the National Fire Protection Association. This material

is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The applicant shall ensure that:

i. Connections are made using National Electrical Manufacturers Association (NEMA) 4x junction boxes certified by Underwriters Laboratories; and

ii. All controls are in NEMA 3r, 4, or 4x enclosures for outdoor use.

3. Dosing tanks and wastewater distribution components.

a. An applicant shall:

i. Design dosing tanks to withstand anticipated internal and external loads under full and empty conditions, and design concrete tanks to meet the "Standard Specification for Precast Concrete Water and Wastewater Structures, C913-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;

ii. Design dosing tanks to be easily accessible and have secured covers;

iii. Install risers to provide access to the inlet and outlet of the tank and to service internal components;

iv. Ensure that the volume of the dosing tank accommodates bottom depth below maximum drawdown, maximum design dose, including any drainback, volume to high water alarm, and a reserve volume above the high water alarm level that is not less than the daily design flow volume. If the tank is time dosed, the applicant shall ensure that the combined surge capacity and reserve volume above the high water alarm is not less than the daily design flow volume;

v. Ensure that dosing tanks are watertight and anti-buoyant;

vi. Design the wastewater distribution components to withstand system pumping pressures;

vii. Design the wastewater distribution system to allow air to purge from the system;

viii. Design pressure piping to minimize freezing during cold weather;

ix. Ensure that the end of each wastewater distribution line is accessible for maintenance;

x. Ensure that orifices emit the design discharge rate uniformly throughout the wastewater distribution system; and

xi. Design orifices using orifice shields to provide proper distribution of wastewater to the receiving medium.

b. An applicant may use a septic tank second compartment or a second septic tank in series as a dosing tank if all dosing tank requirements of this Section are met and a screened vault is used instead of the septic tank effluent filter.

4. Design SAR. If the site conditions of the property for the on-site wastewater treatment facility do not require pressure distribution, but an applicant chooses to use pressure distribution, the applicant shall use a design SAR for the absorption surfaces in the disposal works that is not more than 1.10 times the adjusted SAR determined in R18-9-A312(D).

E. Additional Discharge Authorization requirements. An applicant shall obtain copies of instructions for the critical controls of the system from the person who installed the pressure distribution system. The applicant shall submit one copy of the instructions with the information required in subsection (C).

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), a permittee shall ensure that:

1. The operation and maintenance manual for the on-site wastewater treatment facility that supplies the wastewater to the pressure distribution system specifies inspection and maintenance needed for the following items:

a. Sludge level in the bottom of the treatment and dosing tanks,

b. Watertightness,

c. Condition of electrical and mechanical components, and

d. Piping and other components functioning within design limits;

2. All critical control functions are specified in the operation and maintenance manual for testing to demonstrate compliance with design specifications, including:

a. Alarms, test features, and controls;

b. Float switch level settings;

c. Dose rate, volume, and frequency, if applicable;

d. Distal pressure or squirt height, if applicable; and

e. Voltage test on pumps, motors, and controls, as applicable;

3. The finished grade is observed and maintained for proper surface drainage. The applicant shall observe the levelness of the tank for differential settling. If there is settling, the applicant shall grade the facility to maintain surface drainage.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E305. 4.05 General Permit: Gravelless Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.05 General Permit allows for the use of a gravelless trench with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "gravelless trench" means a disposal technology characterized by installation of a proprietary pipe and geocomposite or other substitute media into native soil instead of the distribution pipe and aggregate fill used in a trench allowed in R18-9-E302.

2. A permittee may use a gravelless trench if suitable gravel or volcanic rock aggregate is unavailable, excessively

expensive, or if adverse site conditions make movement of gravel difficult, damaging, or time consuming.

B. Performance. An applicant shall design a gravelless trench so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit the following:
1. The soil absorption area that would be required if a conventional disposal trench filled with aggregate was used at the site,
2. The configuration and size of the proposed gravelless disposal works, and
3. The manufacturer's installation instructions and warranty of performance for absorbing wastewater into the native soil.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the top of the gravelless disposal pipe or similar disposal mechanism is at least 6 inches below the surface of the native soil and 12 to 36 inches below finished grade if approved fill is placed on top of the installation;
2. Calculate the infiltration surface as follows:
   a. For 8-inch diameter pipe, 2 square feet of absorption area is allowed per linear foot;
   b. For 10-inch diameter pipe, 3 square feet of absorption area is allowed per linear foot;
   c. For bundles of two pipes of the same diameter, the absorption area is calculated as 1.67 times the absorption area of one pipe; and
   d. For bundles of three pipes of the same diameter, the absorption area is calculated as 2.00 times the absorption area of one pipe;
3. Use a pressure distribution system meeting the requirements of R18-9-E304 in medium sand, coarse sand, and coarser soils; and
4. Construct the drainfield of material that will not decay, deteriorate, or leach chemicals or byproducts if exposed to sewage or the subsurface soil environment.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Install the gravelless pipe material according to manufacturer's instructions if the instructions are consistent with this Chapter,
2. Ensure that the installed disposal system can withstand the physical disturbance of backfilling and the load of any soil cover above natural grade placed over the installation, and
3. Shape any backfill and soil cover in the area of installation to prevent settlement and ponding of rainfall for the life of the disposal works.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade in the vicinity of the gravelless disposal works for maintenance of proper drainage and protection from damaging loads.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E306. 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.06 General Permit allows for the use of a natural seal evapotranspiration bed with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "natural seal evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system, contained on the bottom and sidewalls by an engineered liner consisting of natural soil and clay materials.
2. An applicant may use a natural seal evapotranspiration bed if site conditions restrict soil infiltration or require reduction of the volume of wastewater discharged to the native soil underlying the natural seal liner.

B. Restrictions. Unless a person provides design documentation to show that a natural seal evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of the average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a natural seal evapotranspiration bed:
1. Minimizes discharge to the native soil through the natural seal liner,
2. Maximizes wastewater disposed to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. An applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and shall calculate the bed design based on the capillary rise of the bed media, following the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2000)," incorporated by reference in R18-9-E307(E), and the anticipated maximum frost depth;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months and the design seepage rate;
4. Ensure that the natural seal liner is a durable, low-hydraulic conductivity liner and is accompanied by the liner performance specification and calculations for bottom and sidewall seepage rate;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches and ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained

from well-drained arable land;
ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
iii. The pH of the topsoil is between 5.5 and 8.0;
iv. The plasticity index of the topsoil is between 3 and 15; and
v. The topsoil contains approximately 1-1/2 percent organic matter, by dry weight, either natural or added;

b. If landscaping material other than topsoil is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt- and drought-tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to determine the level of the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the natural seal evapotranspiration bed liner to the seasonal high water table is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The liner covers the bottom and all sidewalls of the bed and is installed on a stable base according to the manufacturer’s installation specifications;
2. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
3. The liner is leak tested under the supervision of an Arizona-registered professional engineer to confirm the design leakage rate; and
4. A 2- to 4-inch layer of 1/2- to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall ensure that the filter cloth is placed on top of the gravel or crushed stone to prevent sand from settling into the gravel or crushed stone.

G. Additional Discharge Authorization requirements. An applicant shall submit the satisfactory results of the leakage test required under subsection (F)(3) to the Department before the Department issues the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed, and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E307. 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.07 General Permit allows for the use of a lined evapotranspiration bed receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a “lined evapotranspiration bed” means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system contained on the bottom and sidewalls by an impervious synthetic liner.
2. An applicant may use a lined evapotranspiration bed if site conditions restrict soil infiltration or require reduction or elimination of the volume of wastewater or nitrogen load discharged to the native soil.
3. Provision of a reserve area is not required for a lined evapotranspiration bed.

B. Restrictions. Unless a person provides design documentation to show that a lined evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a lined evapotranspiration bed:
1. Prevents discharge to the native soil by a synthetic liner,
2. Attains full disposal of wastewater to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter in size) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and calculate the bed design on the basis of the capillary rise of the bed media, according to the “Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2003),” published by the American Society for Testing and Materials and the anticipated maximum frost depth. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months;

4. Ensure that the evapotranspiration bed liner is a durable, low hydraulic conductivity synthetic liner that has a calculated bottom area and sidewall seepage rate of less than 550 gallons per acre per day;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches. The applicant shall ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1 1/2 percent organic matter, by dry weight, either natural or added;
   b. If another landscaping material is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt and drought tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to allow determination of the depth to the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the evapotranspiration bed liner to the surface of the seasonal high water table or impervious layer or formation is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. All liner seams are factory fabricated or field welded according to manufacturer’s specifications. The applicant shall ensure that:
2. The liner covers the bottom and all sidewalls of the bed and is cushioned on the top and bottom with layers of sand at least 2 inches thick or other puncture-protective material;
3. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
4. The liner is leak tested under the supervision of an Arizona-registered professional engineer; and
5. A 2- to 4-inch layer of one-half to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall place filter cloth on top of the gravel or crushed stone to prevent sand from settling into the crushed stone or gravel.

G. Additional Discharge Authorization requirements. An applicant shall submit the liner test results sealed by an Arizona-registered professional engineer to the Department for issuance of the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed; and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E308. 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow

A. A 4.08 General Permit allows for the use of a Wisconsin mound with a design flow of less than 3000 gallons per day receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a “Wisconsin mound” means a disposal technology characterized by:
   a. An above-grade bed system that blends with the land surface into which is dispensed pressure dosed wastewater from a septic tank or other upstream treatment device,
   b. Dispersal of wastewater under unsaturated flow conditions through the engineered media system contained in the mound, and
   c. Wastewater treated by passage through the mound before percolation into the native soil below the mound.
2. An applicant may use a Wisconsin mound if:
   a. The native soil has excessively high or low permeability,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. A reduction in minimum vertical separation is desired.

B. Performance. An applicant shall design a Wisconsin mound so that treated wastewater released to the native soil meets the following criteria:
1. Performance Category A.
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1000 (Log_{10} 3.0) colony forming units per 100 milliliters, 95th percentile; or
2. Performance Category B.
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the internal wastewater distribution system media proposed for use in the Wisconsin mound;

2. Two scaled or dimensioned cross sections of the mound (one of the shortest basal area footprint dimension and one of the lengthwise dimension); and
3. Design calculations following the "Wisconsin Mound Soil Absorption System: Siting, Design, and Construction Manual," published by the University of Wisconsin – Madison, January 1990 Edition (the Wisconsin Mound Manual). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the University of Wisconsin – Madison, SSWMP, 1525 Observatory Drive, Room 345, Madison, WI 53706.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressure dosed wastewater is delivered into the Wisconsin mound through a pressurized line and secondary distribution lines into an engineered aggregate infiltration bed, or equivalent system, in conformance with R18-9-E304 and the Wisconsin Mound Manual. The applicant shall ensure that the aggregate is washed;
2. Wastewater is applied to the inlet surface of the mound media at not more than 1.0 gallon per day per square foot of mound bed inlet surface if the mound bed media conforms with the "Standard Specification for Concrete Aggregates, C33-03 (2003)," published by the American Society for Testing and Materials and the Wisconsin Mound Manual, except if cinder sand is used that is the appropriate grade with not more than 5 percent passing a #200 screen. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. The applicant shall:
   a. For cinder sand, ensure that the rate is not more than 0.8 gallons per day per square foot of mound bed inlet surface; and
   b. Wash the media used for the mound bed;
3. The aggregate infiltration bed and mound bed is capped by coarser textured soil, such as sand, sandy loam, or silt loam. An applicant shall not use silty clay, clay loam, or clays;
4. The cap material is covered by topsoil, following the procedure in the Wisconsin Mound Manual, and the topsoil is capable of supporting vegetation, is not clay, and is graded to drain;
5. The top and bottom surfaces of the aggregate infiltration bed are level and do not exceed 10 feet in width and that:
   a. The minimum depth of the aggregate infiltration bed is 9 inches, or
   b. Synthetic filter fabric permeable to water and air and capable of supporting the cap and topsoil load is placed on the top surface of the aggregate infiltration bed;
6. The minimum depth of mound bed media is:
   a. Performance Category A, 24 inches; or
   b. Performance Category B, 12 inches;
7. The maximum allowable side slope of the mound bed, cap material, and topsoil is not more than one vertical to three horizontal;
8. Ports for inspection and monitoring are provided to verify performance, including verification of unsaturated flow within the aggregate infiltration bed. The applicant shall:
   a. Install a vertical PVC pipe and cap with a minimum diameter of 4 inches as an inspection port at the end of the disposal line, and
   b. Install the pipe with a physical restraint to maintain pipe position;
9. The main pressurized line and secondary distribution lines for the aggregate infiltration bed are equipped at appropriate locations with cleanouts to grade;
10. The following requirements and the setbacks specified in R18-9-A312(C) are observed:
    a. Increase setbacks for the following downslope features at least 30 feet from the toe of the mound system:
       i. Property line,
       ii. Driveway,
       iii. Building,
       iv. Ditch or interceptor drain, or
       v. Any other feature that impedes water movement away from the mound; and
    b. Ensure that no upslope natural feature or improvement channels surface water or groundwater to the mound area;
11. The portion of the basal area of native soil below the mound conforms to the Wisconsin Mound Manual. The applicant shall:
    a. Calculate the absorption of wastewater into the native soil for only the effective basal area;
    b. Apply the soil absorption rate specified in R18-9-A312(D). The applicant may increase allowable loading rate to the mound bed inlet surface up to 1.6 times if the wastewater dispersed to the mound is pretreated to reduce the sum of TSS and BOD_5 to 60 mg/l or less. The applicant may increase the soil absorption rate to not more than 0.20 gallons per day per square foot of basal area if the following slowly permeable soils underlie the mound:
       i. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure; or
       ii. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure;
12. The slope of the native soil at the basal area does not exceed 25 percent, and a slope stability analysis is performed whenever the basal area or site slope within 50 horizontal feet from the mound system footprint exceeds 15 percent.

E. Installation. An applicant shall:
1. Prepare native soil for construction of a Wisconsin mound system. The applicant shall:
   a. Mow vegetation and cut down trees in the vicinity of the basal area site to within 2 inches of the surface;
   b. Leave in place boulders and tree stumps and other herbaceous material that would excessively alter the soil structure if removed after mowing and cutting;
   c. Plow native soil serving as the basal area footprint along the contours to 7- to 8- inch depth;
   d. Not substitute rototilling for plowing; and
   e. Begin mound construction immediately after plowing;
2. Place each layer of the bed system to prevent differential settling and promote uniform density; and
3. Use the Wisconsin Mound Manual to guide any other detail of installation. The applicant may vary installation procedures and criteria depending on mound design but

shall use installation procedures and criteria that are at least equivalent to those in the Wisconsin Mound Manual.

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), the permittee shall:
1. If an existing mound system shows evidence of overload or hydraulic failure, conduct the following sequence of evaluations:
   a. Verify the actual loading and performance of the pretreatment system.
   b. Verify the watertightness of the pretreatment and dosing tanks;
   c. Determine the dosing rates and dosing intervals to the aggregate infiltration bed and compare it with the original design to evaluate the presence or absence of saturated conditions in the aggregate infiltration bed;
   d. If the above steps in subsections (F)(1)(a) through (c) do not indicate an anomalous condition, evaluate the site and recalculation of the disposal capability to determine if mound lengthening is feasible;
   e. Determine if site modifications are possible including changing surface drainage patterns at upgrade locations and lowering the groundwater level by installing interceptor drains to reduce native soil saturation at shallow levels; and
   f. Determine if the basal area can be increased, consistent with R18-9-A309(A)(9)(b)(iv);
2. Prepare servicing and waste disposal procedures and task schedules necessary for clearing the main pressurized wastewater line and secondary distribution lines, septic tank effluent filter, pump intake, and controls.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E309. 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.09 General Permit allows for the use of an engineered pad system receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, an "engineered pad system" means a treatment and disposal technology characterized by:
   a. The delivery of pretreated wastewater by gravity or pressure distribution to the engineered pad and sand bed assembly, followed by dispersal of the wastewater into the native soil; and
   b. Wastewater movement through the engineered pad and sand bed assembly by gravity under unsaturated flow conditions to provide additional passive biological treatment.
2. The applicant may use an engineered pad system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The available area is limited for installing a disposal works authorized by R18-9-E302.

B. Performance. An applicant shall ensure that:
1. The engineered pad system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 50 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 50 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile; or
2. The engineered pad system is designed to meet any other performance, loading rate, and configuration criteria specified in the reviewed product list maintained by the Department as required under R18-9-A309(E).

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit design materials and construction specifications for the engineered pad system.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Gravity and pressurized wastewater delivery is from a septic tank or intermediate watertight chamber equipped with a pump and controls. The applicant shall ensure that:
   a. Delivered wastewater is distributed onto the top of the engineered pad system and achieves even distribution by good engineering practice, and
   b. The dosing rate for pressurized wastewater delivery is at least four doses per day and no more than 24 doses per day;
2. The sand bed consists of mineral sand washed to conform to the "Standard Specification for Concrete Aggregates, C33-03 (2003)," which is incorporated by reference in R18-9-E308(D)(2), unless the performance testing and design specifications of the engineered pad manufacturer justify a substitute specification. The applicant shall ensure that:
   a. The sand bed design provides for the placement of at least 6 inches of sand bed material below and along the perimeter of each pad, and
   b. The contact surface between the bottom of the sand bed and the native soil is level;
3. The spacing between adjacent two-pad-wide rows is at least two times the distance between the bottom of the distribution pipe and the bottom of the sand bed or 5 feet, whichever is greater;
4. The wastewater distribution system installed on the top of the engineered pad system is covered with a breathable geotextile material and the breathable geotextile material is covered with at least 10 inches of backfill.
   a. The applicant shall ensure that rocks and cobbles are removed from backfill cover and grade the backfill for drainage.
   b. The applicant may place the engineered pad system above grade, partially bury it, or fully bury it depending on site and service circumstances;
5. The engineered pad system is constructed with durable materials and capable of withstanding stress from installation and operational service; and
6. At least two inspection ports are installed in the engineered pad system to confirm unsaturated wastewater treatment conditions at diagnostic locations.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place sand media to obtain a uniform density of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), an applicant shall

inspect the backfill cover for physical damage or erosion and promptly repair the cover, if necessary.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (B)(2) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E310. 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.10 General Permit allows for the use of an intermittent sand filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "intermittent sand filter" means a treatment technology characterized by:
   a. The pressurized delivery of pretreated wastewater to an engineered sand bed in a containment vessel equipped with an underdrain system or designed as a bottomless filter;
   b. Delivered wastewater dispersed throughout the sand media by periodic doses from the delivery pump to maintain unsaturated flow conditions in the bed; and
   c. Wastewater that is treated during passage through the media, collected by a bed underdrain chamber, and removed by pump or gravity to the disposal works, or wastewater that percolates downward directly into the native soil as part of a bottomless filter design.
2. An applicant may use an intermittent sand filter if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The applicant desires a reduction in setback distances or minimum vertical separation.

B. Performance. An applicant shall ensure that:

1. An intermittent sand filter with underdrain system is designed so that it produces treated wastewater that meets the following criteria:
   a. TSS of 10 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 10 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 40 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level or 1000 (Log_{10} 3) colony forming units per 100 milliliters, 95th percentile; or
2. An intermittent sand filter with a bottomless filter is designed so that it produces treated wastewater released to the native soil that meets the following criteria:
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
   d. Total coliform level of 100,000 (Log_{10} 5 colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the media proposed for use in the intermittent sand filter.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. Pressurized wastewater delivery is from the septic tank or separate watertight chamber with a pump sized and controlled to deliver the pretreated wastewater to the top of the intermittent sand filter. The applicant shall ensure that the dosing rate is at least 4 doses per day and not more than 24 doses per day;
2. The pressurized wastewater delivery system provides even distribution in the sand filter through good engineering practice. The applicant shall:
   a. Specify all necessary controls, pipes, valves, orifices, filter cover materials, gravel, or other distribution media, and monitoring and servicing components in the design documents; and
   b. Ensure that the cover and topsoil is 6 to 12 inches in depth and graded to drain;
3. The sand filter containment vessel is watertight, structurally sound, durable, and capable of withstanding stress from installation and operational service. The applicant may place the intermittent sand filter above grade, partially buried, or fully buried depending on site and service circumstances;
4. Media used in the intermittent sand filter is mineral sand and that the media is washed and conforms to "Standard Specification for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2);
5. The sand media depth is a minimum of 24 inches with the top and bottom surfaces level and the maximum wastewater loading rate is 1.0 gallons per day per square foot of inlet surface at the rated daily design flow;
6. The underdrain system:
   a. Is within the containment vessel;
   b. Supports the filter media and all overlying loads from the unsupported construction above the top surface of the sand media;
   c. Has sufficient void volume above the normal high level of the intermittent sand filter effluent to prevent saturation of the bottom of the sand media by a 24-hour power outage or pump malfunction; and
   d. Includes necessary monitoring, inspection, and servicing features;
7. Inspection ports are installed in the distribution media and in the underdrain;
8. The bottomless filter is designed similar to the underdrain system, except that the sand media is positioned on top of the native soil absorption surface. The applicant shall ensure that companion modifications are made that eliminate the containment vessel bottom and underdrain and relocate the underdrain inspection port to ensure reliable indication of the presence or absence of water saturation in the sand media;
9. The native soil absorption system is designed to ensure that the linear loading rate does not exceed site disposal capability; and
10. The bottomless sand filter discharge rate per unit area to the native soil does not exceed the adjusted soil absorption rate for the quality of wastewater specified in subsection (B)(2).

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place the containment vessel, underdrain system, filter media, and pressurized wastewater distribution system in an excavation with adequate foundation and each layer installed to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter within the sand media.

F. Operation and maintenance requirements. The applicant shall follow the applicable requirements in R18-9-A313(B).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E311. 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.11 General Permit allows for the use of a peat filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "peat filter" means a disposal technology characterized by:
   a. The dosed delivery of treated wastewater to the peat bed, which can be a manufactured module or a disposal bed excavated in native soil and filled with compacted peat;
   b. Wastewater passing through the peat that is further treated by removal of positively charged molecules, filtering, and biological activity before entry into native soil; and
   c. If the peat filter system is constructed as a disposal bed filled with compacted peat, wastewater that is absorbed into native soil at the bottom and sides of the bed.
2. An applicant may configure a modular system if a portion of the wastewater that has passed through the peat filter is recirculated back to the pump chamber.
3. An applicant may use a peat filter system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock,
   c. A reduction in setback distances or minimum vertical separation is desired, or
   d. Cold weather inhibits performance of other treatment or disposal technologies.

B. Performance. An applicant shall ensure that a peat filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the peat media proposed for use in the peat filter or provided in the peat module, including:
   a. Porosity;
   b. Degree of humification;
   c. pH;
   d. Particle size distribution;
   e. Moisture content;
   f. A statement of whether the peat is air dried, and whether the peat is from sphagnum moss or bog cotton; and
   g. A description of the degree of decomposition;
2. Specifications for installing the peat media; and
3. If a peat module is used:
   a. The name and address of the manufacturer,
   b. The model number, and
   c. A copy of the manufacturer's warranty.

D. Design requirements.
1. If a pump tank is used to dose the peat module or bed, an applicant shall:
   a. Ensure that the pump tank is sized to contain the dose volume and a reserve volume above the high water alarm that will contain the volume of daily design flow; and
   b. Use a control panel with a programmable timer to dose at the applicable loading rate.
2. Peat module system. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Size the gravel bed supporting the peat filter modules to allow it to act as a disposal works and ensure that the bed is level, long, and narrow, and installed on contour to optimize lateral movement away from the disposal area;
   b. For modules designed to allow wastewater flow through the peat filter and base material into underlying native soil, size the base on which the modules rest to accommodate the soil absorption rate of the native soil;
   c. Place fill over the module so that it conforms to the manufacturer's specification. If the fill is planted, the applicant shall use only grass or shallow rooted plants; and
   d. Ensure that the peat media depth is at least 24 inches, the peat is installed with the top and bottom surfaces level, and the maximum wastewater loading rate is 5.5 gallons per day per square foot of inlet surface at the rated daily design flow, unless the Department approves a different wastewater loading rate under R18-9-A309(E).
3. Peat filter bed system. In addition to the applicable requirements in R18-9-A312, the applicant shall ensure that:
   a. The bed is filled with peat derived from sphagnum moss and compacted according to the installation specification;
   b. The maximum wastewater loading rate is 1 gallon per day per square foot of inlet surface at the rated daily design flow;
   c. At least 24 inches of installed peat underlies the distribution piping and 10 to 14 inches of installed peat overlies the piping;
   d. The cover material over the peat filter bed is slightly mounded to promote runoff of rainfall. The applicant shall not place additional fill over the peat; and
   e. The peat is air dried, with a porosity greater than 90 percent, and a particle size distribution of 92 to 100 percent passing a No. 4 sieve and less than 8 percent passing a No. 30 sieve.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), the applicant shall:
1. Peat module system.
   a. Compact the bottom of all excavations for the filter modules, pump, aerator, and other components to provide adequate foundation, slope the bottom toward the discharge to minimize ponding, and ensure that the bottom is flat, and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
   b. Place the peat filter modules on a level, 6-inch deep gravel bed;
   c. Place backfill around the modules and grade the backfill to divert surface water away from the modules;

d. Not place objects on or move objects over the system area that might damage the module containers or restrict airflow to the modules;
e. Cover gaps between modules to prevent damage to the system;
f. Fit each system with at least one sampling port that allows collection of wastewater at the exit from the final treatment module;
g. Provide the modules and other components with anti-buoyancy devices to ensure stability in the event of flooding or high water table conditions; and
h. Provide a mechanism for draining the filter module inlet line; or

2. Peat filter bed system.
   a. Scarify the bottom and sides of the leaching bed excavation to remove any smeared surfaces, and:
      i. Unless directed by an installation specification consistent with this Chapter, place peat media in the excavation in 6-inch lifts; and
      ii. Compact each lift before the next lift is added. The applicant shall take care to avoid compaction of the underlying native soil;
   b. Lay distribution pipe in trenches cut in the compacted peat, and
      i. Ensure that at least 3 inches of aggregate underlie the pipe to reduce clogging of holes or scouring of the peat surrounding the pipe, and
      ii. Place peat on top of and around the sides of the pipes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade over the peat filter for proper drainage, protection from damaging loads, and root invasion of the wastewater distribution system and perform maintenance as needed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E312. 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.12 General Permit allows for the use of a textile filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "textile filter" means a disposal technology characterized by:
   a. The flow of wastewater into a packed bed filter in a containment structure or structures. The packed bed filter uses a textile filter medium with high porosity and surface area; and
   b. The textile filter medium provides further treatment by removing suspended material from the wastewater by physical straining, and reducing nutrients by microbial action.
2. An applicant may use a textile filter in conjunction with a two-compartment septic tank or a two-tank system if the second compartment or tank is used as a recirculation and blending tank. The applicant shall divert a portion of the wastewater flow from the textile filter back into the second tank for further treatment.
3. An applicant may use a textile filter if:
   a. Nitrogen reduction is desired,
   b. The native soil is excessively permeable,
   c. There is little native soil overlying fractured or excessively permeable rock, or
   d. A reduction in setback distances or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a textile filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean, or 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(4); and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. A copy of the manufacturer's filter warranty;
4. If the system is for nitrogen reduction to 15 milligrams per liter, five-month arithmetic mean, specifications on the nitrogen reduction performance of the filter system and corroborating third-party test data;
5. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life; and
6. If a pump or aerator is required for proper operation, the pump or aerator model number and a copy of the manufacturer's warranty.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The textile medium has a porosity of greater than 80 percent;
2. The wastewater is delivered to the textile filter by gravity flow or a pump;
3. If a pump is used to dose the textile filter, the pump and appurtenances meet following criteria:
   a. The textile media loading rate and wastewater recirculation rate are based on calculations that conform with performance data listed in the reviewed product list maintained by the Department as required under R18-9-A309(E),
   b. The tank and recirculation components are sized to contain the dose volume and a reserve volume above the high water level alarm that will contain the volume of daily design flow, and
   c. A control panel with a programmable timer is used to dose the textile media at the applicable loading rate and wastewater recirculation rate.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Before placing the filter modules, slope the bottom of the excavation for the modules toward the discharge point to minimize ponding;
2. Ensure that the bottom of all excavations for the filter modules, pump, aerator, or other components is level and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
3. Provide the modules and other components with anti-buoyancy devices to ensure they remain in place in the event of high water table conditions; and
4. Provide a mechanism for draining the filter module inlet line.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313, the permittee shall not flush corrosives or other materials known to damage the textile material into any drain that transmits wastewater to the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E313. 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow

A. A 4.13 General Permit allows for the use of a separated wastewater streams, denitrifying system for a dwelling.
1. Definition. For purposes of this Section a "denitrifying system using wastewater streams" means a gravity flow treatment and disposal system for a dwelling that requires separate plumbing drains for conducting dishwasher, kitchen sink, and toilet flush water to wastewater treatment tank "A" and all other wastewater to a wastewater treatment tank "B."
   a. Treated wastewater from tanks "A" and "B" is delivered to an engineered composite disposal bed system that includes an upper distribution pipe to deliver treated wastewater from tank "A" to a columnar celled, sand-filled bed.
   b. The wastewater drains downward into a sand bed, then into a pea gravel bed with an internal distribution pipe system that delivers the treated wastewater from tank "B."
   c. The entire composite bed is constructed within an excavation about 6 feet deep.
   d. The system operates under gravity flow from tanks "A" and "B."
   e. An engineered sampling assembly is installed at the midpoint of the disposal line run and at the base of the composite bed during construction to monitor system performance.
2. An applicant may use a separated wastewater streams, denitrifying system where total nitrogen reduction is required under this Article before release to the native soil.

B. Performance. An applicant shall ensure that a separated wastewater streams, denitrifying system is designed so that the treated wastewater released to the native soil meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The applicant shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a separated wastewater streams, denitrifying system achieving the performance requirements specified in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E314. 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

A. A 4.14 General Permit allows for the use of a sewage vault that receives sewage.
1. An applicant may use a sewage vault if a severe site or operational constraint prevents installation of a conventional septic tank and disposal works or any other on-site wastewater treatment facility allowed under this Article.
2. An applicant may install a sewage vault as a temporary measure if connection to a sewer or installation of another on-site wastewater treatment facility occurs within two years of the connection or installation.

B. Performance. An applicant shall:
1. Not allow a discharge from a sewage vault to the native soil or land surface, and
2. Pump and dispose of vault contents at a sewage treatment facility or other sewage disposal mechanism allowed by law.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design requirements. In addition to the requirements in R18-9-A312, an applicant shall:
1. Install a sewage vault with a capacity that is at least 10 times the daily design flow determined by R18-9-A314(4)(a)(i),
2. Use design elements to prevent the buoyancy of the vault if installed in an area where a high groundwater table may impinge on the vault,
3. Test the sewage vault for leakage using the procedure under R18-9-A314(5)(d). The tank passes the water test if the water level does not drop over a 24-hour period,
4. Install an alarm or signal on the vault to indicate when 85 percent of the vault capacity is reached, and
5. Contract with a person who licensed a vehicle under 18 A.A.C. 13, Article 11 to pump out the vault on a schedule specified within the contract to ensure that the vault is pumped before full.

E. Installation, operation, and maintenance requirements. The applicant shall comply with the applicable installation, operation, and maintenance requirements in R18-9-A313(A) and (B).

F. Reference design.
1. An applicant may use a sewage vault that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed storage vault with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E315. 4.15 General Permit: Aerobic System Less Than 3000 Gallons Per Day Design Flow

A. A 4.15 General Permit allows for the construction and use of an aerobic system that uses aeration for treatment.
1. Definition. For purposes of this Section, an "aerobic system" means a treatment unit consisting of components that:
   a. Mechanically introduce oxygen to wastewater,
   b. Typically provide clarification of the wastewater after aeration, and
   c. Convey the treated wastewater by pressure or gravity distribution to the disposal works.
2. An applicant may use an aerobic system if:
   a. Enhanced biological processing is needed to treat wastewater with high organic content,
   b. A soil or site condition is not adequate for installation of a standard septic tank and disposal works under R18-9-E302,
   c. A highly treated wastewater amenable to disinfection is needed, or
   d. Nitrogen removal from the wastewater is needed and removal performance of the system is documented according to subsection (C)(6).

B. Performance.
1. An applicant shall ensure that the aerobic system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(6); and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.
2. An applicant may use an aerobic system that meets the following less stringent performance criteria if the aerobic technology is listed by the Department under R18-9-A309(E) and the Department bases its review and listing on the technology being less costly and simpler to operate when compared to other aerobic technologies:
   a. TSS of 60 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 60 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five month arithmetic mean per liter, if documented under subsection (C)(6); and
   d. Total coliform level of 1,000,000 (Log_{10} 7) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the aerobic system manufacturer;
2. The model number of the aerobic system;
3. Evidence of performance specified in subsection (B)(1) or (B)(2), as applicable;
4. A list of pretreatment components needed to meet performance requirements;
5. A copy of the manufacturer's warranty and operation and maintenance recommendations to achieve performance over a 20-year operational life; and
6. If the aerobic system will be used for nitrogen removal from the wastewater, either:
   a. Evidence of a valid product listing under R18-9-E309(E) indicating nitrogen removal performance, or
   b. Specifications and third party test data corroborating nitrogen reduction to the intended level.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The wastewater is delivered to the aerobic treatment unit by gravity flow either directly or by a lift pump;
2. An interceptor or other pretreatment device is incorporated if necessary to meet the performance criteria specified in subsection (B)(1) or (2), or if recommended by the manufacturer for pretreatment if a garbage disposal appliance is used;
3. A clarifier is provided after aeration for any treatment technology that achieves performance that is equal to or better than the performance criteria specified in subsection (B)(1); and
4. Ports for inspection and monitoring are provided to verify performance.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The installation of the aerobic treatment components conforms to manufacturer's specifications that do not conflict with Articles 1 and 3 of this Chapter and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c); and
2. Excavation and foundation work, and backfill placement is performed to prevent differential settling and adverse drainage conditions.

F. Operation and maintenance requirements. The permittee shall:
1. Follow the applicable requirements in R18-9-A313(B), and
2. Ensure that filters are cleaned and replaced as necessary.

G. Reference design.
1. An applicant may use an aerobic system that achieves the applicable performance requirements by following a reference design on file with the Department.
2. An applicant using a reference design shall submit, with the Notice of Intent to Discharge, supplemental information specific to the proposed installation on a form approved by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E316. 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.16 General Permit allows for the construction and use of a nitrate-reactive media filter receiving pretreated wastewater.
1. Definition. "Nitrate-reactive media filter" means a treatment technology characterized by:
   a. The application of pretreated, nitrified wastewater to a packed bed filter in a containment structure. A packed bed filter consists of nitrate-reactive media that receives pretreated wastewater under appropriate design and operational conditions, and
   b. The ability of the nitrate-reactive filter to further treat the nitrified wastewater by removing total nitrogen by chemical and physical processes.

2. An applicant shall use a nitrate-reactive media filter with a treatment or disposal works to pretreat and dispose of the wastewater.
3. An applicant may use a nitrate-reactive media filter if nitrogen reduction is required under this Article.

B. Restrictions. The applicant shall not use any product to supply pretreated wastewater to the nitrate-reactive media filter unless:
1. The product meets the pretreatment requirements for the filter based on product performance information in the product listing, and
2. The product is listed by the Department as a reviewed product under R18-9-A309(E).

C. Performance. An applicant shall ensure that a nitrate-reactive media filter is designed so that it produces treated wastewater that does not exceed the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 10 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. The manufacturer's requirements for pretreated wastewater supplied to the nitrate-reactive media filter;
4. The manufacturer's specifications for design, installation, and operation for the nitrate-reactive media filter system and appurtenances;
5. The manufacturer's warranty for the nitrate-reactive media filter system and appurtenances;
6. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life for the nitrate-reactive media filter system and appurtenances; and
7. The manufacturer name and model number for all appurtenances that significantly contribute to achieving the performance required in subsection (C).

E. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances conform with manufacturer's specifications,
2. The loading rate of pretreated wastewater to the nitrate-reactive media inlet surface meets the manufacturer's specification and does not exceed 5.00 gallons per day per square foot of media inlet surface area, and
3. The bed packed with nitrate reactive media is at least 24 inches thick.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances are installed according to manufacturer's specifications to achieve proper wastewater treatment, hydraulic performance, and operational life; and
2. Anti-buoyancy devices are installed when high water table or extreme soil saturation conditions are likely during operational life of the facility.

G. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and the manufacturer's specifications for the nitrite-reactive media filter, the permittee shall not dispose of corrosives or other materials that are known to damage the nitrate-reactive media filter system into the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E317. 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.17 General Permit allows for the use of a cap fill cover over a conventional trench disposal works receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "cap system" means a disposal technology characterized by:
   a. A soil cap, consisting of engineered fill placed over a trench that is not as deep as a trench allowed by R18-9-E302; and
   b. A design that compensates for reduced trench depth by maintaining and enhancing the infiltration of wastewater into native soil through the trench sidewalls.
2. An applicant may use a cap system if:
   a. There is little native soil overlying fractured or excessively permeable rock, or
   b. A high water table does not allow the minimum vertical separation to be met by a system authorized by R18-9-E302.

B. Performance. An applicant shall ensure that the design soil absorption rate and vertical separation complies with this Chapter for a trench, based on the following performance, unless additional pretreatment is provided:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed cap fill material.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The soil texture from the natural grade to the depth of the layer or the water table that limits the soil for unsaturated wastewater flow is no finer than silty clay loam;
2. Cap fill material used is free of debris, stones, frozen clods, or ice, and is the same as or one soil group finer than that of the disposal site material, except that the applicant shall not use fill material finer than clay loam as an additive;
3. Trench construction.
   a. The trench bottom is at least 12 inches below the bottom of the disposal pipe and not more than 24 inches below the natural grade, and the trench bottom and disposal pipe are level;
   b. The aggregate cover over the disposal pipe is 2 inches thick and the top of the aggregate cover is level and not more than 9 inches above the natural grade;
   c. The cap fill cover above the top of the aggregate cover is at least 9 inches but not more than 18 inches thick. The applicant shall ensure that:

i. The cap surface is protected to prevent erosion and sloped to route surface drainage around the ends of the trench; and
ii. If the top of the aggregate is at or below the original ground surface, the cap surface has side slopes not more than one vertical to three horizontal; or
iii. If the top of the aggregate is above the original ground surface, the horizontal extent of the finished fill edges is at least 10 feet beyond the nearest trench sidewall or endwall;

d. The criteria for trench length, bottom width and spacing, and disposal pipe size is the same as that for the trench system prescribed in R18-9-E302;
e. Permeable geotextile fabric is placed on the aggregate top, trench end, and sidewalls extending above natural grade;
f. The native soil within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed a 12 percent slope if the top of the aggregate cover extends above the natural grade at any location along the trench length. The applicant shall ensure that the slope within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed 20 percent if the top of the aggregate cover does not extend above the natural grade;
g. The fill material is compacted to a density of 90 percent of the native soil if the invert elevation of the disposal pipe is at or above the natural grade at any location along the trench length;
h. At least one observation port is installed to the bottom of each cap fill trench;
i. The effective absorption area for each trench is the sum of the trench bottom area and the sidewall area. The height of the sidewall used for calculating the sidewall area is the vertical distance between the trench bottom and the lowest point of the natural land surface along the trench length; and
j. If the applicant uses correction factors for soil absorption rate under R18-9-A312(D)(3) and minimum vertical separation under R18-9-A312(E), additional wastewater pretreatment is provided.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall prepare the disposal site when high soil moisture is not present and equipment operations do not create platy soil conditions. The applicant shall:
1. Plow or scarify the fill area to disrupt the vegetative mat while avoiding smearing,
2. Construct trenches as specified in subsection (D)(3),
3. Scarify the site and apply part of the cap fill to the fill area and blend the fill with the scarified native soil within the contact layers, and
4. Follow the construction design specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect and repair the cap fill and other surface features as needed to ensure proper disposal function, proper drainage of surface water, and prevention of damaging loads on the cap.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E318. 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow

A. A 4.18 General Permit allows for the use of a constructed wetland receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. "Constructed wetland" means a treatment technology characterized by a lined excavation, filled with a medium for growing plants and planted with marsh vegetation. The treated wastewater flows horizontally through the medium in contact with the aquatic plants.
   a. As the wastewater flows through the wetland system, additional treatment is provided by filtering, settling, volatilization, and evapotranspiration.
   b. The wetland system allows microorganisms to break down organic material and plants to take up nutrients and other pollutants.
   c. The wastewater treated by a wetland system is discharged to a subsurface soil disposal system.
2. An applicant may use a constructed wetland if further wastewater treatment is needed before disposal.

B. Performance. An applicant shall ensure that a constructed wetland is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 45 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The permittee shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a constructed wetland that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed constructed wetland with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E319. 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.19 General Permit allows for the use of a sand-lined trench receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "sand-lined trench" means a disposal technology characterized by:
   a. Engineered placement of sand or equivalently graded glass in trenches excavated in native soil,
   b. Wastewater dispersed throughout the media by pressure distribution technology as specified in R18-9-E304 using a timer-controlled pump in periodic uniform doses that maintain unsaturated flow conditions, and

c. Wastewater treated during travel through the media and absorbed into the native soil at the bottom of the trench.

2. An applicant may use a sand-lined trench if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. Reduction in setback distances, or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a sand-lined trench is designed so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed media in the trench.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The media used in the trench is mineral sand, crushed glass, or cinder sand and that:
   a. The media conforms to "Standard Specifications for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2), "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C117-04 (2004)," published by the American Society for Testing and Materials, or an equivalent method approved by the Department. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
   b. Sieve analysis complies with the "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C11704," which is incorporated by reference in subsection (D)(1)(a), or an equivalent method approved by the Department;
2. Trenches.
   a. Distribution pipes are capped on the end;
   b. The spacing between trenches is at least two times the distance between the bottom of the distribution pipe and the bottom of the trench or 5 feet, whichever is greater;
   c. The inlet filter media surface, wastewater distribution pipe, and bottom of the trench are level and the maximum effluent loading rate is not more than 1.0 gallon per day per square foot of sand media inlet surface;
   d. The depth of sand below the gravel layer containing the distribution system is at least 24 inches;
   e. The gravel layer containing the distribution system is 5 to 12 inches thick, at least 36 inches wide, and level;
   f. Permeable geotextile fabric is placed at the base of and along the sides of the gravel layer, as necessary. The applicant shall ensure that:
      i. Geotextile fabric is placed on top of the gravel layer, and
      ii. Any cover soil placed on top of the geotextile fabric is capable of maintaining vegetative growth while allowing passage of air;
   g. At least one observation port is installed to the bottom of each sand lined trench;
   h. If the trench is installed in excessively permeable soil or rock, at least 1 foot of loamy sand is placed in the trench below the filter media. The minimum vertical separation distance is measured from the bottom of the loamy sand; and
   i. The trench design is based on the design flow, native soil absorption area at the trench bottom, minimum vertical separation below the trench bottom, design effluent infiltration rate at the top of the sand fill, and the adjusted soil absorption rate for the final effluent quality; and
3. The dosing system consists of a timer-controlled pump, electrical components, and distribution network and that:
   a. Orifice spacing on the distribution piping does not exceed 4 square feet of media infiltrative surface area per orifice, and
   b. The dosing rate is at least four doses per day and not more than 24 doses per day.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that the filter media is placed in the trench to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall ensure that:
1. The septic tank filter and pump tank are inspected and cleaned;
2. The dosing tank pump screen, pump switches, and floats are cleaned yearly and any residue is disposed of lawfully; and
3. Lateral lines are flushed and the liquid waste discharged into the treatment system headworks.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E320. 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

A. A 4.20 General Permit allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a). An applicant may use a disinfection device if:
1. The disinfection device kills the microorganisms by exposing the wastewater to heat, radiation, or a chemical disinfectant.
2. Some means of disinfection is required before discharge.
3. A reduction in harmful microorganisms, as represented by the total coliform level, is needed for surface or near surface disposal of the wastewater or reduction of the minimum vertical separation distance specified in R18-9-A312(E) is desired.

B. Restrictions.

1. Unless the disinfection device is designed to operate without electricity, an applicant shall not install the device if electricity is not permanently available at the site.
2. The 4.20 General Permit does not authorize a disinfection device that releases chemical disinfectants or disinfection byproducts harmful to plants or wildlife in the discharge area or causes a violation of an Aquifer Water Quality Standard.

C. Performance. An applicant shall ensure that:
1. A fail-safe wastewater control or operational process is incorporated to prevent a release of inadequately treated wastewater;
2. The performance of a disinfection device meets the level of disinfection needed for the type of disposal and produces effluent that:
   a. Is nominally free of coliform bacteria;
   b. Is clear and odorless, and
   c. Has a dissolved oxygen content of at least 6 milligrams per liter;

D. Design requirements. An applicant shall ensure that an on-site wastewater treatment facility with a disposal works designed to discharge to the land surface includes disinfection technology that conforms with the following requirements:
1. Chlorine disinfection.
   a. Available chlorine is maintained as indicated in the following table:

pH of Wastewater (s.u.)	Required Concentration of Available Chlorine in Wastewater (mg/L)	
	Wastewater to the Disinfection Device Meets a TSS of 30 mg/L and BOD_5 of 30 mg/L	Wastewater to the Disinfection Device Meets a TSS of 20 mg/L and BOD_5 of 20 mg/L
6	15 – 30	6 – 10
7	20 – 35	10 – 20
8	30 – 45	20 – 35

   b. The minimum chlorine contact time is 15 minutes for wastewater at 70°F and 30 minutes for wastewater at 50°F, based on a flow equal to four times the daily design flow;
2. Contact chambers are watertight and made of plastic, fiberglass, or other durable material and are configured to prevent short-circuiting; and
3. For a device that disinfects by another method other than chlorine disinfection, dose and contact time are determined to reliably produce treated wastewater that is nominally free of coliform bacteria, based on a flow equal to four times the daily design flow.

E. Operation and maintenance. A permittee shall ensure that:
1. If the disinfection device relies on the addition of chemicals for disinfection, the device is operated to minimize the discharge of disinfection chemicals while achieving the required level of disinfection; and
2. The disinfection device is inspected and maintained at least once every three months by a qualified person.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E321. 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.21 General Permit allows for surface application of treated wastewater that is nominally free of coliform bacteria produced by the treatment works of an on-site wastewater treatment facility.

B. Performance. An applicant shall ensure that the treated wastewater distributed for surface application meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean;
4. Is nominally free of total coliform bacteria as indicated by a total coliform level of Log_{10} 0 colony forming units per 100 milliliters, 95th percentile.

C. Restrictions. The applicant shall not install the disposal works if weather records indicate that:
1. Average minimum temperature in any month is 20°F or less, or
2. Over 1/3 of the average annual precipitation falls in a 30-day period.

D. Design requirements. An applicant shall ensure that:
1. The land surface application rate does not exceed the lowest application rate as determined under R18-9-A312(D) minus no greater than 50 percent of the evapotranspiration that may occur during the month with the least evapotranspiration in any soil zone within the top 5 feet of soil;
2. The design incorporates sprinklers, bubbler heads, or other dispersal components that optimize wastewater loading rates and prevent ponding on the land surface;
3. The design specifies containment berms:
   a. Compacted to a minimum of 95 percent Proctor;
   b. Designed to contain the runoff of the 10-year, 24-hour storm event in addition to the daily design flow; and
   c. Designed to remain intact in the event of a more severe rainfall event; and
4. The design incorporates placement of signage on hose bibs, human ingress points to the surface disposal area, and at intervals around the perimeter of the surface disposal area to provide notification of use of treated wastewater and a warning against ingestion.

E. Installation requirements. An applicant shall ensure that installation of the wastewater dispersal components conforms to manufacturer's specifications that do not conflict with this Article and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance. In addition to the requirements specified in R18-9-A313(B), the permittee shall operate and maintain the surface disposal works to:
1. Prevent treated wastewater from coming into contact with drinking fountains, water coolers, or eating areas;
2. Contain all treated wastewater within the bermed area; and
3. Ensure that hose bibs discharging treated wastewater are secured to prevent use by the public.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E322. 4.22 General Permit: Subsurface Drip Irrigation Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.22 General Permit allows for the construction and use of a subsurface drip irrigation disposal works that receives high quality wastewater from an on-site wastewater treatment facility to dispense the wastewater to an irrigation system that is buried at a shallow depth in native soil. A 4.22 General Permit includes a pressure distribution system under R18-9-E304.
1. The subsurface drip irrigation disposal works is designed to disperse the treated wastewater into the soil under unsaturated conditions by pressure distribution and timed dosing. The applicant shall ensure that the pressure distribution system meets the requirements specified in R18-9-E304, and the Department shall consider whether the requirements of R18-9-E304 are met when processing the application under R18-9-A301(B).
2. A subsurface drip irrigation disposal works reduces the downward percolation of wastewater by enhancing evapotranspiration to the atmosphere.
3. An applicant may use a subsurface drip irrigation disposal works to overcome site constraints, such as high groundwater, shallow soils, slowly permeable soils, or highly permeable soils, or if water conservation is needed.
4. The subsurface drip irrigation disposal works includes pipe, pressurization and dosing components, controls, and appurtenances to reliably deliver treated wastewater to driplines using supply and return manifold lines.

B. Performance. An applicant shall ensure that:
1. Treated wastewater that meets the following criteria is delivered to a subsurface drip irrigation disposal works:
   a. Performance Category A.
      i. TSS of 20 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of one colony forming unit per 100 milliliters, 95th percentile; or
   b. Performance Category B.
      i. TSS of 30 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile; and
2. The subsurface drip irrigation works is designed to meet the following performance criteria:
   a. Prevention of ponding on the land surface, and
   b. Incorporation of a fail-safe wastewater control or operational process to prevent inadequately treated wastewater from being discharged.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B), R18-9-A309(B), and R18-9-E304, the applicant shall submit:
1. Documentation of the pretreatment method proposed to achieve the wastewater criteria specified in subsection (B)(1), such as the type of pretreatment system and the manufacturer's warranty;
2. Initial filter and drip irrigation flushing settings;
3. Site evapotranspiration calculations if used to reduce the size of the disposal works; and
4. If supplemental irrigation water is introduced to the subsurface drip irrigation disposal works, an identification of the cross-connection controls, backflow controls, and supplemental water sources.

D. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The design requirements of R18-9-E304 are followed, except that:
   a. The requirement for quick disconnects in R18-9-E304(D)(1)(c) is not applicable, and
   b. The applicant may provide the reserve volume specified in R18-9-E304(D)(3)(a)(iv) in an oversized treatment tank or a supplemental storage tank;
2. Drip irrigation components and appurtenances are properly placed.
   a. Performance category A subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed to prevent ponding on the land surface, and
      ii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; or
   b. Performance category B subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed at least 6 inches below the surface of the native soil;
      ii. A cover of soil or engineered fill is placed on the surface of the native soil to achieve a total emitter burial depth of at least 12 inches;
      iii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; and
      iv. The drip irrigation disposal works is not used for irrigating food crops;
3. Wastewater is filtered upstream of the dripline emitters to remove particles 100 microns in size and larger;
4. A pressure regulator is provided to limit the pressure of wastewater in the drip irrigation disposal works;
5. Wastewater pipe meets the approved pressure rating in "Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120, D1785-04a (2004)," or "Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80, F441/F441M-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
6. The system design flushes the subsurface drip irrigation disposal works components with wastewater at a minimum velocity of 2 feet per second, unless the manufacturer's manual and warranty specify another flushing practice. The applicant shall ensure that piping and appurtenances allow the wastewater to be pumped in a line flushing mode of operation with discharge returned to the treatment system headworks;
7. Air vacuum release valves are installed to prevent water and soil drawback into the emitters;

8. Driplines.
   a. Driplines are placed from 12 to 24 inches apart unless other configurations are allowed by the manufacturer's specifications;
   b. Dripline installation and design requirements, including the allowable deflection, follow manufacturer's requirements;
   c. The maximum length of a single dripline follows manufacturer's specifications to provide even distribution;
   d. The dripline incorporates a herbicide to prevent root intrusion for at least 10 years;
   e. The dripline incorporates a bactericide to reduce bacterial slime buildup;
   f. Disinfection does not reduce the life of the bactericide or herbicide in the dripline;
   g. Any return flow from a drip irrigation disposal works to the treatment works does not impair the treatment performance; and
   h. When dripline installation is under subsection (E)(1)(b) or (c), backfill consists of the excavated soil or similar soil obtained from the site that is screened for removal of debris and rock larger than 1/2-inch;
9. Emitters.
   a. Emitters are spaced no more than 2 feet apart, and
   b. Emitters are designed to discharge from 0.5 to 1.5 gallons per hour;
10. A suitable backflow prevention system is installed if supplemental water for irrigation is introduced to the pumping system. The applicant shall not introduce supplemental water to the treatment works;
11. The drip irrigation disposal works is installed in soils classified as:
   a. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure or in soil with a percolation rate from 45 to 120 minutes per inch;
   b. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure or in soil with a percolation rate from 31 to 120 minutes per inch; and
   c. Other soils if an appropriate site-specific SAR is determined;
12. The minimum vertical separation distances are 1/2 of those specified in R18-9-A312(E)(2) if the design evapotranspiration rate during the wettest 30-day period of the year is 50 percent or more of design flow, except that the applicant shall not use a minimum vertical separation distance less than 1 foot;
13. In areas where freezing occurs, the irrigation system is protected as recommended by the manufacturer;
14. If drip irrigation components are used for a disposal works using a shaded trench constructed in native soil, the following requirements are met:
   a. The trench is between 12 and 24 inches wide;
   b. The trench bottom is between 12 and 30 inches below the original grade of native soil and level to within 2 inches per 100 feet of length;
   c. Two driplines are positioned in the bottom of the trench, not more than 4 inches from each sidewall;
   d. The trench with the positioned driplines is filled to a depth of 6 to 10 inches with decomposed granite or C-33 sand or a mixture of both, with mixture composition, if applicable, and placement specified on the construction drawing;
   e. A minimum of 8 inches of backfill is placed over the decomposed granite or C-33 sand fill to an elevation of 1 to 3 inches above the native soil finished grade;
   f. Observation ports are placed at both ends of each shaded trench to confirm the saturated wastewater level during operation; and
   g. A separation distance of 24 inches or more is maintained between the nearest sidewall of an adjacent trench; and
15. The soil absorption area used for design of a drip irrigation works is calculated using:
   a. For a design that uses the shaded trench method described in subsection (D)(14), the bottom and sidewall area of the shaded trench not more than 4 square feet per linear foot of trench; or
   b. For all other designs, the number of emitters times an area for each emitter where the emitter area is a square centered on each emitter with the side dimension equal to the emitter separation distance selected by the designer in accordance with R18-9-E322(D)(9)(a), excluding all areas of overlap of adjacent squares.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A) and R18-9-E304, the applicant shall ensure that:
1. The dripline is installed by:
   a. A plow mechanism that cuts a furrow, dispenses pipe, and covers the dripline in one operation;
   b. A trencher that digs a trench 4 inches wide or less;
   c. Digging the trench with hand tools to minimize trench width and disruption to the native soil; or
   d. Without trenching, removing surface vegetation, scarifying the soil parallel with the contours of the land surface, placing the pipe grid, and covering with fill material, unless prohibited in subsection (D)(2)(b)(ii);
2. Drip irrigation pipe is stored to preserve the herbicidal and bactericidal characteristics of the pipe;
3. Pipe deflection conforms to the manufacturer's requirements and installation is completed without kinking to prevent flow restriction;
4. A shaded trench drip irrigation disposal works is installed as specified in the design documents used for the Construction Authorization; and
5. The pressure piping and electrical equipment are installed according to the Construction Authorization in R18-9-A301(D)(1)(c) and any local building codes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and R18-9-E304, the permittee shall:
1. Test any fail-safe wastewater control or operational process quarterly to ensure proper operation to prevent discharge of inadequately treated wastewater, and
2. Maintain the herbicidal and bacteriological capability of the drip irrigation disposal works.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E323. 4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

A. A 4.23 General Permit allows for the construction and use of an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day

or more than one on-site wastewater treatment facility on a property or on adjacent properties under common ownership with an combined design flow from 3000 to less than 24,000 gallons per day if all of the following apply:

1. Except as specified in subsection (A)(3), the treatment and disposal works consists of technologies or designs that are covered under other general permits, but are sized larger to accommodate increased flows;
2. The on-site wastewater treatment facility complies with all applicable requirements of Articles 1, 2, and 3 of this Chapter;
3. The facility is not a system or a technology covered by one of the following general permits available for a design flow of less than 3000 gallons per day:
   a. An aerobic system with subsurface or surface disposal described in R18-9-E315;
   b. A disinfection device described in R18-9-E320; or
   c. A seepage pit or pits described in R18-9-E302; and
4. The discharge of total nitrogen to groundwater is controlled.
   a. An applicant shall:
      i. Demonstrate that the nitrogen loading calculated over the property served by the on-site wastewater treatment facility, including streets, common areas, and other non-contributing areas, is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field; or
      ii. Justify a nitrogen loading that is equally protective of aquifer water quality as the nitrogen loading specified in subsection (A)(4)(a)(i) based on site-specific hydrogeological or other factors.
   b. For purposes of the demonstration in subsection (A)(4)(a)(i), the applicant may assume that 0.0333 pounds (15.0 grams) of total nitrogen per day per person is contributed to raw sewage and may determine the nitrogen concentration in the treated wastewater at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. A performance assurance plan consisting of tasks, schedules, and estimated annual costs for operating, maintaining, and monitoring performance over a 20-year operational life;
2. Design documents and the performance assurance plan, signed, dated, and sealed by an Arizona-registered professional engineer;
3. Any documentation submitted under the alternative design procedure in R18-9-A312(G) that pertains to achievement of better performance levels than those specified in the general permit for the corresponding facility with a design flow of less than 3000 gallons per day, or for any other alternative design, construction, or operational change proposed by the applicant; and
4. A demonstration of total nitrogen discharge control specified in subsection (A)(4).

C. Design requirements. The applicant shall comply with the applicable requirements in R18-9-A312 and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

D. Installation requirements. The applicant shall comply with the applicable requirements in R18-9-A313(A) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

E. Operation and maintenance requirements. The applicant shall comply with the applicable requirements in R18-9-A313(B) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

F. Additional Discharge Authorization requirements. In addition to any other requirements, the applicant shall submit the following information before the Discharge Authorization is issued.

1. A signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department affirming that:
   a. The project was completed in compliance with the requirements of this Section and as described in the plans and specifications, or
   b. Any changes are reflected in as-built plans submitted with the Engineer's Certificate of Completion.
2. The name of the service provider or certified operator that is responsible for implementing the performance assurance plan.

G. Reporting requirement. The permittee shall provide the Department with the following information on the anniversary date of the Discharge Authorization:

1. A form signed by the certified operator or service provider that:
   a. Provides any data or documentation required by the performance assurance plan,
   b. Certifies compliance with the requirements of the performance assurance plan, and
   c. Describes any additions to the facility during the year that increased flows and certifies that the flow did not exceed 24,000 gallons per day during any day; and
2. Any applicable fee required by 18 A.A.C. 14.

H. Facility expansion. If an expansion of an on-site wastewater treatment facility operating under this Section involves the installation of a separate on-site wastewater treatment facility on the property with a design flow of less than 3000 gallons per day, the applicant shall submit the applicable Notice of Intent to Discharge and fee required under 18 A.A.C. 14 for the separate on-site wastewater treatment facility.

1. The applicant shall indicate in the Notice of Intent to Discharge the Department's file number and the issuance date of the Discharge Authorization previously issued by the Director under this Section for the property.
2. Upon satisfactory review, the Director shall reissue the Discharge Authorization for this Section, with the new issuance date and updated information reflecting the expansion.
3. If the expansion causes the accumulative design flow from on-site wastewater treatment facilities on the property to equal or exceed 24,000 gallons per day, the Director shall not reissue the Discharge Authorization, but shall require the applicant to submit an application for an individual permit addressing all proposed and operating facilities on the property.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November

12, 2005 (05-3).

Table 1. Unit Design Flows

Wastewater Source	**Applicable Unit**	**Sewage Design Flow per Applicable Unit, Gallons Per Day**
Airport	Passenger (average daily number) Employee	4 15
Auto Wash	Facility	Per manufacturer, if consistent with this Chapter
Bar/Lounge	Seat	30
Barber Shop	Chair	35
Beauty Parlor	Chair	100
Bowling Alley (snack bar only)	Lane	75
Camp Day camp, no cooking facilities Campground, overnight, flush toilets Campground, overnight, flush toilets and shower Campground, luxury Camp, youth, summer, or seasonal	 Camping unit Camping unit Camping unit Person Person	 30 75 150 100-150 50
Church Without kitchen With kitchen	 Person (maximum attendance) Person (maximum attendance)	 5 7
Country Club	Resident Member Nonresident Member	100 10
Dance Hall	Patron	5
Dental Office	Chair	500
Dog Kennel	Animal, maximum occupancy	15
Dwelling For determining design flow for sewage treatment facilities under R18-9-B202(A)(9)(a) and sewage collection systems under R18-9-E301(D) and R18-9-B301(K), excluding peaking factor.	Person	80
Dwelling For on-site wastewater treatment facilities per R18-9-E302 through R18-9-E323: Apartment Building 1 bedroom 2 bedroom 3 bedroom 4 bedroom Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction) Single Family Dwellings Other than Single Family Dwelling, the greater flow value based on: Bedroom count 1-2 bedrooms Each bedroom over 2 Fixture count	 Apartment Apartment Apartment Apartment Resident see R18-9-A314(D)(1) Bedroom Bedroom Fixture unit	 200 300 400 500 100 see R18-9-A314(D)(1) 300 150 25
Fire Station	Employee	45
Hospital All flows Kitchen waste only Laundry waste only	 Bed Bed Bed	 250 25 40

Hotel/motel		
Without kitchen	Bed (2 person)	50
With kitchen	Bed (2 person)	60
Industrial facility		
Without showers	Employee	25
With showers	Employee	35
Cafeteria, add	Employee	5
Institutions		
Resident	Person	75
Nursing home	Person	125
Rest home	Person	125
Laundry		
Self service	Wash cycle	50
Commercial	Washing machine	Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use)		
Picnic, with showers, flush toilets	Parking space	40
Picnic, with flush toilets only	Parking space	20
Recreational vehicle, no water or sewer connections	Vehicle space	75
Recreational vehicle, with water and sewer connections	Vehicle space	100
Mobile home/Trailer	Space	250
Restaurant/Cafeteria	Employee	20
With toilet, add	Customer	7
Kitchen waste, add	Meal	6
Garbage disposal, add	Meal	1
Cocktail lounge, add	Customer	2
Kitchen waste disposal service, add	Meal	2
Restroom, public	Toilet	200
School		
Staff and office	Person	20
Elementary, add	Student	15
Middle and High, add	Student	20
with gym & showers, add	Student	5
with cafeteria, add	Student	3
Boarding, total flow	Person	100
Service Station with toilets	First bay	1000
	Each additional bay	500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store	Employee	20
Public restroom, add	Square foot of retail space	0.1
Swimming Pool, Public	Person	10
Theater		
Indoor	Seat	5
Drive-in	Car space	10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

R18-9-401. Definitions

In addition to the definitions established in A.R.S. §§ 49-101 and 49-201 and A.A.C. R18-9-101, the following terms apply to this Article:

1. "Application of nitrogen fertilizer" means any use of a substance containing nitrogen for the commercial production of a crop or plant. The commercial production of a crop or plant includes commercial sod farms and nurseries.
2. "Contact stormwater" means stormwater that comes in contact with animals or animal wastes within a concentrated animal feeding operation.
3. "Crop or plant needs" means the amount of water and nitrogen required to meet the physiological demands of a crop or plant to achieve a defined yield.
4. "Crop or plant uptake" means the amount of water and nitrogen that can be physiologically absorbed by the roots

and vegetative parts of a crop or plant following the application of water.

5. "Impoundment" means any structure, other than a tank or a sump, designed and maintained to contain liquids. A structure that stores or impounds only non-contact stormwater is not an impoundment under this Article.
6. "Liner" or "lining system" means any natural, amendment, or synthetic material used to reduce seepage of impounded liquids into a vadose zone or aquifer.
7. "NRCS guidelines" means the United States Department of Agriculture, Natural Resources Conservation Service, National Engineering Handbook, Part 651 Agricultural Waste Management Field Handbook, Chapter 10, 651.1080, Appendix 10D – Geotechnical, Design, and Construction Guideline (November 1997). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the United States Department of Agriculture, Natural Resources Conservation Service at ftp://ftp.wcc.nrcs.usda.gov/downloads/wastemgmt/AWMFH/awmfh-chap10-app10d.pdf.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-401 renumbered from R18-9-201 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-402. Nitrogen Management General Permits: Nitrogen Fertilizers

An owner or operator may apply a nitrogen fertilizer under this general permit without submitting a notice to the Director, if the owner or operator complies with the following best management practices:

1. Limit application of the fertilizer so that it meets projected crop or plant needs;
2. Time application of the fertilizer to coincide to maximum crop or plant uptake;
3. Apply the fertilizer by a method designed to deliver nitrogen to the area of maximum crop or plant uptake;
4. Manage and time application of irrigation water to minimize nitrogen loss by leaching and runoff; and
5. Use tillage practices that maximize water and nitrogen uptake by a crop or plant.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-402 renumbered from R18-9-202 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-403. Nitrogen Management General Permits: Concentrated Animal Feeding Operations

A. An owner or operator may discharge from a concentrated animal feeding operation without submitting a notice to the Director, if the owner or operator complies with the following best management practices:

1. Harvest, stockpile, and dispose of animal manure from a concentrated animal feeding operation to minimize discharge of any nitrogen pollutant by leaching and runoff;
2. Control and dispose of nitrogen-contaminated water resulting from an activity associated with a concentrated animal feeding operation, up to a 25-year, 24-hour storm event equivalent, to minimize the discharge of any nitrogen pollutant;
3. Following the requirements in subsection (B), construct and maintain a lining for an impoundment, used to contain process wastewater or contact stormwater from a concentrated animal feeding operation to minimize the discharge of any nitrogen pollutant; and
4. Close a facility in a manner that will minimize the discharge of any nitrogen pollutant. If a liner was used in an impoundment:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect any synthetic liner for evidence of holes, tears, or defective seams that could have leaked. If evidence of leakage is discovered:
      i. Remove the liner in the area of suspected leakage,
      ii. Sample potentially impacted soil, and
      iii. Properly dispose of impacted soil or restore to background nitrogen levels;
   c. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   d. Remove and dispose of the liner elsewhere if the impoundment is bermed;
   e. Grade the facility to prevent the impoundment of water; and
   f. Notify the Department within 60 days following closure.

B. Lining requirements for concentrated animal feeding operation impoundments.

1. New impoundments. The owner or operator shall:
   a. Follow the NRCS guidelines for any newly constructed impoundment or an impoundment first used after November 12, 2005, and
   b. Use a coefficient of permeability of 1×10^{-7} centimeters per second or less as acceptable liner performance. The owner or operator may include up to 1 order of magnitude reduction in permeability from manure sealing in impoundments that hold wastes having manure as a significant component.
2. Impoundments already in use.
   a. The owner or operator shall maintain the existing seal for any impoundment first used before November 12, 2005.
   b. If any of the following conditions exist at a concentrated animal feeding operation, the Director shall send a notice requiring the owner or operator to reassess the performance of the lining system:
      i. The concentrated animal feeding operation is located within a Nitrogen Management Area designated under R18-9-A317; or
      ii. Existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of an Aquifer Water Quality Standard for a nitrogen pollutant at the point of compliance determined under A.R.S. § 49-244, based on the following information:
         (1) Existing contamination of groundwater by nitrogen species;
         (2) Existing and potential impact to groundwater by sources of nitrogen other than the concentrated animal feeding operation;
         (3) Characteristics of the soil surface, vadose zone, and aquifer;
         (4) Depth to groundwater;

(5) The estimated operational life of the impoundment;
(6) Location and characteristics of existing and potential drinking water supplies;
(7) Construction material and design of existing impoundment structure; and
(8) Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.

c. The owner or operator shall, within 90 days of the Director's notice, submit either:
i. A report to the Department demonstrating consistency with NRCS guidelines and the acceptable liner performance criteria established in subsection (B)(1)(b); or
ii. Plans and a schedule to upgrade the liner for the impoundment to meet the NRCS guidelines and the acceptable liner performance criteria in subsection (B)(1)(b). The Director may provide additional time for the submittal of the plans and a schedule for upgrade, if the owner or operator demonstrates that technical or financial assistance to develop the plans is needed.

d. Preliminary decision.
i. Within 90 days from the date of receipt, the Director shall review the report or the plans submitted under subsection (B)(2)(c) and provide to the owner or operator a preliminary decision on the submittal.
ii. The owner or operator may, within 30 days of the preliminary decision, submit written comments and supporting information to the Director on the preliminary decision.
iii. The Director shall evaluate any comments on the preliminary decision and supporting information and, within 90 days of receipt of the comments and information, make a final decision.

e. Final decision.
i. If the Director determines that the owner or operator has demonstrated that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b), no additional action is necessary.
ii. If the Director approves the plans and schedules under subsection (B)(2)(c)(ii), the owner or operator shall implement the plans within the time-frame specified in the approved schedule.
iii. If the Director determines that the owner or operator failed to demonstrate that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b) or that the schedule to upgrade the lining is not acceptable, the owner or operator shall upgrade the lining system within a time-frame specified by the Director.
iv. The owner or operator may appeal the Director's decision under A.R.S. Title 41, Chapter 6, Article 10.

3. Notification requirement. The owner or operator of any lined impoundment shall either:
a. Notify the Department of the type of liner that was used to line each impoundment by February 19 of each year following either:
i. The first use of an impoundment not used before November 12, 2005; or
ii. Completion of a liner upgrade required under this Section for an impoundment used before November 12, 2005; or
b. Include the information required in subsections (B)(3)(a)(i) and (ii) in the next annual report submitted for the AZPDES Concentrated Animal Feeding Operation General Permit, issued under 18 A.A.C. 9, Article 9, Part C.

Historical Note
Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-403 renumbered from R18-9-203 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

A. The Director may revoke coverage under a nitrogen management general permit and require the permittee to obtain an individual permit under 18 A.A.C. 9, Article 2, if the Director determines that the permittee failed to comply with the best management practices under R18-9-403.

B. Notification.
1. If coverage under the nitrogen management general permit is revoked under subsection (A), the Director shall notify the permittee by certified mail of the decision according to the notification and hearing procedures in A.R.S. Title 41, Chapter 6, Article 10. The notification shall include:
a. A brief statement of the reason for the decision,
b. The effective revocation date of the general permit coverage, and
c. A statement of whether the discharge shall cease immediately or whether the discharge may continue until the individual permit is issued, and
2. If the Director requires a person to obtain an individual permit, the notification shall include:
a. An individual permit application form, and
b. A deadline between 90 and 180 days after receipt of the notification for filing the application.

C. When the Director issues an individual permit to an owner or operator of a facility covered under a nitrogen management general permit, the coverage under the nitrogen management general permit is superseded by the individual permit allowing the discharge.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

R18-9-501. Surface Water Quality General Grazing Permit

A. A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:
1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;
2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;

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 assure 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. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Assist the department of health services in recruiting and training state, local and district health department personnel.
15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope

of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This provision shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
    (a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.
    (b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.
12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at 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 H, 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 shall:
(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. After July 20, 2011, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rule making 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.

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.

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged.

State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.
3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for such a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall publish a list of the names and locations of existing facilities that are required to obtain an aquifer protection permit. The director may revise the list as needed. Any revised list shall contain deadlines for the submittal of applications for aquifer protection permits, based on the degree of risk to the public health and welfare and the environment and based on a work plan of the director designed to process all applications for an aquifer protection permit no later than January 1, 2004 for nonmining facilities and no later than January 1, 2006 for mining facilities.

E. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, shall be available to the public on request.

F. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit,

pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-241.02. Payment for aquifer protection permit fees; definitions

A. Only for a one-time rule making after July 29, 2010, the director shall establish by rule fees for aquifer protection permits, including maximum fees and fees for individual or area-wide permits, complex and standard modifications to permits and clean closure of a nonpermitted facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

B. Each permit action application submitted by the applicant is subject to a maximum fee.

C. Notwithstanding any other provision in this section, an applicant may request that the department waive the applicable maximum fee for processing an application for a permit action. On requesting the waiver, the applicant agrees to pay the total direct costs incurred by the department in processing the application and the department may process the application for a permit action.

D. If the department contracts with a consultant under section 49-203, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and agreeing to pay to the department the costs of the consultant's services regardless of the other provisions of this section.

E. The department shall review the revenues derived from and expenses incurred for processing permit action applications through June 30, 2014 to determine the adequacy of the maximum fees, and by August 31, 2014, the department shall issue a report to the legislature on its findings.

F. For the purposes of this section:

1. "Complex modification" means, for purposes of the mining sector, any of the following:

(a) Any new tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance required to have an individual permit under this article, unless this new facility is within an approved passive containment capture zone under section 49-243, subsection G, paragraph 1.

(b) The expansion of the footprint of any tailing impoundment, leach pad or stockpile, or process solution impoundment or conveyance permitted under this article if the expanded facility is not located within a passive containment capture zone under section 49-243, subsection G, paragraph 1, and the expansion either:

(i) Requires expansion of the pollutant management area and a new or relocated point of compliance.

(ii) Extends over a geologic unit of higher hydraulic conductivity than the original facility, unless the original facility is lined and the same liner is extended to cover the entire expansion area.

(c) A new or expanded waste rock pile is not considered to be a discharging facility under section 49-241, subsection B and may be categorized as a complex modification for purposes of this section only if the department determines all of the following:

(i) The new or expanded waste rock pile otherwise qualifies as a discharging facility and is not exempted under section 49-250.

(ii) The new or expanded waste rock pile is located outside of a passive containment capture zone under section 49-243, subsection G, paragraph 1.

(iii) The new or expanded waste rock pile either requires expansion of the pollutant management area and a new or relocated point of compliance or it extends over a geologic unit of higher hydraulic conductivity than the original facility.

2. "Maximum fee" means the maximum amount the director establishes by rule for services for a permit action.

3. "Permit action" means:

(a) Issuance of an individual or area-wide aquifer protection permit to operate or to close.

(b) Issuance of a complex modification of an individual or area-wide aquifer protection permit.

(c) Issuance of a clean closure approval.

(d) Issuance of a standard modification of an individual or area-wide aquifer protection permit.

(e) Denial of any application.

(f) Processing any permit action application request that the applicant withdraws.

G. The department shall adopt a rule to define "complex modification" for other nonmining aquifer protection permit sectors.

49-242. Procedural requirements for individual permits; annual registration of permittees; fee

A. The director shall prescribe by rule requirements for issuing, denying, suspending or modifying individual permits, including requirements for submitting notices, permit applications and any additional information necessary to determine whether an individual permit should be issued, and shall prescribe conditions and requirements for individual permits.

B. Each owner of an injection well, a land treatment facility, a dry well, an on-site wastewater treatment facility with a capacity of more than three thousand gallons per day, a recharge facility or a facility that discharges to navigable waters to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily discharge of pollutants pursuant to subsection E of this section.

C. Each owner of a surface impoundment, a facility that adds a pollutant to a salt dome formation, salt bed formation, underground cave or mine, a mine tailings pile or pond, a mine leaching operation, a sewage or sludge pond or a wastewater treatment facility to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily influent of pollutants pursuant to subsection E of this section.

D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.

E. Only for a one-time rule making after the effective date of this amendment to this section, the director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility. After the one-time rule making, the director shall not increase those fees by rule without specific statutory authority for the increase.

F. For a site with more than one permit subject to the requirements of this section, the owner or operator of the facility at that site shall pay the annual registration fee prescribed pursuant to subsection E of this section based on the permit that covers the greatest gallons of discharge or influent per day plus one-half of the annual registration fee for gallons of discharge or influent for each additional permit.

G. The director shall prescribe the procedures to register the notice of disposal or permit and collect the fee under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund to pay the reasonable and necessary costs of administering the registration program.

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.
2. A description of how the facility will be operated.
3. Existing and proposed pollutant control measures.
4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.
5. The use of water from aquifers in the discharge impact area.
6. The existing quality of the water in the aquifers in the discharge impact area.
7. The characteristics of the pollutants discharged by the facility.

8. Closure strategy.
9. Any other relevant federal or state permits issued to the applicant.
10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:
   (a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.
   (b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.
   (c) The age of equipment and facilities involved.
   (d) The industrial and control process employed.
   (e) The engineering aspects of the application of various types of control techniques.
   (f) Process changes.
   (g) Non-water quality environmental impacts.
   (h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.
2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.
3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria

of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.
2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.
2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).
3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:
   1. Monitoring requirements.
   2. Record keeping and reporting requirements.
   3. Contingency plan requirements.
   4. Discharge limitations.
   5. Compliance schedule requirements.
   6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.
   7. Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.
   8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:
   1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06 and the rules adopted pursuant to that section.
   2. The pollutant that was discharged constituted a hazardous substance.

M. With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N. The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The following apply to an application for a permit or to an issued permit:
   1. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.
   2. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self-assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a) For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b) For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3. Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee that demonstrates financial responsibility by means of a self-assurance or guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.

4. The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.

5. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.

6. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.

7. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit

unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.
2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area-wide permit.
3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.
4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

49-243.01. Presumptive best available demonstrated control technology

A. The director may establish, by rule, presumptive best available demonstrated control technology, processes, operating methods or other alternatives, consistent with section 49-243, subsection B, paragraph 1, for a class of facilities, if the director determines that the facilities in that class are substantially similar in nature. Once presumptive controls are established by rule for a particular class of facilities the director shall review those rules every five years and, if appropriate, revise the rules for that class of facilities.
B. An owner or operator of a facility who applies for an individual permit under section 49-243 shall be deemed to have demonstrated that the design meets the requirements of section 49-243, subsection B, paragraph 1, if the application incorporates the presumptive controls for that class of facilities established pursuant to subsection A of this section.
C. A person or group of persons who own or operate facilities that are required to obtain a permit pursuant to this article may petition the director to establish by rule presumptive best available demonstrated control technology, processes, operating methods or other alternatives for that class of facilities. The director may grant the petition if he determines that the following conditions have been met:
   1. The petition identifies the class of facilities for which rule adoption is requested.
   2. The petition includes a description of the presumptive controls for the requested class of facilities.
   3. The petition complies with section 41-1033.
   4. The class of facilities described in the petition satisfies subsection A of this section.
D. The owner or operator of a facility with a permit shall not be required to obtain a new or modified permit because of rules adopted or revised pursuant to subsection A of this section. Any complete application that is filed before the effective date of any rules adopted or revised pursuant to this section shall be processed by the department without requiring compliance with the rules adopted or revised pursuant to subsection A of this section.

49-244. Point of compliance

The director shall designate a point or points of compliance for each facility receiving a permit under this article. For the purposes of this chapter, the point of compliance is the point at which compliance must be determined for either the aquifer water quality standards or, if an aquifer water quality standard is exceeded at the time the aquifer protection permit is issued, the requirement that there be no further degradation of the aquifer as provided in section 49-243, subsection B, paragraph 3. The point of compliance shall be a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility. For an aquifer that has no existing or reasonably foreseeable drinking water beneficial use, the director may establish monitoring for compliance in another aquifer in lieu of monitoring in the uppermost aquifer. The point of compliance shall be determined as follows:

1. Except as provided in paragraph 2 of this section, for a pollutant that is a hazardous substance the point of compliance is the limit of the pollutant management area. The pollutant management area is the limit projected in the

horizontal plane of the area on which pollutants are or will be placed. The pollutant management area includes horizontal space taken up by any liner, dike or other barrier designed to contain pollutants in the facility. If the facility contains more than one discharging activity, the pollutant management area is described by an imaginary line circumscribing the several discharging activities.

2. A point of compliance for hazardous substances other than that identified in paragraph 1 of this section may be approved by the director if the facility owner or operator can demonstrate either:
   (a) That it is technically impracticable or inappropriate considering the likely fate or transport of a pollutant in an aquifer to monitor at the boundary specified in paragraph 1 of this section.
   (b) The alternative point of compliance will allow installation and operation of the monitoring facilities that are substantially less costly. Such a request by a facility owner or operator under this paragraph must be supported by an analysis of the volume and characteristics of the pollutants that may be discharged and the ability of the vadose zone to attenuate the particular pollutants that may be discharged, including such factors as climate, hydrology, geology and soil chemistry. In no event shall an alternative point of compliance be further from the boundary specified in paragraph 1 of this section than is necessary for purposes of this paragraph, subdivisions (a) and (b) of this paragraph, and in no event shall it be so located as to result in an increased threat to an existing or reasonably foreseeable drinking water source. In addition an alternate compliance point for a hazardous substance pursuant to this subdivision shall never be further downgradient than any of the following:
      (i) The property boundary.
      (ii) Any point of an existing or reasonably foreseeable future drinking water source.
      (iii) Seven hundred fifty feet from the edge of the pollutant management area.
3. For pollutants that are not hazardous substances the director, in identifying a point of compliance, shall take into account the volume and characteristics of the pollutants, the practical difficulties associated with implementation of applicable water pollution control requirements, whether the facility is a new facility or an existing facility, water conservation and augmentation and the site-specific characteristics of the facility, including, but not limited to, climate, hydrology, geology, soil chemistry and pollutant levels in the aquifer. The point of compliance must be so located as to ensure protection of all current and reasonably foreseeable future uses of the aquifer.

49-245. Criteria for issuing general permit

A. The director may issue by rule a general permit for a defined class of facilities if all of the following apply:
   1. The cost of issuing individual permits cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.
   2. The facilities, activities or practices in the class are substantially similar in nature.

3. The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity will meet the applicable requirements in section 49-243 or, as to facilities for which the director has established best management practices, section 49-246.

B. In addition to other applicable enforcement actions, if a person violates the conditions of a general permit, the director may revoke the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended at any time by the director if necessary to comply with this chapter.

C. Rules establishing a general permit shall include terms and conditions to ensure that all discharges and facilities will meet the requirements of this chapter and shall provide for the collective or individual revocation of the general permit if necessary to ensure compliance with this chapter.

D. Rules adopted pursuant to subsection A of this section may require a person who owns or operates a facility seeking coverage under a general permit to notify the director of the person's intent to operate the facility pursuant to the general permit and pay the applicable fee required pursuant to section 49-203.

49-245.01. Storm water general permit

A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water

A. A general permit is issued for the following discharges:

1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water

associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.

(b) The discharge occurs only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.

(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.

(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.

(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.

(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.

(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.

(b) The discharges occur only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with

reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

49-246. Criteria for developing best management practices

A. Pursuant to section 49-245, the director may issue a general permit for facilities requiring implementation of best management practices appropriate to the class of discharges to be regulated. The director shall:
   1. Identify the aquifer water quality problem which must be addressed and determine that protection of aquifer water quality standards can be accomplished through development and implementation of a best management practice for the class of discharge.
   2. Assign a specific advisory committee to create the specific class best management practice to regulate the problem and report its recommendations to the director on a specified schedule.
   3. On issuing a general permit containing best management practices, make a reasonable effort to notify persons conducting or managing the activity subject to the best management practices of the requirements of the best management practices contained in the general permit.

B. The director may establish best management practices for the following facilities or activities:
   1. On-site facilities for urban runoff.
   2. Storm sewers.
   3. Urban runoff.
   4. Silvicultural activities.
   5. Septic tank systems.

C. The director may by rule establish best management practices for additional facilities or activities pursuant to this section, if all of the following apply:
   1. The facilities or activities meet the criteria in section 49-245, subsection A, paragraphs 1 and 2.
   2. The individual facilities or activities within the class are conducted over a large geographic area.

49-247. Agricultural general permits; best management practices for regulated agricultural activities

A. The director shall adopt by rule pursuant to the requirements of this section, agricultural general permits consisting of best management practices for regulated agricultural activities. Agricultural general permits are not subject to section 49-245 or 49-246. Except as provided in subsection G of this section, a person is not required to obtain an individual permit for a regulated agricultural activity.

B. The terms and conditions of agricultural general permits adopted pursuant to this section shall be agricultural best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities. Agricultural best management practices may vary within the state, according to regional and hydrogeologic conditions. The director may waive the use of best management practices in a designated region if the director

determines that existing regulated agricultural activities will not cause or contribute to a violation of the adopted water quality standards.

C. The director shall adopt, by rule, agricultural best management practices, and in doing so shall consider any recommendation of the agricultural best management practices advisory committee established under section 49-248.

D. In adopting agricultural best management practices, the director shall consider:

1. The availability, the effectiveness and the economic and institutional considerations of alternative technologies.
2. The potential nature and severity of discharges from regulated agricultural activities and their effect on public health and the environment.

E. In adopting best management practices for regulated agricultural activities, the director shall require the application of all economically feasible best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity.

F. Compliance with best management practices adopted pursuant to this section constitutes compliance with this article.

G. If the director, after providing a person with notice and an opportunity for a hearing determines that the person has violated the applicable best management practices, the director may revoke the agricultural general permit for that person and require that the person obtain a permit pursuant to section 49-241.

H. The director may periodically reexamine, evaluate and propose any modification to or waiver of agricultural best management practices necessary to meet the requirements of this article after considering any recommendation submitted by the advisory committee established under section 49-248.

49-248. Agricultural best management practices advisory committee

A. The agricultural best management practices advisory committee is established to develop and recommend best management practices for grazing activities as defined in section 49-202.01 and to develop and recommend best management practices for concentrated animal feeding operations. The directors, or the directors' designees, from the department of environmental quality, the Arizona department of agriculture and the department of water resources and the dean of the college of agriculture of the university of Arizona, or the dean's designee, shall serve on the advisory committee.

B. The governor shall appoint ten members to the advisory committee as follows:
   1. Two persons who are actively engaged in dairying.
   2. Two persons who are actively engaged in commercial livestock operations.
   3. One person who is actively engaged in the production of swine.
   4. One person who is actively engaged in the production of poultry.
   5. One hydrologist from the university of Arizona college of agriculture.
   6. Two persons who are actively engaged in cattle grazing.
   7. One person who is actively engaged in sheep grazing.

C. Appointive members shall be appointed to terms of six years and may be reappointed to one additional term. Members are not entitled to compensation

for their services as such but are entitled to reimbursement for expenses as provided by law for travel on, and attending, official business. The committee shall elect a chairperson from among the appointive members to serve a two year term as chairperson. The chairperson may be reelected. The committee shall meet on the call of its chairperson or at the request of a majority of its appointive members. The department of environmental quality, the Arizona department of agriculture, the department of water resources and the college of agriculture of the university of Arizona shall cooperate with, provide technical and expert assistance to and supply data and other necessary information to the advisory committee. The department of environmental quality shall furnish necessary staff support and meeting facilities to the advisory committee.

D. The advisory committee shall develop and recommend to the director best management practices for discharges from a regulated agricultural activity considering the requirements of section 49-247.

E. The advisory committee may appear or be represented at any administrative proceeding for adopting the agricultural best management practices.

F. The advisory committee shall periodically reexamine, evaluate and propose any modification to agricultural best management practices necessary to meet the requirements of this article. The advisory committee may recommend modifications to agricultural best management practices at any time on its own initiative.

49-249. Aquifer pollution information

The director shall make available to the public upon request and on the agency's web site every five years the levels of pollutants in aquifers in this state and the effects of regulation under this chapter in general and best management practices in particular on controlling or reducing pollution in aquifers.

49-250. Exemptions

A. The director may, by rule, exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from such facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.

6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

49-251. Temporary emergency waiver

A. A facility owner or operator may apply for, and the director may issue, a temporary emergency waiver of compliance with the requirement to obtain a permit or with any applicable permit requirement, surface or aquifer water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds any of the following:
    1. That an emergency of such severity exists that water supplies for domestic uses will be inadequate to meet demand unless the facility is able to temporarily exceed one or more water quality standards or discharge limitations by its discharge into waters of the state.
    2. That there has been a breakdown of equipment or upset of operations resulting in a discharge to waters of the state in excess of one or more water quality standards or discharge limitations, and both of the following apply:

(a) The breakdown or upset was beyond the control of the facility owner or operator and the facility was being operated in compliance with this chapter before the discharge.

(b) The breakdown or upset will be corrected in a reasonable period of time.

3. That the activity that is the subject of the waiver is necessary to protect human health or welfare or minimize potential adverse impacts to the environment.

B. A temporary emergency waiver of compliance issued by the director may be subject to such reasonable terms and conditions as the director deems necessary. The director may grant a waiver after the occurrence of the activity that is subject to the waiver if the applicant demonstrates that exigent circumstances made it impractical to secure the waiver in advance.

C. As a condition to the issuance of a temporary emergency waiver of compliance, the director may require the facility owner or operator to provide notice of the waiver to all downstream or downgradient users directly affected by both:

1. Publication on not less than three consecutive days, or on three consecutive weeks in the case of weekly publications, in a newspaper or newspapers of general circulation in the area in which the emergency or breakdown has occurred or is occurring.
2. Furnishing a copy of the publication to the radio and television stations serving the area in which the emergency or breakdown has occurred or is occurring.

D. The facility owner or operator shall furnish a copy of the publication to the director.

E. A temporary emergency waiver of compliance issued pursuant to this section shall remain in effect as long as necessary to accommodate the emergency but in no event longer than ninety days.

F. A person operating under a temporary emergency waiver is not subject to section 49-262 or 49-263 for discharges allowed under the temporary emergency waiver but is subject to article 5 of this chapter.

49-252. Closure notification and approval

A. A person who owns or operates a dry well subject to this article or a groundwater protection permit facility as defined in section 49-241.01, subsection C or a person who has been issued a permit pursuant to this article shall notify the director of the intent to permanently cease an activity for which the facility or a portion of the facility was designed or operated.

B. Within ninety days of the notification in subsection A of this section, the owner or operator shall submit a closure plan to the director.

C. Within sixty days of submittal of a complete closure plan, the director shall determine whether or not the closure plan is for a clean closure.

D. If the director determines that the closure plan is for a clean closure, the director shall send a letter of approval to the owner or operator and no aquifer protection permit shall be required.

E. If the director determines that the proposed closure plan achieves a closure condition other than clean closure, the owner or operator shall submit either an application for an aquifer protection permit or a request to modify a current aquifer protection permit in order to address closure activities and postclosure

monitoring and maintenance at the facility. The director shall require submittal of a permit application or a request to modify a permit within ninety days or a reasonable time not to exceed one year, if the applicant can supply a scope of work justifying a schedule for collecting the technical information necessary to apply.

DEPARTMENT OF AGRICULTURE (F-16-0802)
Title 4, Chapter 29, Article 1, General and Administrative Provisions; Article 2, Certification, Registration and Licensure; Continuing Education; Article 3, Pest Management; Article 4, Supervision; Article 5, Recordkeeping and Reporting; Article 6, Inspections; Disciplinary Procedures

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-2**

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

FROM: Shama Thathi, Staff Attorney

DATE : November 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF AGRICULTURE (F-16-0802)**
Title 4, Chapter 29, Article 1, General and Administrative Provisions; Article 2, Certification, Registration and Licensure; Continuing Education; Article 3, Pest Management; Article 4, Supervision; Article 5, Recordkeeping and Reporting; Article 6, Inspections; Disciplinary Procedures

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The rules reviewed address procedures involved in administering the Pest Management Division (PMD), formerly known as the Office of Pest Management (OPM), through the Arizona Department of Agriculture (Department). The PMD licenses commercial pest control businesses, as well as the pesticide applicators and inspectors employed by these companies. It also enforces laws governing pesticide use, disposal and storage. Pesticide applications used directly in the commercial production of crops and animals are exempt from PMD regulations.

This five-year-review report covers 43 rules and one table in A.A.C. Title 4, Chapter 29, which pertain to licensure, supervision, reporting and inspections. The rules, as written, became effective at various times between 2013 and 2015.

Articles Contents

Article 1 contains five rules and one table, related to general and administrative provisions.

Article 2 contains 15 rules, related to certification, registration, licensure and continuing education requirements.

Article 3 contains ten rules, related to usage, storage and disposal of pesticides and devices.

Article 4 contains seven rules, related to supervision of applicators.

Article 5 contains five rules, related to recordkeeping and reporting.

Article 6 contains six rules, related to inspections and disciplinary procedures.

Proposed Action

In addition to the specific actions described below, the Department indicates that it is working with stakeholders to generate ideas and feedback that can further improve the current rules. If less burdensome alternatives are generated, the Department intends to submit a request for an exemption from the moratorium to the Governor's Office by January 1, 2017.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Department indicates that the rules are generally effective in achieving their objectives with the following exceptions:

- R4-29-202 should be amended to add a requirement that the licensee promptly inform the PMD of any change in address or other contact information.
- R4-29-203 should be amended to require applicants to provide evidence of lawful presence prior to examination. This amendment will reduce the amount of time spent on applications by both the PMD and applicants that are ultimately denied due to failure to submit proof of lawful presence.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

Yes. The Department indicates that it received one written comment from the Arizona Pest Professional Organization (AzPPO) during the 2015 rulemaking. The AzPPO comment supported the fee reductions, and supported an effective date prior to the 2015 licensing renewal cycle. The OPM implemented the decrease as soon as the rulemaking became effective.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Department cites to A.R.S. § 3-3603(A) as general authority for the rules. Under A.R.S. § 3-3603(A)(1), the director of the Department shall "[a]dopt rules that are necessary or proper to administer and implement this chapter, including rules that may be more stringent than a corresponding federal law…." In addition, the Department cites to applicable specific statutory authority throughout the report.

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Department notes that the rules are consistent with other rules and statutes with the following specific exceptions:

- R4-29-101 contains outdated statutory references to Title 32.
- R4-29-104 should be amended to update statutory references and the name of the committee.
- R4-29-306(A)(2) requires notices to customers to include the "specific site *to* which a pesticide was applied." R4-29-501(A)(2) requires applicators to maintain records including the "specific site *at* which a pesticide was applied." The two rules would be more consistent if they stated "specific site *to* which a pesticide was applied."
- R4-29-601 should be amended to remove the "within 24 hours" language to remain consistent with the statutory requirement.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Department indicates that the rules are enforced as written to the extent that they do not conflict with other rules and statutes.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The Department has identified the following changes that would make the rules more clear, concise and understandable:

- R4-29-101 should include a definition for "advertising and management" or "advertising pest management" to clarify what landscapers are allowed to advertise without violating the law. In addition, the definition for "Division" should be updated and references to OPM should be changed to PMD, as necessary.
- R4-29-208 should be amended to clarify that the applicators must obtain the required hours of continuing education prior to June 1.
- R4-29-215 should include language specifying that teachers and students may only earn continuing education credit for teaching or attending a course once per cycle.
- R4-29-308(I) should replace the word "treatment" with "drill" to clarify the expectation that applicators patch all holes drilled during a pest management service rather than only those injected with pesticides.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. The Department states that 40 C.F.R. parts 150-180, Pesticide Programs, contains the federal regulations related to pesticide application, registration, and certification of pesticide applicators. Under these regulations, Arizona may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. See 40 CFR 171.7. The standards of certification in the State plan must "conform and be at least equal to those prescribed" in the federal regulations. 40 CFR 171.4(a). See also 40 CFR 171.5(a), 171.7(e)(1)(i)(C) and 171.7(e)(1)(ii)(B). These rules are in conformance with 40 C.F.R. §§ 150-180 and the approved State plan.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Yes. The Department indicates that the rules require issuance of a regulatory permit, license or agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Yes. The Department indicates that an exception, A.R.S. § 41-1037(A)(2), applies to the rules. R4-29-102, R4-29-103, R4-29-202, R4-29-203, R4-29-204, R4-29-207, and R4-29-208 set requirements for obtaining licenses or certifications required by R4-29-201. General permitting is not used because the authorizing statutes prescribe seven categories of certification and distinct licensure requirements for businesses and individuals. See A.R.S. §§ 3-3614, 3-3615, 3-3616, and 3-3617.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates that no course of action was proposed in the report approved by the Council in July 2011.

Conclusion

As mentioned above, the Department anticipates submitting a request for an exemption from the moratorium by January 1, 2017 and will begin the rulemaking process upon approval

from the Governor's Office. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends that the report be approved.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-2**

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

FROM: GRRC Economic Team

DATE : November 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF AGRICULTURE (F-16-0802)**
Title 4, Chapter 29, Article 1, General and Administrative Provisions; Article 2, Certification, Registration and Licensure; Continuing Education; Article 3, Pest Management; Article 4, Supervision; Article 5, Recordkeeping and Reporting; Article 6, Inspections; Disciplinary Procedures

---

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 2015 was reviewed for Articles 1, 2, 3, 4, 5, and 6.

The Pest Management Division (PMD) is responsible for the licensing and regulation of pest control businesses, pesticide use, and pesticide storage, with the exception of commercial crop production, commercial animal production, and golf courses. These exempt industries are regulated by the Environmental Services Division of ADA.

Key stakeholders that are impacted are PMD, pest control businesses, consumers of pest control services, and the general public. PMD notes that most of the burden associated with these rules is derived from the statutes instead of the rules used to enforce these statutes.

In FY 2014, PMD processed approximately 10,500 licenses, certifications, and registrations. In the same year, PMD received roughly 1,500 applicants for qualified applicator certification. Finally, in FY 2014, PMD received approximately 170,000 termite action report forms (TARFs). Fees for these services can range from $450 for a two year business license to $2 for an electronic TARF submission.

PMD concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Articles cited above.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

PMD believes that the current rules impose minimal burdens and costs while achieving the regulatory objective. There are minor corrections that could improve the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to PMD by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

DOUGLAS A. DUCEY
Governor

MARK W. KILLIAN
Director

Arizona Department of Agriculture

Animal Services Division
1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-4293 FAX (602) 542-4290

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May 27, 2016

Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 4, Chapter 29

Dear Ms. Ong:

Enclosed please find the Office of Pest Management's five-year review report for A.A.C. Title 4, Chapter 29.

The Office reviewed all the rules in the article. It does not intend for any rules to expire under A.R.S. § 41-1056(J).

The Office certifies that it is in compliance with A.R.S. § 41-1091.

Please contact Aaron Thompson at (602) 542-8334 or Aaron.Thompson@azag.gov with any questions about this report.

Sincerely,

Mark Killian, Director
Arizona Department of Agriculture

MK/at

PEST MANAGEMENT DIVISION
FORMERLY
OFFICE OF PEST MANAGEMENT

2016 FIVE-YEAR REVIEW REPORT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. OFFICE OF PEST MANAGEMENT

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Office of Pest Management
2016 Five-Year Review Report
I. Introduction

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Pest Management Division (PMD) (formerly Office of Pest Management (OPM)) rules listed under A.A.C. Title 4, Chapter 29 is due May 27, 2016.

The PMD licenses commercial pest control businesses in Arizona and the pesticide applicators and inspectors employed by these companies. It also enforces laws governing pesticide use and storage. Statute designates the Director of the Arizona Department of Agriculture (ADA) as the head of PMD and assigns the Director the authority over and responsibility for enforcing PMD law. Pesticide applications used directly in the commercial production of crops and animals or used not for hire on golf courses are exempt from PMD regulations. The Environmental Services Division of ADA regulates those types of applications.

II. Information That Is Identical For All Rules

1. Statutory Authority.

General: A.R.S. §3-3603(A)(1)[1]

3. Effectiveness.

The rules are effective in meeting their respective objectives.

4. Consistency.

Except as stated herein these rules are consistent with each other and are consistent with PMD statutes: A.R.S. Title 3, Chapter 20.

5. Enforcement.

The rules are enforced as written.

6. Clarity, Conciseness and Understandability.

Except as noted herein, the rules are clear and concise; however, PMD is requesting a rule making to update the department name from Office of Pest Management to Pest Management Division.

7. Written Criticisms.

The Council has not received any written criticisms of the current rules that are in place. However, in 2015, during a rulemaking, PMD received written support from Arizona Pest Professional Organization (AzPPO) when they amended R4-29-103 to reduce licensing fees. AzPPO also expressed appreciation for PMD working with, and including industry in the rulemaking process. Additionally, at an oral proceeding in the 2015 rulemaking, Kevin Etheridge asked for clarification about whether R4-29-308 will apply to warranty service or renewals. PMD responded that the amendments would not affect warranty service or renewals and explained that the amendments to R4-29-308 prevent issuance of a treatment proposal when no on-site inspection has been performed.

8. Economic, Small Business, and Consumer Impact Comparison.

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared by PMD as part of a rulemaking by GRRC on March 3, 2015.

9. Analysis Submitted Comparing Rule's Impact.

No analysis was submitted.

10. Completion of Previous Five-Year Review.

OPM completed the course of action proposed in the previous report.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

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[1] SB 1270 transferred the Office of Pest Management from Title 32 to the Title 3 under the Arizona Department of Agriculture and renamed it the Pest Management Division.

As noted in the previous report much of the burden and costs associated with these regulations is mandated by statute. Furthermore, since the last report, OPM has gone through a series of statutory and rule changes as part of the transition of its authority to the Director of the ADA.

Laws 2011, Ch. 20, § 6 required the Director of the ADA to appoint a nine member task force made up of PMD stakeholders to study the regulation of structural pest management in Arizona. The Task Force and its subcommittees held over eighteen public meetings to review the laws and regulations governing structural pest management and to develop proposed statute and rules. The Task Force developed the proposed statutes and rules on parallel paths to help ensure appropriate regulatory oversight while imposing the least burden and costs to regulated persons.

The Task Force's recommendations became SB1290 (2013) and SB1143 (2013), albeit with a few changes made by the Legislature. Both bills passed and were signed into law. See Laws 2013, ch. 125 & Laws 2013, ch. 64. Subsequently, OPM established, by exempt rulemaking procedures, rules to implement the statutory changes. See 19 A.A.R. 2967, October 4, 2013 and 20 A.A.R. 705, March 21, 2014. Finally, OPM conducted a regular rulemaking to make its exempt fee rule permanent, reduce license fees established under the rule, and address practical issues in the rules that have been uncovered during the initial period of their enforcement. 20 A.A.R. 451, March 27, 2015.

SB 1270, 52nd Leg., 2nd Reg. Sess., 2016, signed by the Governor on May 12, 2016,eastablishes the Division of Pest Management within ADA and transfers certain specified authority, duties and responsibilities originally granted to the OPM to the ADA. The law includes a one year exemption from the rulemaking requirements of the Arizona Administrative Procedure Act. ADA plans to continue to work with its stakeholders and make appropriate changes to its rules.

Due to the long process PMD has under gone over the last five years it believes these rules achieve the regulatory objectives while imposing the least burden and costs to regulated persons.

12. Determination that Rules are not more Stringent than Corresponding Federal Law

Pesticide Programs, 40 C.F.R. §§ 150-180, contains the federal regulations related to pesticide registration, application, and certification of pesticide applicators. A State may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. See 40 CFR 171.7. The standards of certification in the State plan must "conform and be at least equal to those prescribed" in 40 CFR 171.4(a) & 171.5(a). See also 40 CFR 171.7(e)(1)(i)(C) & (e)(1)(ii)(B). These rules are in conformance with 40 C.F.R. §§ 150-180 and the approved State plan. Furthermore, A.R.S. § 3-3603 expressly authorizes the Director of ADA to adopt rules that are more stringent than corresponding federal law.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

These rules comply with A.R.S. § 41-1037. R4-29-201 requires a permit. Rules R4-29-102, R4-29-103, R4-29-202, R4-29-203, R4-29-204, R4-29-207, and R4-29-208 set requirements for obtaining permits required by R4-29-201. General permitting is not used because the authorizing statutes prescribe seven categories of certification and distinct licensure requirements for businesses and individuals. See A.R.S. §§ 3-3614, 3-3615, 3-3616, and 3-3617.

14. Proposed Action.

PMD has been working with stakeholders in an effort to generate ideas to update the rules to eliminate unnecessary and burdensome rules and clarify the remaining rules. PMD anticipates requesting the Governor's exemption to the moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

III. Information That Is Different For Each Rule

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R4-29-101. Definitions

2. Objective.

This rule prescribes definitions of terms used in PMD's other rules.

4. Consistency.

This rule contains several outdated statutory references related to the transfer to Title 3 which will be corrected in the next rulemaking.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes adding a definition of "advertising weed management" or "advertising pest management" might help to clarify what landscapers are allowed to advertise without violating PMD law. Additionally, an updated definition of "Division" and changing references to OPM to PMD is necessary.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval. Updates to this rule would occur during this rulemaking.

R4-29-102. Certification Categories; Scope

1. Statutory Authority.

Specific: A.R.S. § 3-3614(A).

2. Objective.

Pursuant to A.R.S. § 3-3614, pesticide applicators are not required to be certified to perform all types of pest management services. Instead applicators need only be certified to perform the specific type of service which they provide. This rule provides further clarification on what type of services are included in seven certification categories in statute and establishes one additional category.

R4-29-103. Fees; Charges; Exemption

1. Statutory Authority.

Specific: A.R.S. §§ 3-3603, 3-3614(A), 3-3618, 3-3631(C)

2. Objective.

This rule sets the various fees related to PMD licenses, termite action report forms, and certification examinations, including provisions for late fees, returned checks, and credit cards.

R4-29-104. Pest Management Advisory Committee

1. Statutory Authority.

Specific: A.R.S. § 3-3605(A)

2. Objective.

Pursuant to A.R.S. § 3-3605, this rule establishes and provides a basic framework for the Pest Management Advisory Committee, including the number of members, member qualifications, terms, vacancies, and elections.

4. Consistency.

This rule needs to be revised to update the statutory reference and name of the committee.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval. Updates to this rule would occur during this rulemaking.

4-29-107. Licensing Time-frames

1. Statutory Authority.

Specific: A.R.S. § 41-1073

2. Objective.

This rule prescribes specific time-frames for processing applications for licenses issued under this chapter.

Table 1. Time-frames (Calendar Days)

1. Statutory Authority.

Specific: A.R.S. § 41-1073

2. Objective.

This rule displays the time-frames within which the PMD will act on a license application.

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

R4-29-201. Activities that Require a License; Exemptions

2. Objective.

This rule further describes the three primary kinds of licenses issued under PMD statutes, outlines the relationship among the licenses, and describes entities and activities that are exempt from licensure.

R4-29-202. Business License

1. Statutory Authority.

Specific: A.R.S. § 3-3615(B)(1)

2. Objective.

This rule prescribes the information that must be submitted to PMD to obtain a business license and contains other provisions relevant to business license holders, including the requirement that a business register a qualifying party, expiration and transferal provisions, and provisions relating to proof of financial security.

3. Effectiveness.

This rule is generally effective in achieving its objective. PMD believes adding a requirement to update PMD if a licensee's address or other contact information on file changes might increase the effectiveness of this rule and the regulatory scheme generally by ensuring more effective and efficient communication between PMD and licensees.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-203. Applicator Certification

1. Statutory Authority.

Specific: A.R.S. § 3-3615(B)(1)

2. Objective.

This rule prescribes the information that must be submitted to PMD to obtain an applicator license and contains other provisions relevant to applicator license holders, including provisions related to the requirement that an applicant be of good moral character, examination, and expiration and transferal of licenses.

3. Effectiveness.

This rule is generally effective in achieving its objective; however between October 2013, and October 2015, 780 applicants were denied licenses for failure to submit proof of lawful presence. PMD believes amending the rule to require applicants to provide evidence of lawful presence prior to examination may be a more efficient manner to achieve the objective because it could reduce the amount of time spent on applications by both PMD and applicants that are ultimately unapproved due to failure to submit proof of lawful presence.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-204. Qualified Applicator Certification

1. Statutory Authority.

Specific: A.R.S. § 3-3616(B)(1)

2. Objective.

This rule prescribes the information that must be submitted to PMD to obtain qualified applicator certification and contains other provisions relevant to qualified applicators, including required experience, moral character requirements, examination, and expiration and transferal of certification.

R4-29-205. Qualifying Party Registration; Temporary Qualifying Party Registration

1. Statutory Authority.

Specific: A.R.S. § 3-3616(B)(2)

2. Objective.

This rule prescribes the information that must be submitted to PMD to register as a qualifying party for a business licensee or school district and contains other provisions relevant to qualifying parties, including the requirement that one be certified in the category in which they register, provisions related to temporary registration, expiration, and transferal of registrations.

R4-29-206. Branch Office Registration; Branch Supervisor Registration

1. Statutory Authority.

Specific: A.R.S. § 3-3617

2. Objective.

This rule prescribes the information that must be submitted to PMD to register as a branch office and a branch supervisor and contains other provisions relevant to branch offices and supervisors, including the requirement that the branch office may only do business in the name of the business licensee, the requirement that the branch supervisors may only supervise one physical location, and provisions related to expiration and transferal of registrations.

R4-29-207. Applicator Registration

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(19)

2. Objective.

This rule requires business licensees and political subdivisions to register all of their applicators, prescribes the information and fees required to complete a registration, requires uncertified applicators to be at least 18 years old, makes the business licensee and the qualifying party both responsible for registering applicators, and establishes a $150 penalty for failing to register.

R4-29-208. License, Certification and Registration Renewal

2. Objective.

This rule sets forth the requirements for renewal of PMD licenses, including provisions for expired licenses and surrendering a license.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes the clarity of the rule could be improved by adding language that clarifies that applicators must have obtained the required about continuing education prior to June 1.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-209. Change in Business Licensee

2. Objective.

This rule specifies the circumstance under which a business license may be transferred and the procedure for notifying the PMD when a business licensee changes the name or form of the business.

R4-29-210. Certification Broadening

1. Statutory Authority.

Specific: A.R.S. § 3-3614

2. Objective.

The objective of this rule is to specify the procedure for an applicator or qualifying party licensee to become licensed to work in another license category.

R4-29-211. Certification Examination

1. Statutory Authority.

Specific: A.R.S. § 3-3603(A)(3)

2. Objective.

The objective of this rule is to specify the examination requirements for applicator certification and qualified applicator certification.

R4-29-212. Reciprocity

2. Objective.

This rule allows the Director to waive the examination requirements for individuals licensed to apply pesticides by the Arizona department of Agriculture or another state.

R4-29-213. Political Subdivision Responsible Individual

1. Statutory Authority.

Specific: A.R.S. § 3-3612(A)(2)

2. Objective.

This rule specifies the requirements for political subdivisions to designate individuals responsible for PMD compliance.

R4-29-215. Continuing Education

2. Objective.

This rule specifies the continuing education requirements for certified applicators and qualified applicators the manner in which an individual who holds both applicator and qualifying party licenses may use participation in a continuing education to meet the requirement for both licenses.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes the rule could provide additional clarity and information on these issues if language were added to specify that continuing education teachers and students may only get credit for teaching and attending a course once per cycle. If a teacher re-teaches or a student re-attends a course additional those hours will not be counted towards the continuing education requirements.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-216. Continuing Education Approval

1. Statutory Authority.

Specific: A.R.S. § 3-3603(A)(7)

2. Objective.

This rule specifies the requirements for obtaining PMD's approval of continuing education courses and the requirements for continuing education providers.

ARTICLE 3. PEST MANAGEMENT

R4-29-301. Using Pesticides and Devices

1. Statutory Authority.

Specific: A.R.S. § 3-3624(B)(4)

2. Objective.

This rule is to clarifies actions that constitute grounds for discipline due to misuse of a pesticide or device and actions required to ensure safe use of pesticides and devices.

R4-29-302. Storing and Disposing of Pesticides and Devices

2. Objective.

This rule establishes minimum standards for storing and disposing of pesticides and devices in a manner that protects public health and safety.

R4-29-303. Pesticide and Device Storage Area

2. Objective.

This rule establishes minimum standards for securing pesticides and ensuring the area where they are stored is appropriate for housing pesticides.

R4-29-304. Devices Exempt from Licensure and Registration; Advertising

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(17)

2. Objective.

This rule designates devices that are exempt from the licensure, certification, and registration requirements of PMD and requires unlicensed individuals performing pest management services using said devices to include the statement “Not licensed to apply pesticides” in any advertisements.

R4-29-305. Equipping a Service Vehicle

2. Objective.

This rule protects the health and safety of the public and those engaged in pest management by specifying the manner in which a service vehicle must be equipped.

R4-29-306. Providing Notice to Customers

1. Statutory Authority.

Specific: A.R.S. §§ 3-3606 and 3-3621(C)(7) through (C)(10)

2. Objective.

This rule provides detail regarding the notice that an applicator must provide to a customer of pest management services.

R4-29-307. Performing a Wood-destroying Insect Inspection

1. Statutory Authority.

Specific: A.R.S. § 3-3633

2. Objective.

This rule specifies who may perform a wood-destroying insect inspection; areas required to be inspected for wood-destroying insects; the conditions that are conducive to infestation; when a supplemental inspection is appropriate; that all structures must be noted on the inspection report but not all structures need be inspected; and that a report must be completed and submitted to PMD.

R4-29-308. Performing Wood-destroying Insect Management

1. Statutory Authority.

Specific: A.R.S. §§ 3-3631 and 3-3632

2. Objective.

This rule specifies who may perform wood-destroying insect control and requirements for pretreatment, new-construction treatment, and post-construction treatment of commercial or residential construction.

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes replacing the word "treatment" with "drill" in R4-29-308(I) would further clarify the expectation that applicators patch all holes drilled during a pest management service rather than only those injected with pesticide.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-309. Termite Warranties and Retreatments

2. Objective.

This rule specifies requirements for providing warranties for subterranean termite treatments and for performing retreatments when infestations occur after initial pretreatments and new-construction treatments.

R4-29-310. Business Management

1. Statutory Authority.

Specific: A.R.S. § 3-3615

2. Objective.

This rule provides additional clarification and requirements for business licensees related to financial responsibility and the display of the business name and license number.

ARTICLE 4. SUPERVISION

R4-29-401. Supervising an Applicator

1. Statutory Authority.

Specific: A.R.S. § 3-3622

2. Objective.

This rule clarifies actions that must be performed by qualified parties and business licensees to comply with their responsibility to properly train, equip, and supervise their applicators.

R4-29-402. Qualifying a Business or School District

1. Statutory Authority.

Specific: A.R.S. §§ 3-3612(B) and 3-3616

2. Objective.

This rule requires business licensees and school districts to employ a qualifying party in each category that the business licensee or school district works; generally prohibits a qualifying party from qualifying more than one business or school district; gives the Director discretion to allow a qualifying party to qualify multiple school districts; and prohibits a qualifying party from qualifying a business or school district in a category in which he or she is not registered.

R4-29-403. Qualifying Party Management

1. Statutory Authority.

Specific: A.R.S. §§ 3-3612(B) and 3-3616

2. Objective.

This rule specifies the actions and oversight required of qualifying party to ensure appropriate management of the business or school district's pest management activities.

R4-29-404. Branch Supervisors

1. Statutory Authority.

Specific: A.R.S. § 3-3617(B)

2. Objective.

This rule requires branch supervisors to perform the management duties of a qualified party at their branch with certain exceptions.

R4-29-405. Supervision of Qualifying Party

1. Statutory Authority.

Specific: A.R.S. § 3-3616

2. Objective.

This rule requires business licensees and school districts to provide their qualifying parties with the resources needed to comply with PMD laws.

R4-29-406. Responsible Individuals

1. Statutory Authority.

Specific: A.R.S. §§ 3-3612(A)

2. Objective.

This rule establishes compliance expectations for political subdivisions' responsible individuals.

R4-29-407. Joint Responsibility

1. Statutory Authority.

Specific: A.R.S. § 3-3622

2. Objective.

This rule provides additional clarification of the requirement that qualified parties and business properly train, equip, and supervise their applicators.

ARTICLE 5. RECORDKEEPING AND REPORTING

R4-29-501. Applicator Recordkeeping

1. Statutory Authority.

Specific: A.R.S. § 3-3624(B)(15)

2. Objective.

This rule establishes minimum standards for the various records that an applicator is required to maintain.

4. Consistency.

The rules is generally consistent with the other rules in this chapter and with PMD statutes: A.R.S. Title 3, Chapter 20. R4-29-306(A)(2) requires notices to customers to include the "[s]pecific site *to* which a pesticide was applied." R4-29-501(A)(2) requires applicators to maintain records including the "[s]pecific site *at* which a pesticide was applied." PMD believes it would be more consistent for both rules to state "[s]pecific site *to* which a pesticide was applied."

6. Clarity, Conciseness and Understandability.

This rule is generally clear, concise and understandable. PMD believes amending the rule to state "[s]pecific site *to* which a pesticide was applied" would improve the clarity of the rule by eliminating any appearance of inconsistency. PMD believes "to" is the better word because the agency expects applicators to be specific in describing where pesticide is applied. For example, a proper record would indicate "north wall of second bedroom," whereas indicating "house" or "bedroom" would not adequately specify where the application was made.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-502. Qualifying Party Recordkeeping

1. Statutory Authority.

Specific: A.R.S. § 3-3624(B)(15)

2. Objective.

This rule establishes additional records that a qualifying party is required to maintain regarding the training, supervision, and equipping of applicators.

R4-29-503. Business Licensee and Political Subdivision Recordkeeping and Retention

1. Statutory Authority.

Specific: A.R.S. § 3-3624(B)(15)

2. Objective.

This rule establishes additional records that business licensees and political subdivisions are required to maintain regarding their pest management activities.

R4-29-504. Reporting Incidents and Bulk Releases

2. Objective.

This rule requires business licensees and political subdivisions to notify PMD when pesticide incidents result in death or illness, contamination, or evacuation. Qualified parties are required to notify PMD if the business licensee or School District does not. The rule also requires business licensees and political subdivisions to notify PMD when there is a bulk release of pesticide and to notify the

Department of Public Safety if the release occurs on a public highway or railway. Qualified parties are required to notify PMD if the business licensee or School District does not.

R4-29-505. Groundwater Protection List Reporting

2. Objective.

This rule requires qualified parties and political subdivisions to make quarterly reports of their soil-applied pesticide applications for groundwater protection research.

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

R4-29-601. Inspection of Licensee Records

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(4)

2. Objective.

PMD often requests records from licensees during investigations. This rule clarifies what actions of licensees are required to comply with a request for production of records from PMD.

6. Clarity, Conciseness and Understandability.
This rule is generally clear, concise and understandable; however, PMD believes there could be some conflict between the 24 requirements listed in statute and rule. PMD believes that removing the "within 24 hours" language from the rule would eliminate the conflict.

14. Proposed Action.

PMD has been consulting with applicable stakeholders and advisory groups. If PMD continues to receive positive feedback it will request an exemption to the Governor's moratorium prior to the January 1, 2017 and will begin the rulemaking process upon approval.

R4-29-602. Compliance with PMD Monitoring

1. Statutory Authority.

Specific: A.R.S. § 3-3603(D)

2. Objective.

PMD often monitors pesticide applications during investigations. This rule clarifies what actions of licensees are required to comply with a request for a list of future applications from PMD.

R4-29-603. Corrective Work Orders

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(10)

2. Objective.

This rule provides additional detail on the requirements for complying with a corrective work order.

R4-29-604. Disciplinary Action

1. Statutory Authority.

Specific: A.R.S. § 3-3621

2. Objective.

This rule provides notice of factors that the Director may consider when exercising his or her discretion to take disciplinary action against a licensee.

R4-29-605. Consent Agreements

1. Statutory Authority.

Specific: A.R.S. § 3-3603(B)(17)

2. Objective.

This rule establishes PMD's procedure for entering into a consent agreement with a licensee..

R4-29-606. Penalties

1. Statutory Authority.

Specific: A.R.S. § 3-3621(A)(5)

2. Objective.

This rule establishes the procedure for assessing civil penalties for violations.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. OFFICE OF PEST MANAGEMENT

(Authority: A.R.S. § 32-2301 et seq.)

Chapter heading amended from Structural Pest Control Commission to Office of Pest Management by A.R.S. § 32-2302 as amended by Laws 2008, Ch. 309 (Supp. 09-4).

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Article 1, consisting of Sections R4-29-101 through R4-29-107 and Table 1, made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1).

Article 1, consisting of Sections R4-29-101 through R4-29-107, adopted effective December 24, 1992 (Supp. 92-4).

Article 1, consisting of Sections R4-29-01 through R4-29-06, repealed effective December 24, 1992 (Supp. 92-4).

Section
R4-29-101. Definitions
R4-29-102. Certification Categories; Scope
R4-29-103. Fees; Charges; Exemption
R4-29-104. Pest Management Advisory Committee
R4-29-105. Renumbered
R4-29-106. Renumbered
R4-29-107. Licensing Time-frames
Table 1. Time-frames (Calendar Days)
R4-29-108. Repealed

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

Article 2, consisting of Sections R4-29-201 through R4-29-216, made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1).

Article 2, consisting of Sections R4-29-201 through R4-29-213, adopted effective December 24, 1992 (Supp. 92-4).

Article 2, consisting of Sections R4-29-14 through R4-29-26, repealed effective December 24, 1992 (Supp. 92-4).

Section
R4-29-201. Activities that Require a License; Exemption
R4-29-202. Business License
R4-29-203. Applicator Certification
R4-29-204. Qualified Applicator Certification
R4-29-205. Qualifying Party Registration; Temporary Qualifying Party Registration
R4-29-206. Branch Office Registration; Branch Supervisor Registration
R4-29-207. Applicator Registration
R4-29-208. License, Certification and Registration Renewal
R4-29-209. Change in Business Licensee
R4-29-210. Certification Broadening
R4-29-211. Certification Examination
R4-29-212. Reciprocity
R4-29-213. Political Subdivision Responsible Individual
R4-29-214. Renumbered
R4-29-215. Continuing Education
R4-29-216. Continuing Education Approval

ARTICLE 3. PEST MANAGEMENT

Article 3, consisting of Sections R4-29-301 through R4-29-320, adopted effective December 24, 1992 (Supp. 92-4).

Article 3, consisting of Sections R4-29-35 through R4-29-38, repealed effective December 24, 1992 (Supp. 92-4).

Section
R4-29-301. Using Pesticides and Devices
R4-29-302. Storing and Disposing of Pesticides and Devices
R4-29-303. Pesticide and Device Storage Area
R4-29-304. Devices Exempt from Licensure and Registration; Advertising
R4-29-305. Equipping a Service Vehicle
R4-29-306. Providing Notice to Customers
R4-29-307. Performing a Wood-destroying Insect Inspection; WDIIRs
R4-29-308. Performing Wood-destroying Insect Management
R4-29-309. Termite Warranties and Retreatments
R4-29-310. Business Management
R4-29-311. Repealed
R4-29-312. Repealed
R4-29-313. Repealed
R4-29-314. Repealed
R4-29-315. Repealed
R4-29-316. Expired
R4-29-317. Expired
R4-29-318. Expired
R4-29-319. Expired
R4-29-320. Expired

ARTICLE 4. SUPERVISION

Article 4, consisting of Sections R4-29-401 through R4-29-418, adopted effective December 24, 1992 (Supp. 92-4).

Article 4, consisting of Sections R4-29-40 through R4-29-47, repealed effective December 24, 1992 (Supp. 92-4).

Section
R4-29-401. Supervising an Applicator
R4-29-402. Qualifying a Business or School District
R4-29-403. Qualifying Party Management
R4-29-404. Branch Supervisors
R4-29-405. Supervision of Qualifying Party
R4-29-406. Responsible Individuals
R4-29-407. Joint Responsibility
R4-29-408. Repealed
R4-29-409. Repealed
R4-29-410. Repealed
R4-29-411. Expired
R4-29-412. Repealed
R4-29-413. Repealed
R4-29-414. Repealed
R4-29-415. Repealed
R4-29-416. Expired
R4-29-417. Repealed
R4-29-418. Repealed

ARTICLE 5. RECORDKEEPING AND REPORTING

Article 5, consisting of Sections R4-29-501 through R4-29-505, made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1).

Article 5, consisting of Sections R4-29-501 through R4-29-504, adopted effective December 24, 1992 (Supp. 92-4).

Section
R4-29-501. Applicator Recordkeeping
R4-29-502. Qualifying Party Recordkeeping

R4-29-503. Business Licensee and Political Subdivision Recordkeeping and Retention
R4-29-504. Reporting Incidents and Bulk Releases
R4-29-505. Groundwater Protection List Reporting
Appendix A. Repealed

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

Article 6, consisting of Sections R4-29-601 through R4-29-609, made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1).

Section
R4-29-601. Inspection of Licensee Records
R4-29-602. Compliance with OPM Monitoring
R4-29-603. Corrective Work Orders
R4-29-604. Disciplinary Action
R4-29-605. Consent Agreements
R4-29-606. Penalties
R4-29-607. Renumbered
R4-29-608. Renumbered
R4-29-609. Renumbered

ARTICLE 7. RENUMBERED

Article 7, consisting of Sections R4-29-701 through R4-29-708, made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1).

Section
R4-29-701. Repealed
R4-29-702. Repealed
R4-29-703. Repealed
R4-29-704. Renumbered
R4-29-705. Repealed
R4-29-706. Repealed
R4-29-707. Repealed
R4-29-708. Renumbered

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R4-29-101. Definitions

In addition to the definitions provided in A.R.S. § 32-2301, the following terms apply to this Chapter:

"Administratively complete" means an application contains all components required by statute or this Chapter to be submitted to the OPM to enable the OPM to determine whether to grant a license or approval.

"Advertisement" means a written or oral notice, including a business card, website, or telephone directory listing, which is intended, directly or indirectly, to induce a person to enter into an agreement for pest management services.

"Applicator" means an individual who provides pest management services. Applicator does not include a laborer.

"Applicator certification" means a certified applicator license.

"Broadening" means to add another category of work to an existing certification.

"Certified applicator" means an individual who is licensed by the OPM to provide pest management services, including a QA.

"CEU" means continuing education unit.

"Continuing education unit" means 50 minutes of participation in continuing education.

"Control" or "manage" means, with respect to pests, to exterminate, eradicate, destroy, kill, repel, attract, sterilize, mitigate, remove, or a combination of these activities.

"Department" means the Arizona Department of Agriculture.

"Disassociate" means to die, become disabled, resign, retire, be ill or take leave for more than 14 days, be terminated, or be called to active military duty.

"Entire structure" means all critical areas as defined in this Chapter and as specified on product labeling for both the interior and exterior of a structure.

"EPA" means the U.S. Environmental Protection Agency.

"EPA registration number" means the actual EPA registration number of a product or the federal provision exempting the product from EPA registration.

"Final grade treatment" means establishment of a complete vertical barrier at the exterior of foundation walls in stem wall or monolithic construction.

"Fog or fogging" means applying a pesticide by a flammable, aerosolizing thermal or other generator that forms particles less than 10 microns in diameter.

"Food-handling establishment" means a place, other than a private residence, in which food is received, served, stored, packaged, prepared, or processed.

"Fumigant" means a chemical substance with a vapor pressure greater than five millimeters of mercury at 25 degrees Centigrade that is used to destroy plant or animal life.

"Fumigation" means a method of pest management that completely fills an area with a fumigant to suffocate or poison pests within the area.

"Fungi" means saprophytic and parasitic organisms that lack chlorophyll such as molds, rusts, mildews, smuts, and yeast, except those on or in living people or animals or processed foods, beverages, or pharmaceuticals.

"Health care institution" means a health care institution licensed pursuant to Title 36, Chapter 4 and includes doctor and dental offices.

"Label" means a written, printed, or graphic document that is approved by the EPA and on or attached to a pesticide container, the wrapper of a pesticide container, or a device.

"Labeling" means a written, printed, or graphic document that is authorized by the manufacturer or a state or federal agency to accompany a pesticide or device, or is referred to on the label or in literature accompanying the pesticide or device.

"Laborer" means an individual who performs physical labor necessary for an applicator to provide pest management services, including drilling and trenching, but who does not handle any pesticide container that has ever been opened, identify infestations, make inspections, make inspection reports or recommendations with respect to infestations, or use any device for the purpose of eliminating, exterminating, controlling or preventing infestations, except that laborer includes an individual who assists with the use of a tarp on a structure for a fumigation performed by an applicator.

"New-construction treatment" means a treatment to all cellulose components of a structure as prescribed by the pesticide label to protect the structure from subterranean termites and is performed after a permanent concrete slab foundation is installed or footings and supports for a raised foundation are

installed, but before the structure or a final grade treatment is completed.

"OPM" means the Office of Pest Management.

"Pest" means a vertebrate or invertebrate insect, bird, mammal, or other animal or organism, or a weed or plant pathogen that is in an undesirable location.

"Pesticide," as defined in A.R.S. § 32-2301, includes but is not limited to an insecticide, fungicide, rodenticide, termiticide, fumigant, larvicide, piscicide, adulticide, herbicide, nematicide, avicide, or molluscicide.

"Pest management services" means identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations, making written or oral inspection reports or recommendations with respect to infestations, and the application of pesticides or the use of devices not exempt by section 32-2304, subsection B, paragraph 18, for the purpose of eliminating, exterminating, controlling or preventing infestations.

"Post-construction treatment" means a treatment to control wood-destroying insects in or around an existing structure performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal under A.R.S. § 32-2332(A) and (B).

"Pretreatment" means a termite treatment that protects all cellulose components of a structure from subterranean termites, is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation, and establishes thorough and complete horizontal and vertical treated barriers.

"Primary service," as used in A.R.S. § 32-2311.02(B)(3), means applying an herbicide as the only or predominant service under a verbal or written contract to maintain a property.

"Project" means an individual address or a privately owned or individually owned dwelling.

"QA" means certified qualified applicator.

"QP" means qualifying party.

"Qualified applicator certification" means a certified qualified applicator license.

"SDS" means safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

"Service container" means a receptacle that is used to hold, store, or transport a pesticide concentrate or use-dilution preparation other than the original labeled receptacle provided by the manufacturer, a measuring instrument, or application equipment.

"Service vehicle" means a motor vehicle, including a trailer attached to the motor vehicle, used regularly to transport an applicator and equipment or pesticides used to provide pest management services.

"Signal word" means a word printed on a label that indicates the toxicity level of the pesticide in the container to which the label is affixed.

"Special Local Need registration" means an authorization from the Department to use a pesticide, which meets an Arizona-specific need, in Arizona according to the terms of the registration.

"Specimen label" means a label other than the label attached to a pesticide container that contains the same information as the labeling.

"Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.

"Subterranean termites" means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.

"Supplemental wood-destroying insect inspection" means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.

"Tag" means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.

"TARF" means termite action report form.

"Termiticide" means a chemical registered by the EPA and the Department and used for control of termites.

"Water-retention basin" means an area to temporarily hold water run-off until the water dissipates.

"WDIIR" means wood-destroying insect inspection report, which is a written report on a form approved by the OPM that is prepared in connection with the sale or refinancing of real property regardless of whether the report is used as part of the sale or refinancing.

"Wood-destroying insect inspection" means an inspection for the presence or absence of wood-destroying insects.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-102. Certification Categories; Scope

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in, on, around or adjacent to a structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man holes, not covered by another certification category; pest management of health related pests wherever found; but excluding anti-microbial pest management and fungi inspection.
2. Wood-destroying organism management.
   a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
   b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.
3. Ornamental and turf: pest management, including weeds, in the maintenance of turf or bare ground not covered by the right-of-way category and ornamental trees, shrubs, and flowers by a means other than use of a fumigant.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric pow-

erlines, pipelines, railway rights-of-way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.
5. Aquatic: pest management, including weeds, in standing or running water.
6. Fumigation: pest management using fumigants.
7. Wood preservation: application of pesticides directly to structural components of wood or wood products, which are not part of an existing structure normally habitable by persons, to prevent or manage wood degradation by wood-destroying organisms including fungi and bacteria.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-103. Fees; Charges; Exemption

A. A person shall pay the following application and renewal fees for licensure, certification, and registration:
1. For an applicator:
   a. Applicator certification, $75.
   b. Applicator certification broadening application, $0.
   c. QA certification, $100.
   d. QA certification broadening application, $25.
2. For a qualifying party:
   a. Registration at same time as application for or renewal of the business license, $0.
   b. Registration at a different time than application for or renewal of the business license, $50.
   c. Registration broadening, $25.
   d. Temporary qualifying party registration, $100.
3. For a business:
   a. Business license, $250.
   b. Business license for federal entity, $0.
   c. Applicator registration, $0 per applicator.
4. For a branch:
   a. Branch office registration, $50 per branch.
   b. Branch supervisor registration at same time as branch office registration, $0.
   c. Branch supervisor registration at a different time than branch office registration, $25.

B. A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.

C. In addition to the fees listed in subsection (A), a person shall pay a $10 handling fee for each application or renewal form not submitted electronically when OPM allows electronic submission.

D. A person shall pay a late fee equal to half of the renewal fee for any license, certification, or registration that is not renewed timely. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of $15 per month that the license remains expired, not to exceed $165. Late fees are in addition to the renewal fee.

E. A business licensee shall pay the following TARF fees:
1. Electronic submissions, $2;
2. Electronic final grade treatment TARF submissions, $0;
3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, $0, if the business licensee:
   a. Performed the pretreatment or new-construction treatment of the main structure,
   b. Filed a TARF regarding the pretreatment or new-construction treatment,
   c. Has the structure under warranty, and
   d. Treats the abutting addition under the terms of the site warranty;
4. All paper submissions, $8; and
5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be $2.

F. If the OPM administers a certification examination, an applicant shall pay $50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the OPM.

G. OPM employees are exempt from the applicator and examination fees listed in this Section.

H. An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
1. The OPM shall void any approval of the application or renewal.
2. The applicant shall pay any financial institution fee incurred by the OPM.
3. The OPM may require the applicant to pay all fees due using a method other than a personal or business check.
4. An application for renewal will be considered untimely if the substitute payment is not received by the OPM by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.

I. The OPM may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the OPM by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.

J. In addition to the fees listed in this Section, the OPM may collect service charges from persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-103 repealed; new Section R4-29-103 renumbered and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-104. Pest Management Advisory Committee

A. A five-member Pest Management Advisory Committee is established to assist and make recommendations to the director regarding the administration and implementation of A.R.S. Title 32, Chapter 22.

B. The members shall meet the following qualifications:
1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience.
   a. At least one of these three members shall be a business licensee who has five or fewer applicators.
   b. For one of these three members, first priority shall be given to a business licensee or QP based outside of Maricopa and Pima Counties and secondary priority shall be given to a business licensee or QP who is not based outside of those counties but is associated with a business that has an office in Arizona outside of those counties. If there are no qualified first or secondary priority applicants, the Director may appoint any business licensee or QP with a minimum of five years of pest management experience.
2. One member shall be a representative of a political subdivision.
3. One member shall be a public member who does not provide pest management services or work for a business licensee.

C. Members shall serve three year staggered terms. Members shall not serve consecutive terms, except that a member who is appointed to fill a vacancy may serve the unexpired term that fills the vacancy plus one regular term. A member shall be ineligible for reappointment for three years.

D. The office of a member shall be deemed vacant under any of the following circumstances:
1. The member no longer satisfies the qualification in subsection (B).
2. The member is unable to perform the duties of the office.
3. The absence of the member from three consecutive Committee meetings if the absences have not been excused by the Committee.

E. The Committee shall annually select a chairman and vice-chairman from among its members.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-104 repealed; new Section R4-29-104 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1).

R4-29-105. Renumbered

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section amended by emergency rulemaking at 15 A.A.R. 1835, effective October 15, 2009, for 180 days (Supp. 09-4). Emergency expired; Section amended by exempt rulemaking at 16 A.A.R. 290, effective November 30, 2009 by Laws 2009, 4th Spec. Sess., Ch. 3, § 28 (Supp. 10-1). Amended by exempt rulemaking at 18 A.A.R. 626, effective July 20, 2011 (Supp. 12-1). Amended by exempt rulemaking at 18 A.A.R. 2068, effective August 2, 2012 (Supp. 12-3). Section R4-29-105 renumbered to R4-29-103 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-106. Renumbered

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-106 renumbered to R4-29-407 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-107. Licensing Time-frames

A. Overall time-frame. The OPM shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substantive review time-frames, begins when the OPM receives an application.

B. Administrative completeness review time-frame.
1. During the administrative completeness review time-frame, the OPM shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the OPM shall specify in the notice what information is missing. If the OPM does not provide notice to the applicant within the administrative completeness review time-frame, the OPM shall deem the application complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the OPM receives the information.
3. If an applicant fails to submit the missing information before expiration of the completion request period, the OPM shall consider the application withdrawn and close the file. An applicant whose file is closed may apply for a license by submitting a new application and application fee.

C. Substantive review time-frame.
1. The substantive review time-frame listed in Table 1 begins when an application is administratively complete or at the end of the administrative completeness review time-frame in Table 1, whichever occurs first. If the OPM determines during the substantive review that additional information is needed, the OPM shall send the applicant a comprehensive written request for additional information.
2. Both the substantive review and overall time-frames are suspended from the date of the OPM's request until the date that the OPM receives the additional information. The applicant shall submit the additional information within the additional information period listed in Table 1.
3. If the applicant fails to provide the additional information within the additional information period in Table 1, the OPM shall consider the application withdrawn and close the application. An applicant whose file is closed may apply for a license by submitting a new application and application fee.

D. Within the overall time-frame listed in Table 1, the OPM shall:
1. Deny a license or approval to an applicant if the OPM determines that the applicant does not meet all the substantive criteria required by the OPM's statutes and this Chapter; or

2. Grant a license or approval to an applicant if the OPM determines that the applicant meets all the substantive criteria required by the OPM's statutes and this Chapter.

E. If the OPM denies a license or approval under subsection (D)(1), the OPM shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time for appealing the denial.

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Applicant Response to Completion Request	Substantive Completeness Review	Applicant Response to Additional Information	Overall Time-frame
Applicator						
New	R4-29-203	30	90	100	360	130
Renewal	R4-29-208	30	90	100	15	130
Broaden	R4-29-210	30	90	100	360	130
Qualified applicator (QA)						
New	R4-29-204	30	90	100	360	130
Renewal	R4-29-208	30	90	100	15	130
Broaden	R4-29-210	30	90	100	360	130
Qualifying Party (QP)	A.R.S. § 32-2314					
New	R4-29-205	30	90	100	90	130
Renewal	R4-29-208	30	90	100	15	130
Broaden	R4-29-210	30	90	100	90	130
Temporary	R4-29-205	10	10	10	15	20
Business	A.R.S. § 32-2313; R4-29-202; R4-29-208; R4-29-209	30	90	100	15	130
Branch Office	A.R.S. § 32-2315 R4-29-206	30	90	100	15	130
Branch supervisor	A.R.S. § 32-2315					
New	R4-29-206	30	90	100	90	130
Renewal	R4-29-208	30	90	100	15	130
Continuing Education Approval	R4-29-216	20	60	55	15	75

Historical Note
Table 1 adopted effective December 2, 1998 (Supp. 98-4). Table 1 repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Table 1 made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-108. Repealed

Historical Note
Adopted effective December 2, 1998 (Supp. 98-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

R4-29-201. Activities that Require a License; Exemptions

A. Business license. A person doing an activity defined as the business of pest management shall first possess a valid business license, unless the person is:
1. A political subdivision;
2. Acting on behalf of a business licensee or political subdivision; or
3. Otherwise exempt by this Chapter or the OPM's statutes.

B. Qualifying party registration. A business licensee or school district shall only do an activity defined as the business of pest management if the business licensee or school district has a registered qualifying party. The business licensee or school district shall only provide pest management services in a certification category if the qualifying party is registered in that certification category.

C. Applicator licensure.
1. An individual who provides pest management services shall be a certified applicator and only provide pest management services in a certification category for which the applicator is currently certified except as provided under subsections (C)(2) and (C)(3) or as otherwise exempt by this Chapter or the OPM's statutes.
2. A certified applicator desiring to work in a category for which the applicator is not certified shall become certified in the category within 30 calendar days after beginning work in that category and shall be supervised as provided in subsection (C)(3)(c) while working in that category.
3. An individual may provide pest management services on behalf of a business licensee without being a certified applicator if the individual:

a. Is registered as an applicator of the business licensee under R4-29-207;
b. Has been registered as an applicator of the business licensee for not more than 90 calendar days out of the last 365 days; and
c. Is supervised by a certified applicator who:
i. Is certified in the category for which supervision is provided;
ii. Provides immediate supervision when the individual performs pest management services in the wood-destroying organism treatment, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit; and
iii. Provides direct supervision when the individual performs pest management services not covered by subsection (C)(3)(c)(ii).

4. An individual may not provide pest management services at a school, child care facility, health care institution, or food-handling establishment unless the individual is a certified applicator in the certification category for which services are being provided.
5. An individual using an animal to assist with identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations shall be a certified applicator in the certification category for which services are being provided.

D. Applicator registration. An applicator may not provide pest management services on behalf of a business licensee or political subdivision unless the applicator is registered as an applicator of the business licensee or political subdivision pursuant to R4-29-207.

E. Exemptions. A person is not required to be licensed who:
1. Provides general information about a label or labeling, the identification or management of a pest, integrated pest management or the use of a registered pesticide; does not directly or indirectly charge for the information; and does not make an on-site recommendation.
2. Performs sales work that does not include:
a. Identifying on-site infestations or making inspections for the purpose of identifying or attempting to identify infestations;
b. Making written or oral inspection reports or on-site recommendations with respect to infestations; or
c. The application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations.
3. Is an authorized representative of any educational institution engaged in research in the study of pest management and does not provide pest management services for hire.
4. Is a certified home inspector and documents evidence of wood-destroying organisms on a home inspection, but does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.
5. Only uses, applies or installs home improvement articles, such as insulation, caulk and paint, that are pre-incorporated with a pesticide.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1).

R4-29-202. Business License

A. An applicant for a business license shall submit the following information on a form obtained from the OPM:
1. About the business:
a. Business name;
b. Name and form of business organization;
c. Names of the following persons authorized to act on behalf of the business:
i. Owner if a sole proprietorship;
ii. Managing or general partner if a partnership;
iii. President and other authorized officers if a corporation;
iv. All the managers or members if a limited liability company; or
v. Person authorized to make decisions for the business if any other type of business form;
c. Telephone number;
d. Fax number;
e. Physical address;
f. Mailing address, if different from physical address;
g. E-mail address; and
h. Chemical storage address;
2. Daytime telephone number of individuals identified under subsection (A)(1)(c);
3. Name of the qualifying party; and
4. The dated signature and title of an authorized representative of the business affirming that the information provided is true and correct.

B. In addition to the form required under subsection (A), an applicant shall submit:
1. The fee specified in R4-29-103;
2. The proof of financial security required by A.R.S. § 32-2313;
3. The names of all principals of the business as defined in subsection (G);
4. The name and physical address of the statutory agent of the business; and
5. A copy of the Articles of Incorporation or Organization, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization.

C. A business cannot be licensed without a registered qualifying party.

D. If the OPM determines there may be cause to deny a license to an applicant, the OPM may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.

E. A business license expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial licensure; and
2. Renewable for one or two years, depending on the renewal period selected by the applicant.

F. A business license may not be transferred except in accordance with R4-29-209 and may not be renewed beyond the expiration of the registration for the business's qualifying party.

G. For the purposes of this Section, principal means a person who owns at least a 10 percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.

H. If an applicant's proof of financial security includes an insurance policy which provides for a deductible in excess of one percent of the total financial security for each occurrence, the applicant shall provide other evidence of financial security for the excess deductible amount as required by A.R.S. § 32-2313.

Financial security in the following forms will be acceptable, provided that the nature of the security provides adequate protection for persons who may suffer bodily injury or property damage as a result of the operations of the applicant:

1. Liability insurance, self-insured retention or surety bond issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state;
2. Bank statement evidencing a deposit of money in an amount equal to, or greater than, the excess deductible amount; or
3. Certified Check in an amount equal to, or greater than, the excess deductible amount.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-202 repealed; new Section R4-29-202 renumbered from R4-29-206 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-203. Applicator Certification

A. Application. An applicant for applicator certification shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:

1. Full name;
2. Applicator certification number, if any;
3. Home address;
4. Mailing address, if different from the home address;
5. Telephone number;
6. E-mail address;
7. Date of birth;
8. Social Security number;
9. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
10. Name of employer, if any;
11. Employer's business license number, if applicable;
12. Employer's telephone number, if applicable; and
13. The applicant's dated signature affirming that the information provided is true and correct.
14. Information and documentation concerning lawful presence required by A.R.S. § 41-1080.

B. An applicator shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:

1. Murder involving the death of a law enforcement officer.
2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.

C. Examination. An applicant shall take and pass the certification examinations as provided in R4-29-211 in order to become certified.

D. An applicant for initial certification shall be at least 18 years of age.

E. If the OPM determines there may be cause to deny certification to an applicant, the OPM may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.

F. Certification. Applicator certification is not transferable, expires on May 31, and is:

1. Issued with an expiration in the following calendar year as an initial certification,
2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
3. Renewed for all certification categories for the same renewal period.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-204. Qualified Applicator Certification

A. Before applying for QA certification, an applicant shall fulfill the experience requirement for each category.

B. Application. An applicant for QA certification shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:

1. Full name;
2. Applicator certification number, if any;
3. QA certification number, if any;
4. Home address;
5. Mailing address, if different from the home address;
6. Telephone number;
7. E-mail address;
8. Date of birth;
9. Social Security number;
10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
11. Name of employer, if any;
12. Employer's business license number, if applicable;
13. Employer's telephone number, if applicable;
14. Certification categories for which application is made; and
15. The applicant's dated signature affirming that the information provided is true and correct.
16. Information and documentation concerning lawful presence required by A.R.S. § 41-1080, if not on file.

C. Experience. An applicant shall possess one of the following qualifications:

1. Certification as an applicator for 24 months within the ten years preceding the application in the category applied for.
2. Certification as an applicator for 12 months within the ten years preceding the application and either:
   a. Successful completion of 12 semester hours or its equivalent within the 10 years preceding the application in pest management courses directly related to each category applied for; or
   b. A Bachelor's degree in agricultural sciences, biological sciences, or pest management with 12 semester hours or its equivalent in pest management courses directly related to each category applied for.
3. Twenty four months of verifiable experience in the business of pest management, in another State where licen-

sure was not required, within the ten years preceding application directly related to the category applied for.

D. For an individual who applies for QA certification within one year of honorable separation from active military duty, the time periods "preceding the application" in subsection (C) are tolled during the term of active military duty.

E. A QA shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:
1. Murder involving the death of a law enforcement officer.
2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.

F. OPM review.
1. After notification by the OPM that the applicant is eligible for certification, the applicant may schedule and take the certification examinations described under R4-29-211.
2. If the OPM determines there may be cause to deny certification to an applicant, the OPM may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.

G. Examination. An applicant shall take and pass the certification examinations as provided in R4-29-211 in order to become certified.

H. Certification. QA certification is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial certification,
2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
3. Renewed for all certification categories for the same renewal period.

I. For the purposes of this Section, pest management courses means courses in entomology, zoology, vertebrate management, plant pathology, agronomy, general horticulture, plant biology or botany, biochemistry, organic or inorganic chemistry, the eradication or management of weeds, toxicology, the environmental impact of pesticides, or any combination thereof.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-205. Qualifying Party Registration; Temporary Qualifying Party Registration

A. An applicant for registration as a QP shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:
1. Name;
2. QA certification number;
3. Certification categories to be registered;
4. Name, and license number if applicable, of the business or school district for which the applicant will act as the QP; and
5. Dated signature of the applicant affirming that the information provided is true and correct;

B. An individual may only register as a QP in categories for which the individual possesses QA certification.

C. A certified applicator who is the representative of a business licensee or school district may register as a temporary QP if the QP has become disassociated with the business licensee or school district within the last 45 days. A certified applicator may only register as a temporary QP in the categories for which both the former QP was registered and the certified applicator is certified.

D. An applicant for registration as a temporary QP shall submit the fee specified in R4-29-103 and:
1. The information required in subsection (A), except subsection (A)(2);
2. The applicant's applicator certification number;
3. Written confirmation signed by the business licensee, school district, or former QP indicating that the former QP has become disassociated with the business licensee or school district; and
4. A written statement signed by the business licensee or school district that:
   a. The business licensee or school district has not operated in the business of pest management for more than five business days since the disassociation in the categories for which the disassociated QP was registered; and
   b. The business licensee or school district wants the certified applicator to act as a temporary QP.

E. A business licensee or school district shall not use a temporary QP to qualify the business or school district in a category for more than 180 days in any 12 month period.

F. Registration.
1. QP registration is not transferable, expires on May 31, and is:
   a. Issued with an expiration in the following calendar year as an initial registration,
   b. Renewable for one or two years, depending on the renewal period selected by the applicant, and
   c. Renewed for all registration categories for the same renewal period.
2. Temporary QP registration is not transferable, is valid for 90 calendar days and may be renewed once.
3. A QP or temporary QP may only register to qualify one business licensee or school district except as provided in subsection (F)(4).
4. A QP for school districts shall separately register as a QP for each school district served, but may not register as a QP for more than one school district without approval from the director pursuant to R4-29-402(C).

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-205 renumbered to R4-29-211; new Section R4-29-205 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-206. Branch Office Registration; Branch Supervisor Registration

A. A business licensee may not do business from a branch office unless the branch office and a branch supervisor are registered with the OPM.

B. To register a branch office, the business licensee shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:

1. The business licensee's name and licensee number.
2. About the branch office:
   a. Name of branch supervisor;
   b. Branch supervisor's applicator certification number;
   c. Telephone and fax numbers;
   d. Physical address;
   e. Mailing address, if different from physical address;
   f. E-mail address; and
   g. Chemical storage address; and
3. The dated signature of an authorized representative of the business licensee.

C. A branch office shall do business in the name of the business licensee only.

D. To register as a branch supervisor, the applicant shall submit the fee specified in R4-29-103 and the following information on a form obtained from the OPM:
1. Name,
2. Applicator certification number,
3. Business name and license number,
4. Physical and mailing address of branch office where the applicant will be the supervisor,
5. Branch office telephone and fax numbers,
6. Dated signature of the applicant affirming that the information provided is true and correct, and
7. Dated signature of an authorized representative of the business licensee.

E. A branch supervisor may only register to supervise a branch office at one physical location.

F. Registration. Registration as a branch office or branch supervisor is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial registration, and
2. Renewable for one or two years, depending on the renewal period selected by the applicant.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-206 renumbered to R4-29-202; new Section R4-29-206 renumbered from R4-29-213 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-207. Applicator Registration

A. Every applicator of a business licensee or political subdivision shall be registered with the OPM as an applicator for that business licensee or political subdivision before providing pest management services for the business licensee or political subdivision. This requirement is in addition to applicator certification requirements.

B. To register an applicator, a person shall submit the fee specified in R4-29-103 and the following information about the applicator on a form obtained from the OPM:
1. Full name;
2. Name, and license number if applicable, of the business licensee or political subdivision;
3. For an applicator of a business licensee, identification of the primary or branch office where the applicator's pest management records will be kept;
4. For a certified applicator, the applicator's certification number;
5. For an uncertified applicator, the applicator's:
   a. Home address;
   b. Mailing address, if different from the home address;
   c. E-mail address;
   d. Telephone number;
   e. Date of birth; and
   f. Social Security number.
6. Dated signature of the applicant affirming that the information provided is true and correct.

C. There is no fee to register an applicator of a political subdivision.

D. An uncertified applicator shall be at least 18 years of age.

E. Applicator registration is valid from the date the OPM receives all the information required under subsection (B) and the registration fee.

F. Applicator registration is non-transferable and expires on May 31.

G. A business licensee and QP are jointly responsible for ensuring compliance with this Section.

H. The director shall assess a business licensee with a $150 civil penalty for each unregistered applicator.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-207 repealed; new Section R4-29-207 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-208. License, Certification and Registration Renewal

A. An application to renew a business license, applicator or QA certification, or qualifying party, branch office, branch supervisor, or applicator registration is due May 1 of the year the license, certification, or registration expires. Failure to receive a renewal application does not justify a failure to timely renew.

B. An applicant for renewal shall submit the following information on a form obtained from the OPM:
1. All renewals:
   a. A change in physical address and mailing address, if any;
   b. E-mail address;
   c. Telephone number;
   d. Dated signature of the applicant affirming that the information provided is true and correct; and
   e. License specific information described in this subsection, if applicable.
2. Business license:
   a. Name of the qualifying party in each category for which the business provides pest management services, and
   b. Proof that the licensee still meets the financial security requirement in A.R.S. § 32-2313; and
   c. A change in the chemical storage address, if any.
3. Applicator and QA certification:
   a. Name of employer, if any;
   b. A statement whether the applicant has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and
4. Applicator registration: The names and if applicable certification numbers of all of the business licensee's current applicators.

C. An applicant for renewal shall select a one or two year renewal period and shall pay the renewal fee listed in R4-29-103 for each year of renewal.

D. CEU requirements. The director shall not renew a certification unless, prior to the expiration of the current certification, the applicator obtains the CEUs required by R4-29-215.

E. Expired license, certification, or registration.
1. An applicant who submits a complete renewal application, including the renewal fee, after the expiration of the license, certification, or registration shall pay the late fee listed under R4-29-103 as a penalty in addition to the renewal fee.
2. An applicant may renew an expired applicator or QA certification without retaking the written examinations provided the applicant:
   a. Has satisfied the CEU requirements, and
   b. Submits a complete renewal application, including the renewal fee, and the late fee by June 30.
3. An applicant seeking to renew an expired applicator or QA certification who does not meet the requirements in subsection (E)(2) shall apply as a new applicant and shall retake and pass the applicable certification examinations.
4. A business license that has been expired for more than one year may not be renewed. The former licensee may apply as a new applicant.
5. Notwithstanding subsections (E)(1)-(4), an applicant who fails to renew because the applicant is on active military duty may apply for renewal within one year of honorable separation from active military duty without paying a late fee.
6. Notwithstanding subsections (E)(1) and (E)(2)(a), an applicator who fails to renew by June 30 may renew by submitting a complete renewal application, including the renewal fee and the late fee, by August 31 if:
   a. The applicator has not received discipline from the Office within 5 years immediately preceding the renewal application; and
   b. The applicator has not previously renewed their certification after June 30.

F. Renewal effective date.
1. If an applicant submits a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license certification, or registration does not expire until:
   a. The renewal has been approved; or
   b. In the case of denial or new limits on the license, certification, or registration, the last day for seeking review of the OPM order or later date fixed by a court.
2. If an applicant fails to submit a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license, certification, or registration expires as provided in this Article and is not valid until the OPM has approved the renewal application. A business, branch office, or applicator with an expired license, registration, or certification may not provide pest management services or otherwise engage in the business of pest management. A qualifying party with an expired registration may not qualify a business licensee or school district. A branch supervisor with an expired registration may not supervise a branch office.

G. Surrendering a certification or license.
1. An applicator or business licensee may surrender their certification or license at any time, except for the following situations:
   a. The applicator or business licensee is currently the subject of an investigation; or
   b. The applicator or business licensee owes civil penalties or termite action registration form fees.
2. An applicator or business licensee that has surrendered their certification or license is not absolved of any termite action registration form fees or civil penalties based on actions or omissions that occurred prior to surrendering their certification or license.
3. The Office shall not refund any certification or licensing fees paid prior to the applicator or business license surrendering their certification or license.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-208 repealed; new Section R4-29-208 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-209. Change in Business Licensee

A. Transfer to spouse. A business license may be transferred to the licensee's spouse without a fee by submission of a Business License Entity Change Application if the licensee's spouse submits evidence of marriage to the licensee, keeps the same business name for the remainder of the licensee period and agrees to honor all of the licensee's customer contracts and warranties.

B. Transfer to new entity. A person may request a transfer of a business license to a new entity without a fee by submitting a Business License Entity Change Application if:
1. The owners of the current business licensee own a majority of the new entity,
2. The new entity keeps the same business name as the current business licensee for the remainder of the licensing period,
3. The new entity agrees to honor all customer contracts and warranties provided by the current business licensee, and
4. The current business licensee and the new entity are not the same form of entity.

C. When a business license is transferred under subsection (A) or (B), the new licensee shall be responsible for any outstanding fees or penalties owed to the OPM and for any disciplinary action taken by the OPM as a result of violations of this Chapter or the OPM's statutes by the former licensee.

D. Except as provided in subsections (A) and (B), a change in ownership of a licensed sole proprietorship requires a new business license.

E. If, through a change in ownership, a licensed business's office becomes a branch office of another licensed business, the new owner shall notify the OPM and comply with R4-29-206.

F. A business licensee shall report any change in the principals of the business to the OPM within 30 days. Principal means a person who owns at least a 10 percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.

G. If a business licensee changes the name of the business, the licensee shall provide the following information on a Business Name Change Application submitted to the OPM prior to the change:
1. Name of business entity;
2. Current business name;
3. Business license number;

4. New business name requested;
5. Copy of the Registered Trade Name Certificate, amended Articles of Organization or Incorporation, amended Certificate of Limited Partnership, or amended Statement of Partnership Authority or Qualification showing the new name; and
6. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

H. If a business licensee changes the form of the business, the licensee shall provide the following information on a Business Entity Change Application submitted to the OPM within 30 days of the change:
1. Name of licensed business entity;
2. Business name and license number;
3. Name and form of new business entity;
4. Names of the following persons authorized to act on behalf of the new business entity:
   a. Owner if a sole proprietorship,
   b. Managing or general partner if a partnership,
   c. President and other authorized officers if a corporation,
   d. All the managers or members if a limited liability company, or
   e. Person authorized to make decisions for the business if any other type of business form;
5. Copy of the new business entity's Articles of Organization or Incorporation, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization;
6. As applicable, the Articles of Merger or Consolidation, Statement of Merger, or approved partnership conversion; and
7. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3). New Section R4-29-209 renumbered from R4-29-214 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-210. Certification Broadening

A. To broaden an applicator certification, the applicant shall:
1. Submit the application described in R4-29-203,
2. Submit the fee required under R4-29-103, and
3. Take and pass the certification examination for the specific category in which broadening is sought.

B. A QA is eligible to broaden a QA certification only if, in the category in which broadening is sought, the QA has a valid applicator certification or a qualification listed in R4-29-204(C).

C. To broaden a QA certification, the QA shall:
1. Submit the application described in R4-29-204 and indicate on the application the category in which broadening is sought,
2. Submit the fee required under R4-29-103,
3. Submit the evidence of experience required under R4-29-204(C) for the category in which broadening is sought except as provided in subsection (D) of this Section, and
4. Take and pass the certification examination for the specific category in which broadening is sought.

D. Experience exemptions. A QA may become certified without meeting the experience requirement of R4-29-204(C) in the categories of:
1. Right-of-way or ornamental and turf if the individual has QA certification in the category of industrial and institutional, wood-destroying organism treatment, ornamental and turf, or right-of-way.
2. Wood-destroying organism management if the individual has QA certification in the industrial and institutional category.
3. Wood preservation if the individual has QA certification in the wood-destroying organism treatment category.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-210 repealed; new Section R4-29-210 renumbered from R4-29-212 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-211. Certification Examination

A. An applicant for applicator certification or QA certification shall make arrangements to take the certification examinations by contacting the OPM or the examination service or testing vendor with which the OPM has contracted.

B. The core and category-specific examinations may measure knowledge and understanding of the following content areas:
1. Pesticide label and labeling and pesticide types and formulations;
2. Pest identification, life cycles, and habits;
3. Safety and environmental factors relating to the use, handling, storage, and disposal of pesticides;
4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and
5. Laws and rules.

C. To be certified, an applicant shall score at least 75 percent on the general standards ("core") examination and on the category-specific examination in each category for which the applicant seeks certification.

D. An applicant who fails an examination may not retake the examination for at least seven days or more than two times in a 6-month period.

E. An examination score is only valid for the earlier of 12 months from the date of application for certification or 12 months from the examination date.

F. The OPM shall void the examination score and deny the application of an applicant that the OPM determines cheated on an examination. The applicant may not reapply for one year.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-211 repealed; new Section R4-29-211 renumbered from R4-29-205 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-212. Reciprocity

Notwithstanding the examination requirements in R4-29-203(C), R4-29-204(G), and R4-29-211, the director may waive the examination requirements in whole or in part for an individual who is

certified as an applicator pursuant to A.R.S. Title 3, Chapter 2 or by another state.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-212 renumbered to R4-29-210; new Section R4-29-212 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-213. Political Subdivision Responsible Individual

A. A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements, shall designate an individual or individuals responsible for the following:
1. Responding to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 32, Chapter 22.
2. Identifying for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
3. Demonstrating that all applicators are properly certified.

B. The political subdivision shall annually submit the following information about the responsible individual(s) during the month of May on a form obtained from the Director or the Director's designee:
1. Full name;
2. Physical address;
3. Mailing address, if different from the physical address;
4. E-mail address;
5. Telephone number;
6. Dated signature of the responsible individual(s) affirming that the information provided is true and correct.

C. If the political subdivision changes its responsible individual(s), the political subdivision shall provide the information about the new responsible individual(s) listed in subsection (B) to the Director within 30 days.

D. School districts are exempt from this Section.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-213 renumbered to R4-29-206; new Section R4-29-213 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-214. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-214 renumbered to R4-29-209 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-215. Continuing Education

A. A certified applicator who is not a QA shall, during the current certification period, obtain six CEUs in order to renew the certification for one year or 12 CEUs in order to renew for two years.

B. A QA shall, during the current certification period, obtain 12 CEUs in order to renew the certification for one year or 24 CEUs in order to renew for two years.

C. For an individual who holds both a certified applicator license and a QA license, obtaining the units required in subsection (B) satisfies the requirement in subsection (A).

D. CEUs earned during a certification period that are in excess of the requirements in this Section do not carry forward for use in a subsequent certification period.

E. An applicator who teaches a continuing education course may earn one unit of continuing education for each hour taught, not more than once during a calendar year.

F. No CEU credit will be earned by an attendee of a continuing education course who does not complete the course.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-216. Continuing Education Approval

A. Only continuing education courses approved by the OPM may be used to satisfy the continuing education requirement in R4-29-215. The OPM shall approve a continuing education course only if the course addresses:
1. Pesticide labels and labeling;
2. Safety, environmental factors, and consequences;
3. Pesticide use and disposal;
4. Laws and rules related to pest management and the business of pest management;
5. Application techniques;
6. Calibration and dilution;
7. Equipment;
8. Pest identification;
9. Life cycles and habits;
10. Calculation and measurements;
11. New pest management technologies;
12. Integrated pest management; or
13. Licensee responsibilities.

B. A person who wishes to have the OPM determine whether a course qualifies for CEU credit shall submit the following information to the OPM:
1. Type of continuing education listed under subsection (A);
2. Name of continuing education provider;
3. Address and telephone number of continuing education provider;
4. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
5. Brief description of the information covered within each subject;
6. Brief biography of the presenter, demonstrating the presenter's qualifications;
7. Whether a fee is charged for attending the course;
8. Date and location of each session;
9. Whether the course is open to the public;
10. Number of continuing education units sought;
11. Previous continuing education number, if any; and
12. Dated signature of applicant;

C. The provider of an approved continuing education course shall:
1. Enter attendance information using the OPM's online continuing education reporting tool within 10 days after the date of the continuing education course, and
2. Maintain a copy of the verification of attendance and original sign-in sheet that lists the attendees' names and certification numbers for two years.
3. Allow OPM and Department employees to attend the course and review course materials without charge, except that the provider has no obligation to provide food

to the employees that is made available for paying attendees.

4. Notify OPM in writing of the date, time and place of each continuing education course at least two weeks before each course. In-house and online courses are exempt from this requirement.

D. Unless otherwise indicated in the notice of approval, the OPM's approval of a continuing education course is valid for two years.

E. Approval of a continuing education course is not renewable. To reapply for approval of a continuing education course, a person shall comply with the requirements of subsection (B).

F. The provider of an approved continuing education course shall provide notice and updated information to the OPM within 10 days after the subject matter or instructor of the course changes.

G. To evaluate the effectiveness of a continuing education course, the OPM may monitor an approved continuing education course at no cost.

H. The OPM shall revoke its approval of a continuing education course if the OPM determines that the course fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the OPM's statutes and this Chapter.

I. The OPM may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the OPM modifies the number of CEUs earned, the OPM shall send a letter of modification to the course organizer, who shall be required to inform all individuals who attended the course.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

ARTICLE 3. PEST MANAGEMENT

R4-29-301. Using Pesticides and Devices

A. An applicator shall use only a pesticide that is currently registered for use by the Department or was registered by the Department and does not have a passed EPA end use date.

B. An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:

1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;
2. Provides a pest management service or handles a pesticide without wearing clothing and using the personal protective equipment required by the label or labeling to protect the applicator from pesticide exposure;
3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicator, animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
4. Uses a pesticide in a food-handling establishment that the label or labeling recommends not be used in a food-handling establishment; and
5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.

C. While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the tank fill opening or is equipped with an effective anti-siphoning device.

D. An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.

E. An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted use only if the applicator is certified or working under the immediate supervision of an applicator certified in the category for which the restricted-use pesticide is applicable.

F. An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling directions and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.

G. An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the Department and the pesticide labeling. The applicator shall have in the applicator's possession at the time of the application both the Special Local Need labeling and the EPA section 3 label and labeling.

H. If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the OPM's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.

I. If there is a conflict between any provision in this Section and labeling instructions, an applicator shall follow the more specific instruction.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-301 renumbered to R4-29-602; new Section R4-29-301 renumbered from R4-29-304 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-302. Storing and Disposing of Pesticides and Devices

A. An applicator shall store and dispose of a pesticide or device in a manner consistent with its label and labeling.

B. An applicator shall store a pesticide in a closed container that is free from corrosion, leakage, or pesticide contamination on the outside of the container and properly labeled.

C. An applicator shall ensure that a service container bears a durable and legible specimen label with the following information:

1. The name, address, and telephone number of the business licensee or political subdivision;
2. The common chemical or trade name of the principal active ingredients;
3. The EPA registration number;
4. The strength of the concentrate or dilution expressed as a percentage of active ingredients;
5. Any signal word required on the label; and
6. The phrase "KEEP OUT OF REACH OF CHILDREN."

D. An applicator shall not place words or markings on a service container or on the label affixed to the service container that

are unrelated to the pesticide in the service container, except for markings related to a method of tracking the product.

E. If the label affixed to a pesticide container becomes lost or damaged, an applicator shall attach a specimen label to the pesticide container.

F. An applicator shall replace a damaged container, other than a fumigant container, with an identically labeled container or a properly labeled service container.

G. Application equipment from which a pesticide is directly discharged and in which the pesticide is not stored is not subject to the labeling requirements of this Section.

H. An applicator shall not store a pesticide in a manner which food, beverage, feed, drugs, cosmetics, eating utensils, or tobacco products can be contaminated.

I. An applicator shall not store a pesticide in a container that was used for food, beverage, feed, drugs, or cosmetics, or which by size, shape, or marking could be confused as being a food, beverage, feed, drug, or cosmetic.

J. An applicator shall not store a fumigant within a residence, office or cab of a vehicle.

K. An applicator shall ensure that a pesticide in an original or service container, an empty pesticide container that has not been prepared for disposal in accordance with its label, or a returnable or reusable pesticide container is kept in a locked storage space when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.

L. An applicator shall ensure that a pesticide in portable application equipment is kept locked when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.

M. To prevent damage during transit, an applicator shall ensure that a pesticide container is secured in a locked storage space while the pesticide container is transported on a service vehicle.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-302 renumbered to R4-29-306; new Section R4-29-302 renumbered from R4-29-306 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-303. Pesticide and Device Storage Area

A. A business licensee or political subdivision shall provide a pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

B. A business licensee or political subdivision shall secure the storage area required under subsection (A) from unauthorized entry by equipping its entrance or access with a lock.

C. Immediately after storing a pesticide, a business licensee or political subdivision shall conspicuously post a sign at the entrance or access to a non-vehicle storage area and on a vehicle storage area indicating there is a pesticide, chemical, or poison stored inside.

D. A business licensee or political subdivision shall provide sufficient ventilation to the outside of the storage area required under subsection (A) to prevent build-up of odors and preclude chemical injury to an individual or animal.

E. A business licensee or political subdivision shall provide the following in or immediately adjacent to the storage area required under subsection (A), including a storage area on a service vehicle:

1. Electric or battery-powered lighting that is sufficient to read a pesticide label;
2. Fully charged and operational fire extinguisher or fire suppression system appropriate to each pesticide stored in the area;
3. Emergency medical information including the telephone number of the state or local poison control center;
4. Material capable of absorbing a spill or leak of at least one gallon;
5. Specimen label and SDS for each pesticide stored in the area; and
6. Washing facilities that include at least one gallon of fresh water, soap, and towels.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-303 renumbered to R4-29-307; new Section R4-29-303 renumbered from R4-29-606 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-304. Devices Exempt from Licensure and Registration; Advertising

A. The following devices are not subject to the licensure and registration requirements of this Chapter or the OPM's statutes:

1. Physical barriers used to remove or prevent infestation by pests;
2. Equipment used for the physical removal of pests or the habitat of pests;
3. Mechanical equipment used for the physical removal of weeds and other vegetation;
4. Mechanical traps used without a pesticide;
5. Installation equipment used for home improvement or modifications;
6. Raptors used to control or relocate other birds; and
7. Firearms.

B. An unlicensed person who engages in the business of pest management, but is exempt from licensure and registration because the person does not apply any pesticides and only uses devices listed in subsection (A) shall prominently display or include the phrase "Not licensed to apply pesticides" in all written and oral advertisements.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-304 renumbered to R4-29-301; new Section R4-29-304 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-305. Equipping a Service Vehicle

A business licensee or political subdivision shall provide each service vehicle with the following:

1. All equipment and supplies required by the label and labeling to apply properly the pesticides on the service vehicle;
2. A measuring and pouring device compatible with the pesticides on the service vehicle;
3. Protective clothing and safety equipment suitable for use when handling, mixing, or applying the pesticides on the service vehicle;

4. Material capable of absorbing a spill or leak of at least one gallon;
5. A storage container large enough to hold material contaminated by absorbing a spill or leak of pesticides;
6. At least one gallon of clean, drinkable water for each individual using the service vehicle at one time;
7. Uncontaminated change of clothing;
8. Specimen label and SDS for each pesticide on the service vehicle; and
9. A locking storage space designed to prevent a pesticide container from being damaged while in transit.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-305 renumbered to R4-29-308; new Section R4-29-305 renumbered from R4-29-607 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-306. Providing Notice to Customers

A. Immediately following an application, the applicator shall provide a written notice to a customer for whom the applicator provides a pest management service that contains the:
1. Name and address of the customer;
2. Specific site to which a pesticide was applied;
3. Date of service;
4. Target pest or category of service;
4. Target pest or purpose of service;
6. EPA registration number of restricted use pesticide applied;
7. Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations;
8. Name and certification number of the applicator or if the applicator is uncertified, the name of the uncertified applicator and the name and certification number of the applicator providing supervision; and
9. Following statement printed in at least an eight-point font: "Warning—Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated, or aerated. For more information, contact [business licensee's name and business license number issued by the OPM] at [business licensee's telephone number]."

B. The applicator may provide the notice required by subsection (A) electronically.

C. An applicator who provides a pest management service at a school shall comply with the notification requirements in A.R.S. § 32-2307.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-306 renumbered to R4-29-302; new Section R4-29-306 renumbered from R4-29-302 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1).

R4-29-307. Performing a Wood-destroying Insect Inspection; WDIIRs

A. Only an applicator certified in the category of wood-destroying organism management and who has received the training required under A.R.S. § 32-2333(A) may complete a WDIIR.

B. An applicator completing a WDIIR shall inspect all areas of a structure including crawlspaces that are visible or accessible at the time of the inspection. The applicator may use techniques such as non-destructive probing and sounding.

C. An applicator completing a WDIIR may exclude from inspection an area that is permanently covered by a floor covering, wall covering, or built-in appurtenance such as a bookcase, cabinet, appliance, equipment, or furniture or that would require removing or marring finish work or moving furniture, appliances, or equipment. The applicator shall note on the WDIIR all areas that are not inspected and the reason the areas are not inspected.

D. An applicator completing a WDIIR shall inspect all areas where there is evidence of current or previous infestation and where a condition conducive to infestation exists. A condition conducive to infestation includes:
1. Faulty grade level. If a structure contains a slab or floor that is at or below grade, the existing earth level is considered grade level;
2. Inaccessible sub-area such as an area with less than 24 inches of clear space between the bottom of a floor joist and grade level;
3. Excessive cellulose debris. Cellulose debris is excessive when:
   a. The debris can be raked into a pile of at least one cubic foot,
   b. A stump or wood imbedded in a footing of the structure is in contact with earth, or
   c. Firewood or a lumber pile is within six inches of the structure;
4. Earth-to-wood contact, which involves wood that is part of a structure or that is attached to or securely abuts the structure and is in contact with the ground; or
5. Excessive moisture or evidence of a moisture condition in or around a structure.

E. To verify whether a corrective treatment was performed or a condition conducive to infestation was corrected, an applicator may conduct a supplemental inspection within 30 days after an original inspection. An inspection conducted more than 30 days after an original inspection is not a supplemental inspection.

F. An applicator completing a WDIIR may exclude from inspection other structures at the site. The applicator shall note on the WDIIR all structures at the site that are not inspected and the reason the structures are not inspected.

G. WDIIRs shall be prepared in accordance with R4-29-501(E).

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-307 renumbered to R4-29-501; new Section R4-29-307 renumbered from R4-29-303 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-308. Performing Wood-destroying Insect Management

A. An applicator shall not perform wood-destroying insect management or fumigation unless the applicator is certified in the category of wood-destroying organism treatment or fumigation, respectively, or working under the immediate supervision of an applicator who is certified in the category of wood-destroying organism treatment or fumigation respectively.

B. An applicator shall not perform wood-destroying insect management, issue a treatment proposal, or quote a fee for service until the business licensee that employs the applicator ensures that:
1. An on-site inspection of the property is performed, in accordance with R4-29-307, by a certified applicator meeting the training requirement under A.R.S. § 32-2332(E),
2. A treatment proposal is prepared, based upon the on-site inspection, on a form approved by the OPM and contains the information required under A.R.S. § 32-2332(B) and (C), and
3. The treatment proposal is delivered to the person requesting the proposal or treatment, prior to the treatment.

C. An applicator shall apply a termiticide only in the quantity, strength, dosage, and manner prescribed on the termiticide label unless otherwise specified by this Chapter or an OPM order.

D. Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator performing a pretreatment shall:
   a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
   b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
      i. A penetration or protrusion through the slab;
      ii. An observable preset for crack or joint control;
      iii. A formed-up change of grade level;
      iv. Abutting slabs;
      v. A bath trap or tear-out;
      vi. The interior of a foundation or stem wall; or
      vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
2. Except as specified in subsection (D)(3) and unless the termiticide label requires more, an applicator shall treat all critical areas during a pretreatment at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot.
3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
   a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
   b. Access to the footer is not possible because of its distance below grade; or
   c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
   a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
   b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
      i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by treating beyond a depth of four feet,
      ii. A photograph of the site after the pretreatment but before concrete placement,
      iii. A written statement from the general contractor concerning the fill material and compaction rating,
      iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
      v. A written compaction rating statement from the engineering subcontractor.
5. If an applicator is advised before concrete is poured that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken, and if the applicator is provided an opportunity to re-treat the disturbed area, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.
6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
   a. Name of business licensee;
   b. Address of business licensee;
   c. Telephone number of business licensee;
   d. License number of business licensee;
   e. Location or address of project;
   f. Date of pretreatment application;
   g. Time that application was started (not time that applicator arrived at the site);
   h. Time that application ended (not time that applicator left the site);
   i. Trade name of pesticide used;
   j. Percentage of active ingredient in the pesticide used;
   k. Number of gallons of chemical preparation applied;
   l. Square footage of area treated;
   m. Linear footage of area treated;
   n. Type of slab construction;
   o. Name of applicator; and
   p. Certification number of applicator or, if not certified, the name and certification number of the applicator providing immediate supervision.
7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."
8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."

E. New-construction treatment for commercial or residential construction.
1. Unless specifically precluded by the termiticide label, an applicator performing a new-construction treatment shall treat all critical areas visible at the time of the treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
   a. A penetration or protrusion through the slab;
   b. An observable crack or joint;
   c. Abutting slabs;
   d. A bath trap or tear-out;
   e. The interior of a foundation or stem wall; or
   f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth.
3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection (D)(6).
5. An applicator shall comply with subsections (D)(7) and (D)(8) when performing a new-construction treatment.

F. Final grade treatment for commercial or residential construction.
1. A business licensee that performs a pretreatment or new-construction treatment shall perform a final grade treatment. The final grade treatment must occur after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
2. An applicator shall treat the soil along the exterior of foundation walls at a rate of four gallons of chemical preparation per 10 linear feet (unless precluded by label directions) after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
3. An applicator shall leave a record of the final grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final grade treatment contains the information listed in subsection (D)(6), except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.

G. An applicator who performs a pretreatment, new-construction treatment or final grade treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) or the final grade treatment record required under subsection (F) is provided to the business licensee for inclusion in the business licensee's service records.

H. A warranty regarding subterranean termite treatment shall only be issued to a builder if the structure received a pretreatment or a new-construction treatment.

I. Post-construction treatment for commercial or residential construction.
1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
2. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.
3. Unless precluded by label directions, any application to treat the soil along the exterior of foundation walls shall be made at an effective treatment rate of four gallons of chemical preparation per ten linear feet in a trench six inches wide or other method of treatment prescribed by the label to achieve the effective treatment rate.
4. All post construction treatments shall be made in accordance with the treatment proposal delivered as required under subsection (B). Any deviations to the original proposal shall be redelivered in writing in a revised treatment proposal and shall be approved prior to performing the treatment by the person who requested the original proposal or their authorized agent.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section R4-29-308 renumbered from R4-29-305 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-309. Termite Warranties and Retreatments

A. If a business licensee or an employee of a business licensee is advised before concrete is poured that a pretreatment area is disturbed and the continuous chemical barrier is broken and if an opportunity is provided to re-treat the disturbed area or is advised that a new-construction treatment area is disturbed, the business licensee shall ensure that the disturbed area is retreated.

B. A business licensee that provides a subterranean termite treatment warranty shall ensure that the effective date of the warranty is the date on which treatment begins.

C. If subterranean termites occur in or on a residential or commercial structure within three years after a business licensee first performs a pretreatment or new-construction treatment of the structure, the business licensee shall re-treat the affected area of the structure free of charge in accordance with the label specifications of a termiticide available for use. If subterranean termites occur in or on an addition that does not abut the slab of a residential or commercial structure within three years after a business licensee first performs a pretreatment or new-construction treatment of the non-abutting addition, the business licensee shall re-treat the non-abutting addition free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets pertaining to wood-destroying insect treatment.

D. If subterranean termites occur a third time on the exterior of a one or two unit residential structure within three years after a

business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.

1. As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;
2. For the purpose of this subsection and subsection (E):
   a. A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;
   b. A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and
   c. A third occurrence means evidence of subterranean termites exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.

E. If subterranean termites occur a third time on the interior of a one or two unit residential structure within three years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a residential structure where termite activity originates and that is livable or a garage.

F. A business licensee that performs a re-treatment under subsection (C) or (D) or a post-construction treatment under subsection (E) shall not charge the consumer for any expense incurred in providing the re-treatment or post-construction treatment to which the consumer is entitled under this Chapter.

G. If a business licensee goes to a structure to perform a re-treatment under subsection (C) or (D) or a post-construction treatment under subsection (E) and determines there is no evidence of subterranean termites, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.

H. If a business licensee determines that a re-treatment or post-construction treatment is necessary because the continuous chemical barrier is disturbed, the business licensee may charge the reasonable cost of reestablishing the barrier.

I. If a customer refuses a re-treatment or post-construction treatment as described in this Section, access to the customer's property, or to allow drilling in an area where drilling is necessary, the business licensee shall obtain the customer's printed name and dated signature on a document evidencing that the business licensee:

1. Informed the customer of the right to a re-treatment or post-construction treatment at no charge,
2. Provided the customer with a copy of this Section and the termiticide label requirements,
3. Provided the customer with the OPM's telephone number, and
4. Explained to the customer the benefits of having and the detriments of not having a re-treatment or post-construction treatment.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section R4-29-309 renumbered from R4-29-608 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-310. Business Management

A. Financial responsibility.

1. A business licensee shall maintain the financial responsibility required by A.R.S. § 32-2313 and this Chapter.
2. A business licensee shall ensure that the required financial responsibility covers all pest management activities provided from the primary business office and each branch office.
3. If there is an interruption in the financial responsibility of a business licensee, the business licensee shall immediately stop providing pest management services.

B. Use of business name and license number.

1. A business licensee shall prominently display the license issued by the OPM at the primary business office and each branch office.
2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the OPM, on:
   a. Customer proposals or contracts for pest management services;
   b. Service records;
   c. Inspection reports;
   d. Written materials provided to customers or potential customers;
   e. Correspondence;
   f. Advertisements; and
   g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
      i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the OPM issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner;
      ii. Is in a color that contrasts with the color of the service vehicle and trailer;
      iii. Is on both sides of the service vehicle and trailer;
      iv. Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and
      v. Uses at least two-inch numbers for the license number.
3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effec-

tive April 7, 2007 (Supp. 07-1). New Section R4-29-310 renumbered from R4-29-605 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-311. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-312. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-313. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-314. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-315. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-316. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

R4-29-317. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

R4-29-318. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

R4-29-319. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

R4-29-320. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

ARTICLE 4. SUPERVISION

R4-29-401. Supervising an Applicator

A. A QP and business licensee shall ensure that an applicator receives the training, equipment, and supervision that the applicator requires to comply fully with the OPM's statutes, this Chapter, and label and labeling directions.

B. A QP shall be readily available to an applicator while the applicator provides pest management services.

C. A QP shall ensure that the use, application, storage, or disposal of a pesticide is performed or supervised by an individual certified in a category applicable to the pesticide being used, applied, stored, or disposed.

D. A QP shall ensure that immediate supervision, which requires supervision by a certified applicator who is physically present, is provided when an uncertified applicator performs pest management services in the wood-destroying organism management, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit. A QP shall ensure that a certified applicator provides immediate supervision to not more than two uncertified applicators at a time.

E. In circumstances other than those described in subsection (D), a QP shall ensure that direct supervision, which does not require a supervising certified applicator to be physically present, is provided. A QP shall ensure that a certified applicator providing direct supervision considers the potential danger to the public or environment if the uncertified applicator misuses a pesticide. A QP shall ensure that a certified applicator providing direct supervision instructs the uncertified applicator in the following areas and has written evidence that the instruction was provided and understood:

1. Proper loading, mixing, applying, storing, and disposing of the pesticide;
2. Use of required safety equipment; and
3. Method and means by which to contact the supervisor immediately.

F. A QP shall ensure that an applicator has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the OPM's statutes and this Chapter. The QP shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.

G. A QP, business licensee, and political subdivision shall not allow an uncertified applicator to apply a pesticide for more than 90 days after the applicator is registered.

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section R4-29-401 renumbered from R4-29-502 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-402. Qualifying a Business or School District

A. A business licensee or school district shall employ a QP in each category of pest management in which the business licensee or school district provides pest management services. A business licensee or school district may employ multiple QPs.

B. A QP may not qualify more than one business licensee or school district at a time.

C. Notwithstanding subsection (B), the director may allow a QP to qualify more than one school district if the director believes that the number of applicators, pest management needs, and

distance of the school districts will not hinder the QP's ability to comply with R4-29-403.

D. A QP may only qualify a business licensee or school district in the categories of pest management in which the QP is registered.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section R4-29-402 renumbered from R4-29-503 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-403. Qualifying Party Management

A. A QP shall be physically present at the primary business office at least once every 14 days and at each branch office at least once every 120 days and ensure that all of the following are done:

1. Determine pesticide use by reviewing records of pesticide acquisitions, storage, disposal, and current inventory;
2. Review the pesticide inventory, including pesticides stored on a service vehicle, to determine compliance with labels, labeling, and the OPM's statutes and rules;
3. Review the training, supervision, and equipping of applicators employed by the business licensee or school district to determine whether the training, supervision, and equipping is sufficient to enable the applicators to comply with labels, labeling, and the OPM's statutes and rules;
4. Review personnel records to determine whether an applicator employed by the business licensee or school district is registered and certified in all applicable categories within the time-frames specified by R4-29-201;
5. Review office records and recordkeeping procedures to determine compliance with required recordkeeping and reporting; and
6. Ensure that any deficiency noted when the responsibilities listed in subsections (A)(1) through (A)(5) are performed is corrected.

B. A QP shall develop a written plan that specifies how the duties and responsibilities of the QP are to be fulfilled if the QP is absent or unavailable for any reason. The QP shall ensure that the plan is implemented when the QP is absent or unavailable.

C. A QP shall not delegate the responsibility to be physically present at least every 14 days at the primary business office and at least every 120 days at branch offices unless the QP submits written documentation to the OPM from a licensed medical or mental health care professional that indicates the licensed medical or mental health care professional is treating the QP and is of the opinion that the QP is unable to fulfill the responsibility to be physically present as required.

D. A QP shall:

1. Be active in the management of all pest management related activities of the business licensee or school district.
2. During normal business hours, be readily available to the applicators of the business licensee or school district.
3. Ensure that a business licensee maintains current proof of financial security.

E. A temporary QP has the same duties and responsibilities as a regular QP.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section R4-29-403 renumbered from R4-29-504 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-404. Branch Supervisors

With respect to a branch office, the branch supervisor shall fulfill all the duties and responsibilities of a QP in this Article, except as follows:

1. The branch supervisor shall be present at the branch office at a minimum of once every 14 days to review pesticide use, storage and disposal and by ensuring the training, equipping, and supervision of the applicators.
2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though R4-29-201(C) still applies.
3. The branch supervisor is not responsible for ensuring that the business licensee maintains current proof of financial security.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section R4-29-404 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-405. Supervision of Qualifying Party

A business licensee or school district shall ensure that a QP of the business licensee or school district receives the training, equipment, and supervision that the QP requires to comply fully with the OPM's statutes and rules and label and labeling directions.

Historical Note

New Section R4-29-405 renumbered from R4-29-603 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-406. Responsible Individuals

A responsible individual for a political subdivision shall:

1. Respond to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 32, Chapter 22.
2. Identify for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
3. Demonstrate that all applicators are properly certified.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1). New Section R4-29-406 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-407. Joint Responsibility

A. An applicator, qualifying party, branch supervisor, or business licensee who supervises another person shall ensure that the supervised person is properly trained and equipped and receives the supervision necessary for the supervised person to provide pest management services in accordance with the pesticide label and labeling, this Chapter and the OPM's statutes.

B. An applicator, qualifying party, branch supervisor, or business licensee who supervises another person may be held jointly responsible for the acts or omissions of the supervised person.

C. It is an affirmative defense to joint responsibility as described in subsection (B) if an applicator, qualifying party, branch supervisor, or business licensee complied with subsection (A) and can demonstrate that compliance with contemporaneously maintained records.

D. A QP and business licensee shall comply with every provision in this Chapter regarding applicator duties and responsibilities.

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section R4-29-407 renumbered from R4-29-106 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-408. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-409. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-410. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-411. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

R4-29-412. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-413. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-414. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-415. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-416. Expired

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 1483, effective January 31, 2001 (Supp. 01-1).

R4-29-417. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

R4-29-418. Repealed

Historical Note
Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

ARTICLE 5. RECORDKEEPING AND REPORTING

R4-29-501. Applicator Recordkeeping

A. An applicator shall make all records required by law and provide the records to the business licensee or political subdivision that supervises, directs, or employs the applicator within five business days.

B. Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
1. Name and address of the customer;
2. Specific site at which a pesticide was applied;
3. Date of service;
4. Target pest or purpose of service;
5. Trade name of pesticide applied;
6. EPA registration number of any restricted use pesticide applied;
7. Amount of pesticide applied, in terms of percent active ingredient and total amount of diluent (water, etc.); total amount of concentrate and total amount of diluent (water, etc.); or total amount of ready-to-use product by weight or volume (e.g. lbs, grams, ounces, etc.); and
8. Name and certification number of the applicator or if the applicator is uncertified, name of the uncertified applicator and the name and certification number of the applicator providing supervision.

C. Pesticide purchase records. An applicator shall make a record of each restricted-use pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
1. Date of purchase or acquisition;
2. Trade name of pesticide;
3. EPA registration number of pesticide;
4. Quantity of pesticide purchased or acquired; and
5. Name and license number of the applicator making the pesticide purchase record or name of the business licensee.

D. Pesticide disposal records. An applicator shall make a record of each pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
1. Date of disposal;
2. Trade name of pesticide;
3. EPA registration number of pesticide;
4. Quantity of pesticide disposed;
5. Percent active ingredient in the pesticide disposed,
6. Method of disposal,
7. Location and type of disposal site or service; and
8. Name and license number of the applicator making the pesticide disposal record or name of the business licensee.

E. WDIIR. An applicator who completes a WDIIR shall:
1. Compete the WDIIR using a form approved by the OPM. A trademark or logo may be placed on the WDIIR if it

does not alter the format or substance of the OPM-approved form;
2. Submit an original WDIIR to the QP or branch supervisor within seven days after completing the wood-destroying insect inspection;
3. Submit a supplemental WDIIR to the QP or branch supervisor within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;
4. If required by a federal agency, complete another inspection form in addition to but not instead of the OPM-approved WDIIR; and
5. Ensure that the following information is included on the WDIIR:
   a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
   b. Date of wood-destroying insect inspection, and the WDIIR number;
   c. Purpose of the inspection report;
   d. Whether the report is from an original or supplemental inspection;
   e. Name of property owner or seller;
   f. Address of inspected property;
   g. Inspected and un-inspected structures at the site and the reason why structures are un-inspected;
   h. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
   i. Whether visible evidence of wood-destroying insects is observed;
   j. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on which a proper management measure is performed, if applicable;
   k. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
   l. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
   m. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
   n. Visible conditions conducive to infestation by wood-destroying insects;
   o. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, and areas where further inspection is recommended, and a statement or indication on the diagram or graph clearly identifying inaccessible areas; and
   p. Dated signature and certification number of the individual making the inspection. The individual making the inspection shall sign the WDIIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.

F. Wood-destroying organism treatment proposal. An applicator who is qualified under A.R.S. § 32-2332(B) and (E) shall complete a wood-destroying organism treatment proposal using a form approved by the OPM and provide a copy of the proposal to the person requesting the proposal or treatment and the QP.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-501 repealed; new Section R4-29-501 renumbered from R4-29-307 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-502. Qualifying Party Recordkeeping

A. In addition to ensuring that the records required under R4-29-501 are made, a QP shall ensure that complete records are made and maintained of the training, supervision, and equipping provided to an applicator.

B. At a minimum, QP training records must consist of the following information:
1. Date of the training,
2. Printed name and signature of the trainee,
3. Printed name and signature of the trainer,
4. Brief description of topic(s) covered, and
5. Copies of labels and any other pertinent material used in training.

C. A QP shall maintain the records described in this Section for three years, including after the applicator's employment ending date.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-502 renumbered to R4-29-505; new Section R4-29-502 renumbered from R4-29-505 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-503. Business Licensee and Political Subdivision Recordkeeping and Retention

A. In addition to ensuring that the records required under R4-29-501 and R4-29-502 are made and maintained, a business licensee and political subdivision shall make and maintain records of the following:
1. The specimen label and SDS for each registered pesticide currently used by an applicator supervised, directed or employed by the business licensee or political subdivision;
2. The financial responsibility required under R4-29-310(A), if applicable;
3. Purchase records of each pesticide purchased or otherwise acquired that include the following information:
   a. Date of purchase or acquisition;
   b. Trade name of pesticide;
   c. Quantity of pesticide purchased or acquired; and
   d. Name of the business licensee;
4. Date on which a service vehicle or trailer is acquired;
5. Incident reports submitted to the OPM as required under R4-29-504;
6. A pest management service provided, including a service provided under a warranty;
7. The evidence of customer refusal of a re-treatment or post-construction treatment required under R4-29-309(J);
8. Written inspection reports;

9. Business licensee contracts for pest management services; and
10. Personnel records including for each applicator supervised, directed or employed by the business licensee or political subdivision:
    a. Date of hire or beginning of relationship;
    b. Date on which pest management services are first performed;
    c. Training and continuing education received;
    d. Supervision received;
    e. Protective clothing, safety supplies, and equipment issued to employee;
    f. Name of supervisor; and
    g. Employment or relationship ending date.

B. A business licensee or political subdivision shall maintain the records as follows:
1. Records under subsection (A)(1), as long as the registered pesticide is used by the business licensee or political subdivision. The business licensee shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored;
2. Records under subsection (A)(2), current;
3. Records under subsection (A)(3) or R4-29-501(C) and (D), three years from the date of purchase or disposal;
4. Records under subsection (A)(4), as long as the service vehicle or trailer is owned by the business licensee or political subdivision;
5. Records under subsection (A)(5), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
6. Records under subsection (A)(6) and (A)(7), three years;
7. Records under subsections (A)(8) and (A)(9), three years from the date on the inspection report or customer contract;
8. Records under subsection (A)(10), three years, including after the employment ending date;
9. WDIIRs completed under subsection (C), three years; and
10. Records under subsections (A)(5) and (A)(6) that pertain to the use of a restricted-use pesticide shall be maintained separate from other records.

C. When an applicator supervised, directed or employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:
1. TARF number,
2. If the business licensee has the property under warranty:
    a. Account number,
    b. Target pest,
    c. Date of initial treatment,
    d. Date of warranty expiration, and
3. The TARF number of each TARF completed regarding the property after the WDIIR is completed.

D. TARF. A business licensee or political subdivision shall:
1. Submit to the OPM a TARF, using a form approved by the OPM, within 30 days of completing an action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new-construction is complete when no further preventative treatment is necessary for the last unit at the project until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier;
2. Include the fee with each TARF and, if applicable, the penalty required under R4-29-103;
3. Unless exempt under subsection (D)(4), submit a TARF after completing each of the following:
    a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
    b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
    c. Final grade treatment;
    d. First corrective wood-destroying insect treatment at a site; and
    e. WDIIR.
4. Not submit a TARF after completing:
    a. A supplemental WDIIR; or
    b. The first corrective wood-destroying insect treatment at a site if the business licensee:
        i. Performed a pretreatment or new-construction treatment at the site,
        ii. Filed a TARF regarding the pretreatment or new-construction treatment, and
        iii. Performs the first corrective treatment under R4-29-309(D) or under a warranty.
5. Include the information required under A.R.S. § 32-2331 and the following on a TARF:
    a. License number of the licensed business that performed the work;
    b. Name of the QP;
    c. For a WDIIR, indicate whether:
        i. There was evidence of infestation, conditions conducive to infestation, or damage present;
        ii. Previous treatment was performed for an infestation; and
        iii. Corrective actions were taken for conditions conducive or damage present;
    d. For a pretreatment, new-construction treatment, or final grade treatment to establish an exterior vertical barrier, indicate:
        i. Chemical used and its EPA registration number,
        ii. Amount of chemical used,
        iii. Percentage of active ingredient in the chemical used, and
        iv. Square and linear footage treated; and
    e. For a post-construction corrective termite treatment, indicate:
        i. Type of treatment,
        ii. Target organism,
        iii. Chemical used and its EPA registration number,
        iv. Amount of chemical used, and
        v. Percentage of active ingredient in the chemical used.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-503 renumbered to R4-29-402; new Section R4-29-503 renumbered from R4-29-609 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 451, effective March 3, 2015 (Supp. 15-1).

R4-29-504. Reporting Incidents and Bulk Releases

A. Notice to OPM of an incident.
1. A business licensee and political subdivision shall provide written notice to the OPM within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee or political subdivision:
   a. Death or illness of an individual;
   b. Contamination of food, feed, drugs, or water supply;
   c. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
   d. Contamination of the environment that results in evacuation of the area.
2. A QP shall determine if the business licensee or school district has complied with subsection (A)(1). If compliance has not occurred, the QP shall provide the written notice required by subsection (A)(1) to the OPM within the time-frame specified in subsection (A)(1).

B. Notice to OPM of a bulk release.
1. A business licensee or political subdivision shall notify the OPM at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the person shall immediately report the release to the Arizona Department of Public Safety Duty Office.
2. A QP shall determine if the business licensee or school district has complied with subsection (B)(1). If compliance has not occurred, the QP shall provide the notices specified in subsection (B)(1) within one business day after the release.

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Section repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-504 renumbered to R4-29-403; new Section R4-29-504 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-505. Groundwater Protection List Reporting

A. For each application of a soil-applied pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and has been detected in Arizona groundwater within the last five years, the QP or political subdivision applicator shall submit the following information on a quarterly basis on a form approved by the OPM:
1. The county of use,
2. The name of product used and the EPA registration number,
3. The amount applied,
4. The dates covered by the report, and
5. Business license number.

B. For the purposes of this Section, "soil-applied pesticide" means a pesticide intended for application to or injection into the soil or for which the label requires or recommends that the application be followed within seventy-two hours by irrigation. Soil-applied pesticides include pesticides applied for final grade treatment, post-construction exterior trench or rod treatment, or pre-emergent weed control, but exclude pesticides applied within the stem wall or footer of a structure or to soil that will be promptly covered with concrete.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-505 renumbered to R4-29-502; new Section R4-29-505 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 717, effective, effective February 7, 2014 (Supp. 14-1).

Appendix A. Repealed

Historical Note

Adopted effective December 24, 1992 (Supp. 92-4). Appendix A repealed by final rulemaking at 13 A.A.R. 528, effective April 7, 2007 (Supp. 07-1).

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

R4-29-601. Inspection of Licensee Records

A. Upon written request by the OPM for the production of records, an applicator, QP, branch supervisor, business licensee, or political subdivision shall:
1. Make the records required under this Chapter available for review by the OPM within 24 hours or by a later date specified by the OPM.
2. Make the records available at the OPM unless another location is agreed upon.
3. Be available to interpret the submitted records if requested by the OPM.

B. If a person cannot timely comply with a request made under subsection (A), the person shall immediately provide written notice to the OPM, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

C. If the OPM requests a record from a business licensee or political subdivision when there may be an immediate risk to the health or safety of an individual, non-target animal, or the environment, the business licensee or political subdivision shall provide the record to the OPM within one hour.

D. An applicator or branch supervisor is only responsible for producing records within the applicator's or branch supervisor's control.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-601 repealed; new Section R4-29-601 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-602. Compliance with OPM Monitoring

A. If the OPM makes a written request of an applicator for a list of the time and location of pest management services that the applicator is scheduled to provide on a specified date, the applicator shall make the information available within 24 hours. The applicator may make the information available in a manner prescribed by the OPM.

B. If an applicator cannot timely comply with a request made under subsection (A), the applicator shall immediately provide written notice to the OPM, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

Historical Note

New Section R4-29-602 renumbered from R4-29-301 and amended by final rulemaking at 19 A.A.R. 2967,

effective September 13, 2013 (Supp. 13-3).

R4-29-603. Corrective Work Orders

A. If the OPM issues a corrective work order requiring a licensee to remedy deficiencies in treatment or to comply with this Chapter or the OPM's statutes, the licensee shall notify the OPM in writing by the date specified in the order that the corrective work is complete.

B. The director may consider a licensee's compliance with a corrective work order or lack thereof in imposing appropriate disciplinary action.

C. Failure to timely complete the corrective action or notify the OPM of the completion is a separate ground for disciplinary action.

D. A corrective work order issued by the OPM is not subject to A.R.S. § 41-1009(E)-(F) unless the OPM indicates in the order that timely compliance with the order will result in no disciplinary action being taken for a deficiency or violation.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-603 renumbered to R4-29-405; new Section R4-29-603 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-604. Disciplinary Action

To determine the disciplinary action that is appropriate, the Director may consider the following:

1. Prior violations,
2. Dishonest or self-serving motive,
3. Amount of experience as a licensee,
4. Submission of false evidence or statements or other deceptive practices during the investigative or disciplinary process,
5. Acknowledgement of wrongful nature of violation,
6. Practices put in place to prevent a similar violation from occurring again,
7. Compliance with a corrective work order,
8. Degree of harm resulting from the violation, and
9. Whether harm resulting from the violation was cured.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-604 repealed; new Section R4-29-604 renumbered from R4-29-708 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-605. Consent Agreements

A. A consent agreement shall include the following:

1. General nature of violations,
2. Citation to statutes and rules alleged to be violated,
3. Disciplinary action to be taken,
4. Effective date of the disciplinary action if different from the date of the consent agreement,
5. Corrective action to be taken, and
6. Date to complete any corrective action.

B. A person entering into a consent agreement with the OPM shall waive the right to a formal hearing, rehearing, or judicial review of the matters contained in the consent agreement.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-605 renumbered to R4-29-310; new Section R4-29-605 renumbered from R4-29-704 and amended by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-606. Penalties

A. When assessing a civil penalty for a violation, the Director shall assess a civil penalty for each violation based on the violation's total point value set out in this Section. To calculate the total point value, the Director shall sum the points for each aggravating factor and may subtract the points for each mitigating factor. The Director, in his sole discretion, may treat multiple violations as a single violation for the purpose of calculating the civil penalty.

B. Aggravating factors.

1. Pesticide type.
   - a. General use. 2
   - b. Experimental use or special local need. 3
   - c. Restricted use or unregistered. 5
2. Harm to humans and non-target animals.
   - a. None or unverified potential harm. 0
   - b. Potential harm. 3
   - c. Actual, verifiable harm. 5
3. Harm to environment and economic loss.
   - a. None or unverified potential harm. 0
   - b. Potential harm or loss. 3
   - c. Actual, verifiable loss of $10,000 or less. 4
   - d. Actual, verifiable loss exceeding $10,000. 5
   - e. Actual, verifiable environmental harm. 5
4. Non-pesticide violations.
   - a. Negligent violations. 4
   - b. Knowing or willful violations. 8
5. Prior similar violations.
   - a. None. 0
   - b. Warning letter within 12 months. 1
   - c. One or more within 36 months, but none within 12 months. 2
   - d. One within 12 months. 3
   - e. More than one within 24 months, but none within 12 months. 4
   - f. More than one within 12 months. 5
6. Culpability.
   - a. Negligent violations. 2
   - b. Knowing or willful violations. 4

C. Mitigating factors. In considering whether to subtract points for mitigating factors, the Director may consider whether the mitigating act occurred before, during, or after OPM's investigation.

1. Good will.
   - a. Admission of fault. 1
   - b. Admission and cooperation 2
   - c. Admission, cooperation, and corrective action prior to request. 3
2. Environmental benefit.
   - a. Clean up. 1
   - b. Move toward less toxic methods. 2
   - c. Develop IPM program. 3
3. Consumer benefit.
   - a. Consumer education. 1
   - b. Make consumer whole. 2
   - c. Extend warranty. 3
4. Other benefits.
   - a. Training (CEU). 1
   - b. Equipment (modification or new). 2
   - c. Purchase and use of computer for TARFs. 3

D. Civil penalty. To calculate the civil penalty, the Director shall:

1. For total point values of 6-10, multiply the value by $100 and then subtract $500.
2. For total point values of 11-15, multiply the value by $100 and then subtract $600.

3. For total point values of more than 16, assess the maximum penalty of $1000.

E. Other penalties. In addition to assessing a civil penalty, the Director:

1. For any total point value, may require extra continuing education.
2. For total point values of 6-11, may impose probation requirements.
3. For total point values of 12-17, shall impose probation requirements and may suspend the license, certification, or registration.
4. For total point values of 18 or more, shall suspend or revoke the license, certification, or registration.
5. May take any other action permitted by law, including imposing probation requirements after a suspension ends.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-606 renumbered to R4-29-303; new Section R4-29-606 made by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-607. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-607 renumbered to R4-29-305 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-608. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-608 renumbered to R4-29-309 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-609. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-608 renumbered to R4-29-503by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

ARTICLE 7. RENUMBERED

R4-29-701. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-701 repealed by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-702. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-702 repealed by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-703. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-703 repealed by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-704. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-704 renumbered to R4-29-605 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-705. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-705 repealed by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-706. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-706 repealed by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-707. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-707 repealed by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

R4-29-708. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 623, effective April 7, 2007 (Supp. 07-1). Section R4-29-708 renumbered to R4-29-604 by final rulemaking at 19 A.A.R. 2967, effective September 13, 2013 (Supp. 13-3).

A.R.S. T. 3, Ch. 20, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Chapter 20, Pest Management Division, consisting of former Articles 1 to 4 of Title 32, Chapter 22 (§§ 32-2301 to 32-2333) which were transferred for placement here and renumbered as §§ 3-3601 to 3-3633, was added by Laws 2016, Ch. 221, § 5, effective August 6, 2016.>

A. R. S. T. 3, Ch. 20, Refs & Annos, AZ ST T. 3, Ch. 20, Refs & Annos
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Arizona Revised Statutes Annotated
Title 3. Agriculture
Chapter 20. Pest Management Division
Article 1. General Provisions

A.R.S. T. 3, Ch. 20, Art. 1, Refs & Annos
Currentness

A. R. S. T. 3, Ch. 20, Art. 1, Refs & Annos, AZ ST T. 3, Ch. 20, Art. 1, Refs & Annos
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A.R.S. § 3-3601
Formerly cited as A.R.S. § 32-2301

§ 3-3601. Definitions

Effective: August 6, 2016
Currentness

In this chapter, unless the context otherwise requires:

1. "Branch office" means any fixed place of business, other than the primary office, where records are kept, mail is received, statements are rendered, money is collected, requests for service or bids are received, information pertaining to the business of pest management is given or pesticides are stored or disposed of.

2. "Branch supervisor" means a certified applicator working at or from a branch office who is responsible for ensuring the training, equipping and supervision of all applicators of the branch office.

3. "Business license" means a license that is issued pursuant to this chapter or rules adopted pursuant to this chapter to a person and that entitles that person and the person's employees to engage in the business of pest management.

4. "Business of pest management" means engaging in, offering to engage in, advertising for, soliciting or performing pest management, including any of the following:

(a) Identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations.

(b) Making written or oral inspection reports, recommendations, estimates or bids with respect to infestations.

(c) The application of pesticides or the making of contracts or submitting of bids for the application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations.

5. "Certified applicator" means an individual who is licensed by the division to provide pest management services in accordance with this chapter.

6. "Certified qualified applicator" means a certified applicator who is eligible to act as a qualifying party.

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7. "Child care facility" means a facility that is regulated pursuant to title 36, chapter 7.1. [1]

8. "De minimis violation" means a violation that, although undesirable, has no direct or immediate relationship to safety, health or property damage.

9. "Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling or mitigating any pest or other form of plant or animal life.

10. "Direct supervision" means the use of a pesticide under the instructions, control and responsibility of a certified applicator who is available if needed for consultation or assistance even though the certified applicator is not physically present at the time and place the pesticide is used.

11. "Division" means the pest management division of the department.

12. "Final grade treatment" means the establishment of a complete vertical barrier at the exterior of foundation walls in stem wall or monolithic construction.

13. "Financial security" means liability insurance, a deposit of cash or certified monies, a surety bond or an irrevocable and unconditional letter of credit from a federally chartered financial institution or a financial institution as defined in § 6-101.

14. "Household pests" means pests, other than wood-destroying organisms, that invade households or other structures, including rodents, vermin and insects.

15. "Immediate supervision" means the use of a pesticide by an individual acting under the instructions, control and responsibility of a certified applicator who is within the direct line of sight or within hearing distance of the individual and who is available for consultation or assistance at the time and place the pesticide is used.

16. "Initial corrective treatment" means the first postconstruction treatment of any kind performed by a licensee, excluding a treatment performed under warranty by a licensee who has performed the pretreatment or new-construction treatment.

17. "Inquiry" means an initial investigation of possible violations of this chapter or rules adopted pursuant to this chapter based on information received from the public or division staff.

18. "Integrated pest management" means a sustainable approach to managing pests that combines biological, cultural, physical and chemical tools in a way that minimizes economic, health and environmental risks.

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19. "New-construction treatment" means a treatment that protects all cellulose components of a structure from subterranean termites and that is performed after a permanent concrete slab foundation is installed or footings and supports for a raised foundation are installed, but before the structure or a final grade treatment is completed.

20. "Other structures" includes railroad cars, boats, docks, motor vehicles or airplanes and their contents.

21. "Pest management":

(a) Means the management of health-related pests, aquatic pests, household pests, wood-destroying organisms or other pests, including weeds, that exist in, near or around structures, in ornamental shrubs and trees, along rights-of-way or in lawns or cemeteries and all pesticide applications that could be harmful to public health or the environment.

(b) Includes the management by persons for hire of health-related pests, aquatic pests, household pests, wood-destroying organisms or other pests, including weeds, that exist on golf courses.

(c) Does not include pesticide applications used directly in the commercial production of crops and animals or used not for hire on golf courses.

22. "Pest management services" means identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations, making written or oral inspection reports or recommendations with respect to infestations and the application of pesticides or the use of devices not exempt by § 3-3603, subsection B, paragraph 17 for the purpose of eliminating, exterminating, controlling or preventing infestations.

23. "Pesticide" means any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating insects, fungi, bacteria, microbes, weeds, rodents, predatory animals or any form of plant or animal life that is, or that the director may declare to be, a pest and that may infest or be detrimental to vegetation, humans, animals or households or be present in any environment.

24. "Political subdivision" means a state agency, county, city, town, municipal corporation or school district or a special district formed pursuant to title 48. [2]

25. "Postconstruction treatment" means a treatment to control wood-destroying organisms in or around an existing structure performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal under § 3-3632, subsections A and B.

26. "Pretreatment" means a termite treatment that protects all cellulose components of a structure from subterranean termites, that is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation and that establishes thorough and complete horizontal and vertical treated barriers.

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27. "Prior violation" means any violation for which disciplinary action was taken within a five-year period before the date of the violation for which current disciplinary action is sought.

28. "Qualifying party" means a certified qualified applicator registered with the division as the individual responsible for ensuring the training, equipping and supervision of all applicators of a business licensee or school district.

29. "School" means any public or nonpublic institution, other than a child's home, that is established for the purpose of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve and that qualifies as a school pursuant to § 15-802.

30. "Service vehicle" means a motor vehicle, including a trailer attached to the motor vehicle, that is used to transport equipment or pesticides for the business of pest management.

31. "Sterilant" means a product that is designed for killing all live vegetation and preventing all vegetation growth for twelve or more months.

32. "Weed" means any plant that grows where it is not wanted.

33. "Wood-destroying insect inspection report" means a written inspection report on a form approved by the director that is prepared in connection with the sale or refinancing of real property whether or not the report is used as part of the transaction.

34. "Wood-destroying organisms" means organisms that attack, damage or destroy wood or wood-derivative products, but does not include birds or mammals.

Credits

Added as § 32-2301 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1989, Ch. 186, § 3; Laws 1990, Ch. 374, § 412, eff. Jan. 1, 1991; Laws 1991, Ch. 167, § 1; Laws 1993, Ch. 234, § 5; Laws 1998, Ch. 142, § 1; Laws 2003, Ch. 115, § 1; Laws 2008, Ch. 309, § 2, eff. July 7, 2008; Laws 2011, Ch. 20, § 2; Laws 2013, Ch. 64, § 2; Laws 2013, Ch. 125, § 1. Renumbered as § 3-3601 and amended by Laws 2016, Ch. 221, §§ 5, 6.

Notes of Decisions (1)

Footnotes

1 Section 36-881 et seq.

2 Section 48-101 et seq.

A. R. S. § 3-3601, AZ ST § 3-3601

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A.R.S. § 3-3602
Formerly cited as A.R.S. § 32-2302

§ 3-3602. Applicability of chapter; state preemption

Effective: August 6, 2016
Currentness

A. This chapter applies to pest management. This chapter does not apply to pesticide applications used directly in the commercial production of crops and animals or used, if not for hire, on golf courses.

B. The regulation of pest management is of statewide concern. The regulation of pest management pursuant to this chapter is not subject to further regulation by a county, city, town or other political subdivision of this state.

Credits
Added as § 32-2302 by Laws 2013, Ch. 125, § 3. Renumbered as § 3-3602 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3602, AZ ST § 3-3602
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A.R.S. § 3-3603
Formerly cited as A.R.S. § 32-2304

§ 3-3603. Powers and duties of director

Effective: August 6, 2016
Currentness

A. The director is responsible for administering this chapter and shall:

1. Adopt rules that are necessary or proper to administer and implement this chapter, including rules that may be more stringent than a corresponding federal law for:

(a) Administrative provisions.

(b) Licensure, certification and registration requirements and qualifications, including training and education requirements and financial security standards.

(c) Health and safety provisions.

(d) Duties and responsibilities.

(e) Recordkeeping and production of records requirements.

(f) Licensee inspection and treatment report requirements.

(g) Disciplinary action provisions.

(h) Equipment provisions.

(i) Advertising requirements.

(j) The use, storage and application of pesticides and devices used in pest management.

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2. Notify the business licensee, applicator and qualifying party in writing of any inquiry into possible violations by the business licensee, applicator or qualifying party by the close of business on the tenth business day after the day on which the director initiated the inquiry if the director anticipates an enforcement action. If in the course of the investigation the division identifies any alleged violations by a different business licensee, applicator or qualified party, the director shall notify the additional alleged violator by the close of business on the tenth business day after the day on which the director initiated the new inquiry.

3. Develop and either conduct or contract to conduct certified applicator and certified qualified applicator tests at locations throughout this state. If the director contracts for these tests, the contracts may provide for specific examination fees or a reasonable range of fees determined by the director to be paid directly to the contractor by the applicant. The director shall make all efforts to contract with private parties to electronically administer the tests.

4. Maintain a computer system for the benefit and protection of the public that includes the following information on pretreatments, new-construction treatments, final grade treatments, initial corrective treatments and wood-destroying insect inspection reports:

(a) The name of the individual who performed the work.

(b) The address or location of the work or project.

(c) The name of the pest management company.

(d) The name of the qualifying party.

(e) The applicator license numbers.

(f) The nature and date of the work performed.

(g) Any other information that is required by rule.

5. Establish offices the director deems necessary to carry out the purposes of this chapter.

6. Subject to title 41, chapter 4, article 4,[1] employ personnel the director deems necessary to carry out the purposes of this chapter and designate their duties.

7. Oversee the approval, content and method of delivery of continuing education courses.

8. Deny a license to any person who has had a license revoked for a period of five years from the time of revocation.

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9. License applicators and qualified applicators and license businesses in accordance with this chapter and rules adopted pursuant to this chapter.

10. Register qualifying parties, branch supervisors and branch offices in accordance with this chapter and rules adopted pursuant to this chapter.

11. Require the payment of a penalty for any late license renewal.

12. Refuse to issue a business license in a name that is not registered with the secretary of state or filed with the Arizona corporation commission.

13. Adopt a wood-destroying insect inspection report form for use by business licensees.

14. Receive monies authorized under this chapter for deposit, pursuant to §§ 35-146 and 35-147, in the appropriate funds.

B. The director may:

1. Compel attendance of witnesses, administer oaths or affirmations and take testimony concerning all matters coming within the director's jurisdiction.

2. Issue subpoenas for the taking of depositions, the production of documents and things and the entry on land for inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation on the property relevant to an inquiry or complaint.

3. Contract and enter into interagency and intergovernmental agreements with any private party or public agency.

4. With at least twenty-four hours' notice, unless there may be an immediate risk to public health and safety, require a business licensee, qualifying party or applicator to produce specific records. On a showing of good cause by the business licensee, qualifying party or applicator, the director may excuse failure to timely comply.

5. Deny or revoke a license based on the information in the application.

6. Issue advisory notices for de minimis violations.

7. Investigate alleged violations of this chapter, rules adopted pursuant to this chapter, consent agreements, orders and any condition imposed in connection with a license.

8. Require the public to provide notices regarding alleged violations in writing.

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9. Pursuant to § 41-1092.11, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.

10. Issue a corrective work order requiring a business licensee or applicator to remedy deficiencies in treatment or to comply with this chapter or any rules adopted pursuant to this chapter before or after a formal hearing.

11. On receipt of a complaint or on initiation of a complaint by the division, investigate any alleged violation of unlicensed activity pursuant to this chapter. If the director determines that an unlicensed person is performing an act that is required to be performed by a person licensed pursuant to this chapter, the director shall take one or more of the following enforcement actions:

(a) Issue a cease and desist order requiring the person to immediately cease operations.

(b) Impose on the person a civil penalty of not more than one thousand dollars for the first occurrence and not more than two thousand dollars for the second occurrence.

(c) File an action to enjoin the person from engaging in the unlicensed activity.

(d) Request that the county attorney or attorney general file charges against the person.

12. Refuse to issue a business license in a name that is likely to be misleading or to imply any distorted representation about the business.

13. Register a certified applicator who is a representative of a business licensee as a temporary qualifying party if the qualifying party becomes disassociated with the business licensee.

14. Provide and conduct classes to train individuals in preparation for certified applicator and certified qualified applicator tests. The director may assess a fee for each class. The director may contract with a commercial enterprise or an accredited institution to conduct the class.

15. Provide and conduct continuing education classes quarterly. The director may assess a fee for each credit hour. The director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of division staff.

16. Enter into consent agreements and issue consent orders.

17. Designate by rule devices that are exempt from the licensure, certification and registration requirements of this chapter.

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18. Charge a person for providing copies of rules, forms or policies proposed for adoption and for educational materials.

19. Require a business licensee or qualifying party to register with the division or to otherwise identify all of the licensed or unlicensed applicators of the business or supervised by the qualifying party.

20. Require a business licensee to produce records for the purpose of verifying that an individual is an applicator of the business licensee.

21. Charge a handling fee in addition to the transaction amount for any transaction that could have been completed electronically and was not.

22. Deny or refuse to renew a license of a person who owes unpaid fees or civil penalties to the division.

C. The director or any duly authorized agents may enter any private or public property, including a service vehicle, on which pesticides are located or are reasonably believed to be located to be used for purposes related to pest management or any office of a business engaged in pest management. The owner, managing agent or occupant of the property or office shall permit entry for the purpose of inspecting and investigating conditions relating to the use, storage, application and disposal of pesticides, including worker safety materials and records pertaining to pest management. If a person refuses to admit the director or the authorized agent in accordance with this subsection, the director may obtain a warrant from a court of competent jurisdiction. If a licensed or certified person refuses to admit the director or an authorized agent in accordance with this subsection during regular business hours, the director may impose disciplinary action on the person.

D. The director or any duly authorized agents may monitor compliance by a person with this chapter and rules adopted pursuant to this chapter while the person is providing pest management services.

Credits

Added as § 32-2304 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1989, Ch. 186, § 4; Laws 1990, Ch. 273, § 1; Laws 1991, Ch. 167, § 2; Laws 1993, Ch. 234, § 7; Laws 1998, Ch. 142, § 4; Laws 1998, Ch. 242, § 16, eff. July 1, 1999; Laws 2000, Ch. 113, § 128; Laws 2002, Ch. 99, § 12, eff. April 29, 2002; Laws 2002, Ch. 262, § 1; Laws 2003, Ch. 115, § 4; Laws 2004, Ch. 208, § 1; Laws 2006, Ch. 263, § 1; Laws 2008, Ch. 309, § 4, eff. July 7, 2008; Laws 2012, Ch. 321, § 66, eff. Sept. 29, 2012; Laws 2013, Ch. 125, § 5. Renumbered as § 3-3603 and amended by Laws 2016, Ch. 221, §§ 5, 7.

Footnotes

1 Section 41-741 et seq.

A. R. S. § 3-3603, AZ ST § 3-3603

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A.R.S. § 3-3604
Formerly cited as A.R.S. §32-2305

§ 3-3604. Pest management trust fund

Effective: August 6, 2016
Currentness

A. The pest management trust fund is established for the exclusive purpose of implementing, continuing and supporting the division and its objectives as established by this chapter.

B. The director shall administer the trust fund as trustee. The state treasurer shall accept, separately account for and hold in trust any monies deposited in the state treasury, which are considered to be trust monies as defined in § 35-310 and which shall not be commingled with any other monies in the state treasury except for investment purposes. On notice from the director, the state treasurer shall invest and divest any trust fund monies deposited in the state treasury as provided by §§ 35-313 and 35-314.03, and monies earned from the investment shall be credited to the trust fund.

C. The beneficiaries of the trust are the division programs established by this chapter. Monies in the trust fund shall be disbursed as approved by the director exclusively for the purposes prescribed in this chapter.

D. Surplus monies, including any unexpended and unencumbered balance at the end of the fiscal year, do not revert to the state general fund.

E. If the division is terminated, any monies in the trust fund shall be expended to meet existing legal obligations of the division. The director shall expend any remaining monies on any program consistent with this chapter.

Credits
Added as § 32-2305 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1998, Ch. 142, § 5; Laws 1998, Ch. 242, § 17, eff. July 1, 1999; Laws 2000, Ch. 193, § 307; Laws 2008, Ch. 309, § 5, eff. July 7, 2008; Laws 2013, Ch. 125, § 6. Renumbered as § 3-3604 and amended by Laws 2016, Ch. 221, §§ 5, 8.

A. R. S. § 3-3604, AZ ST § 3-3604
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A.R.S. § 3-3605
Formerly cited as A.R.S. § 32-2306

§ 3-3605. Pest management division council; members; duties

Effective: August 6, 2016
Currentness

A. The director shall establish by rule a pest management division council to assist and make recommendations to the director regarding the administration and implementation of this chapter. The director shall appoint five members to the council, including one public member.

B. The pest management division council shall:

1. Review pest management policy in this state as established by law and administered by the division.

2. Assist the director in formulating administrative rules for the division, including reviewing, advising and making recommendations to the director on proposed rules before the rules are adopted and recommending and initiating the rulemaking process for rules relating to this chapter.

3. Assist the director in developing proposed budgets for the division.

4. Provide additional assistance as the director deems necessary.

C. If the director determines that the rulemaking recommendations of the pest management division council are practicable and in the best interests of the pest management industry and the public, the director shall accept the rulemaking recommendations. If the director rejects the rulemaking recommendations of the pest management division council, the director shall provide a written explanation of the reasons for the rejection to the division council not more than fifteen days after the director's decision to reject the recommendations.

D. The director shall include the comments of the pest management division council in the official record when adopting rules or budgets for the division.

Credits
Added as § 32-2306 by Laws 2013, Ch. 125, § 8. Renumbered as § 3-3605 and amended by Laws 2016, Ch. 221, §§ 5, 9.

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A. R. S. § 3-3605, AZ ST § 3-3605
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A.R.S. § 3-3606
Formerly cited as A.R.S. §32-2307

§ 3-3606. Pesticide applications at schools and child care facilities; advance notification; exemptions

Effective: August 6, 2016
Currentness

A. Only a certified applicator may apply pesticides at a school or child care facility.

B. A business licensee or certified applicator shall notify a school or a child care facility at least seventy-two hours in advance of any pesticide application in order to permit the school to comply with § 15-152 and the child care facility to comply with § 36-898. The seventy-two-hour advance notice shall include:

1. The scheduled date and time the application is to occur.

2. The location and area of the application and the brand name of the pesticide or pesticides to be applied.

3. The name, address, phone number and contact person of the business licensee or certified applicator.

4. A statement that further information, the product label or the safety data sheet is available by contacting the business licensee or certified applicator.

C. The following pesticide applications are exempt from the notification requirement prescribed by subsection B of this section:

1. Nonresidual pesticide applications performed or contracted by public health agencies for adult vector control, provided that oral notification is attempted at least seventy-two hours before the application, when possible, to the school office or child care facility office with a statement of the pest problem, treatment procedure, area to be treated and approximate time of the application.

2. Emergency applications of a pesticide that has a toxicity category of III or IV pursuant to 40 Code of Federal Regulations section 156.62 to control harmful pests that pose an immediate threat to the public health. Under the circumstances described in this paragraph or paragraph 1 of this subsection, the business licensee or certified applicator shall do all of the following:

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(a) Notify the school office or child care facility office before the application with a statement of the pest problem, treatment procedure, area to be treated and approximate time of application.

(b) Immediately after the application has been completed, notify the school office or the child care facility office of the name of the pesticide applied, the formulation, the strength and dosage and the date and time of application and provide the pesticide label.

(c) Post the treated area immediately after the application. The posting shall be at least eight and one-half inches by eleven inches and shall include the name of the pesticide, the registration number issued by the United States environmental protection agency, the date and time of application and the name and telephone number of the business licensee and certified applicator. A copy of the posting shall also be placed at the main entrance to the school or child care facility. The posting and the copy of the posting shall remain in place for at least forty-eight hours after the application.

3. Disinfectants or swimming pool chemicals.

4. Block, gel or paste-type bait that is a toxicity category III or IV formulation of insecticide pursuant to 40 Code of Federal Regulations section 156.62 and that is either of the following:

(a) Secured in an enclosed, tamper-resistant bait station and placed in an area that is inaccessible to children.

(b) Applied to a crack or crevice that is inaccessible to children.

5. Block-type bait that is a toxicity level III or IV formulation of rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area that is inaccessible to children.

6. Personal repellants.

7. Nonrestricted use sanitizers and deodorizers.

Credits

Added as § 32-2307 by Laws 1993, Ch. 102, § 2. Amended by Laws 2003, Ch. 115, § 7; Laws 2006, Ch. 311, § 1, eff. Jan. 2, 2007; Laws 2013, Ch. 125, § 9. Renumbered as § 3-3606 and amended by Laws 2016, Ch. 221, §§ 5, 10.

A. R. S. § 3-3606, AZ ST § 3-3606
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A.R.S. § 3-3611
Formerly cited as A.R.S. § 32-2311

§ 3-3611. License and registration exemptions

Effective: August 6, 2016
Currentness

A. The provisions of this chapter requiring licensure and registration do not apply to:

1. Persons applying nonrestricted use pesticides on residential property that they own and occupy or that they own and that is not occupied.

2. Authorized representatives of any educational institution engaged in research in the study of pest management or a state agency engaged in research or the study of pest management.

3. Persons using a nonrestricted, ready-to-use disinfectant, sanitizer or deodorizer.

4. A utility and the utility's employees if pest management services are needed for an employee's health and safety in order for the employee to continue performing work tasks.

5. Persons using an over-the-counter antimicrobial to treat a swimming pool.

6. Persons using a device that is exempt pursuant to § 3-3603, subsection B, paragraph 17.

7. Persons who are exempt pursuant to § 3-3612 or 3-3613.

B. An individual is not required to have a separate business license to engage in the business of pest management on behalf of a business licensee or as an employee of a political subdivision.

C. The director by rule may exempt from §§ 3-3615 and 3-3616 a certified applicator who performs inspections but does not make recommendations, estimates, bids or contracts for treatment or use pesticides or devices for pest management and may prescribe alternative requirements and conditions.

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Credits

Added as § 32-2311 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1989, Ch. 186, § 5; Laws 1989, Ch. 283, § 13; Laws 1990, Ch. 273, § 2; Laws 1992, Ch. 159, § 1; Laws 1993, Ch. 234, § 9; Laws 1998, Ch. 142, § 7; Laws 2003, Ch. 115, § 8; Laws 2006, Ch. 88, § 1; Laws 2006, Ch. 263, § 2; Laws 2008, Ch. 309, § 8, eff. July 7, 2008; Laws 2010, Ch. 65, § 1; Laws 2013, Ch. 125, § 11; Laws 2015, Ch. 80, § 1. Renumbered as § 3-3611 and amended by Laws 2016, Ch. 221, §§ 5, 11.

Notes of Decisions (4)

A. R. S. § 3-3611, AZ ST § 3-3611
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A.R.S. § 3-3612
Formerly cited as A.R.S. § 32-2311.01

§ 3-3612. Political subdivisions; exemptions; definition

Effective: August 6, 2016
Currentness

A. A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements:

1. Is not required to be licensed under § 3-3615.

2. Must provide the department with the name and telephone number of the primary contact person or persons responsible for responding to department inquiries or concerns regarding compliance with this chapter. The primary contact person or persons at a minimum shall demonstrate to the department:

(a) Where the records are retained.

(b) Where the personal protective equipment is located.

(c) Where the pesticides are stored.

(d) That all applicators are properly certified.

B. A school district is exempt from subsection A, paragraph 2 of this section, but shall have a qualifying party who is registered in the appropriate categories.

C. An employee of a political subdivision who provides pest management services must be a certified applicator except as provided by subsection D of this section.

D. The following individuals are exempt from the certification requirements of this chapter:

1. An employee of a political subdivision who applied pesticides for the political subdivision no more than ninety calendar days before certification. This exemption does not apply to an employee who applies pesticides at a school or child care facility.

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2. An employee of a political subdivision or designated agent while performing emergency response or rescue services.

3. A volunteer of a political subdivision while applying herbicides for the purpose of the eradication and control of noxious weeds as defined in § 3-201 and who is under the immediate supervision of a certified applicator. This exemption does not apply to a volunteer of a political subdivision who:

(a) Applies herbicides at a school or child care facility.

(b) Uses herbicides that are labeled with the words “restricted use” or “danger”.

(c) Uses sterilants.

(d) Uses application equipment that holds more than four gallons of total mixed liquid herbicide.

(e) Has not completed an herbicide application training program conducted by the political subdivision and approved by the division.

E. For the purposes of this section, “volunteer” means a person who works without compensation other than reimbursement of actual expenses incurred or disbursement of meals or other incidental benefits.

Credits
Added as § 32-2311.01 by Laws 2013, Ch. 125, § 12. Amended by Laws 2015, Ch. 80, § 2. Renumbered as § 3-3612 and amended by Laws 2016, Ch. 221, §§ 5, 12.

A. R. S. § 3-3612, AZ ST § 3-3612
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A.R.S. § 3-3613
Formerly cited as A.R.S. § 32-2311.02

§ 3-3613. Landscapers; records; civil penalties

Effective: August 6, 2016
Currentness

A. The provisions of this chapter requiring licensure and registration do not apply to a person who conducts lawn, garden, shrub or tree maintenance and who applies herbicides for the purpose of weed management, except as otherwise provided in this section.

B. Notwithstanding subsection A of this section, the licensure and registration requirements of this chapter apply to a person who:

1. Uses herbicides that are labeled with the words “restricted use” or “danger”.

2. Uses sterilants or preemergent herbicides.

3. Offers weed management as the person's primary service or advertises weed management services.

4. Uses application equipment that collectively holds more than five gallons of total mixed liquid herbicide at an address or project on the same day.

5. Uses more than twenty-five pounds of nonliquid herbicide at an address or project on the same day.

6. Uses or is part of a crew of two or more herbicide applicators at an address or project on the same day.

7. Uses an herbicide at a school or child care facility.

8. Uses an herbicide at an address or project without performing lawn, garden, shrub or tree maintenance at that address or project on the same day.

C. A person who is exempt from licensure and registration pursuant to this section shall provide treatment records to each customer on application of herbicides for the purpose of weed management and shall retain records containing the

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same information provided to customers for at least six months after the date of the treatment. For the purposes of this subsection, treatment records must include the following:

1. The address of the location of the herbicide application.

2. The date of the herbicide application.

3. The trade name or common name of the herbicide applied.

4. The amount of the herbicide applied.

5. The name of the individual who performed the treatment.

D. If a person is exempt from licensure and registration pursuant to subsection A of this section but does not comply with subsection C of this section, the director shall:

1. For a first violation, issue a written notice of correction that contains a warning and a copy of this section.

2. For a second violation, impose a civil penalty of at least fifty dollars.

3. For a third or any subsequent violation, impose a civil penalty of not more than one thousand dollars.

E. If a person is not exempt from licensure and registration but uses an herbicide for the purpose of weed management, the director may:

1. Issue a cease and desist order and an administrative warning.

2. For a first violation, impose a civil penalty of not more than one thousand dollars.

3. For a second or any subsequent violation, impose a civil penalty of not more than two thousand dollars.

Credits
Added as § 32-2311.02 by Laws 2013, Ch. 125, § 12. Renumbered as § 3-3613 and amended by Laws 2016, Ch. 221, §§ 5, 13.

A. R. S. § 3-3613, AZ ST § 3-3613
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A.R.S. § 3-3614
Formerly cited as A.R.S. § 32-2312

§ 3-3614. Applicator certification; categories

Effective: August 6, 2016
Currentness

A. An application for applicator certification shall be in a form prescribed by the director and be accompanied by the prescribed fee.

B. An individual may apply for certification as an applicator or qualified applicator in any one or a combination of the following categories:

1. Industrial, institutional, structural and health-related pest management.

2. Wood-destroying organism management.

3. Ornamental and turf pest management.

4. Right-of-way pest management.

5. Aquatic pest management.

6. Fumigation.

7. Other categories or subcategories established by rule.

Credits
Added as § 32-2312 by Laws 2013, Ch. 125, § 14. Renumbered as § 3-3614 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3614, AZ ST § 3-3614
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A.R.S. § 3-3615
Formerly cited as A.R.S. § 32-2313

§ 3-3615. Business license; financial security

Effective: August 6, 2016
Currentness

A. A person who engages in the business of pest management shall obtain a valid business license from the division. A person who is not exempt under this chapter and who advertises for, solicits or claims to be willing to engage in the business of pest management is presumed to be engaging in the business of pest management.

B. An application for an original or a renewal business license shall:

1. Be in a form and include the information prescribed by the director.

2. Be accompanied by the prescribed fee.

3. Include the following proof of financial security:

(a) Either a deposit of money, liability insurance, self-insured retention, a surety bond or a certified check protecting persons who may suffer bodily injury or property damage as a result of the operations of the applicant. The director shall not accept a bond or a liability insurance policy unless it is issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state. The amount of the deposit, insurance, self-insured retention or bond shall be at least five hundred thousand dollars and shall be maintained at not less than that amount at all times during the licensing period. The license of a business licensee whose financial security falls below the minimum five hundred thousand dollars shall be suspended by the director and shall remain suspended until the security meets the minimum financial security requirement. The financial security need only cover those particular operations in which the licensee is engaged at any time. If the financial security is in the form of liability insurance or a surety bond, the licensee shall furnish the director with a certificate of coverage that indicates the coverages and endorsements required by this subsection on a form prescribed by the director.

(b) Either of the following if the business licensee performs termite treatments:

(i) Proof of a surety bond in the amount of one hundred thousand dollars per business license for actual damages, including reasonable costs of collection suffered by persons as a result of termite damage due to negligent treatment.

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(ii) Proof of a liability insurance policy rider in the amount of one hundred thousand dollars per business license that covers termite damage due to negligent treatment.

(c) If the business licensee provides wood-destroying insect inspection reports, proof of a surety bond or a liability insurance policy rider in the amount of one hundred thousand dollars per business license for actual damages plus reasonable costs of collection suffered by persons as a result of errors and omissions contained in the reports.

C. If an insurance policy provides for a deductible, the deductible amount shall not exceed one percent of the total financial security for each occurrence. If the deductible amount is in excess of one percent of the total financial security for each occurrence, the business licensee shall provide other security as provided in this section or other evidence of financial security for the excess deductible amount.

D. If the financial security is in the form of liability insurance, a licensee shall maintain a coverage endorsement for pesticides and herbicides, fumigation, care, custody and control, rights-of-way, wood-destroying insect inspection report errors and omissions and pollution transit for its applicable license categories.

E. If the proof of financial security on file with the division expires, the business license is automatically suspended until a current certificate of insurance or proof of financial responsibility is furnished to the director.

Credits

Added as § 32-2313 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1991, Ch. 167, § 4; Laws 1993, Ch. 234, § 12, eff. Jan. 1, 1995; Laws 1998, Ch. 142, § 9; Laws 2003, Ch. 115, § 11; Laws 2003, Ch. 146, § 1; Laws 2004, Ch. 208, § 2; Laws 2008, Ch. 183, § 43; Laws 2008, Ch. 309, § 10, eff. July 7, 2008; Laws 2013, Ch. 125, § 15. Renumbered as § 3-3615 and amended by Laws 2016, Ch. 221, §§ 5, 14.

Notes of Decisions (2)

A. R. S. § 3-3615, AZ ST § 3-3615
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A.R.S. § 3-3616
Formerly cited as A.R.S. § 32-2314

§ 3-3616. Qualifying party; registration

Effective: August 6, 2016
Currentness

A. A person shall not engage in the business of pest management in any category without a qualifying party registered in that category.

B. To be a qualifying party, an individual must:

1. Be a certified qualified applicator.

2. Register as a qualifying party with the division using a form and including the information prescribed by the director.

Credits
Added as § 32-2314 by Laws 2013, Ch. 125, § 17. Renumbered as § 3-3616 and amended by Laws 2016, Ch. 221, §§ 5, 15.

A. R. S. § 3-3616, AZ ST § 3-3616
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A.R.S. § 3-3617
Formerly cited as A.R.S. § 32-2315

§ 3-3617. Branch office; branch supervisor

Effective: August 6, 2016
Currentness

A. A business licensee shall register each branch office with the director before the branch office opens for business.

B. Each branch office shall be supervised by a registered branch supervisor.

Credits
Added as § 32-2315 by Laws 2013, Ch. 125, § 17. Renumbered as § 3-3617 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3617, AZ ST § 3-3617
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A.R.S. § 3-3618
Formerly cited as A.R.S. § 32-2317

§ 3-3618. Fees

Effective: August 6, 2016
Currentness

A. The director shall establish by rule and collect application and renewal fees for the following:

1. A business license.

2. A branch office registration.

3. A branch supervisor registration.

4. A qualifying party registration.

5. A temporary qualifying party registration.

6. A temporary qualifying party renewal registration.

7. An applicator certification.

8. A qualified applicator certification.

9. An applicator registration.

10. A duplicate license.

B. The director may charge and collect late fees in addition to the fees listed in subsection A of this section.

C. The director may establish tiered fees for business licenses.

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D. The director may charge and collect additional fees for goods and services that the director considers to be appropriate to carry out the intent and purpose of this chapter. These additional fees shall not exceed the costs of providing the goods or rendering the services.

Credits

Added as § 32-2317 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1993, Ch. 234, § 16; Laws 1998, Ch. 142, § 13; Laws 2001, Ch. 39, § 1; Laws 2002, Ch. 262, § 3; Laws 2003, Ch. 115, § 14; Laws 2004, Ch. 208, § 3; Laws 2008, Ch. 309, § 12, eff. July 7, 2008; Laws 2013, Ch. 125, § 18. Renumbered as § 3-3618 and amended by Laws 2016, Ch. 221, §§ 5, 16.

A. R. S. § 3-3618, AZ ST § 3-3618
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A.R.S. § 3-3621
Formerly cited as A.R.S. § 32-2321

§ 3-3621. Disciplinary action; grounds; procedure

Effective: August 6, 2016
Currentness

A. If the director finds that a person has violated this chapter, a rule adopted pursuant to this chapter or a written order of the director, the director may issue a notice of violation and a cease and desist order to the person and, after an opportunity for a hearing, take any of the following disciplinary actions, in combination or alternatively:

1. Revoke a license or registration.

2. Suspend a license or registration.

3. Refuse to renew a license or registration.

4. Impose probation requirements that require a person to comply with one or more specific provisions of this chapter or rules adopted pursuant to this chapter and that require reporting by or monitoring of the person.

5. Impose a civil penalty in an amount of not more than one thousand dollars for each violation except for grounds prescribed in § 3-3624, subsection B, paragraphs 8 and 9.

6. Require a qualifying party to report to the director the qualifying party's role in the management of a business license.

7. Require an individual to take supplemental continuing education within a time period set by the director.

B. Instead of taking disciplinary action for a violation pursuant to subsection A of this section, the director may issue an administrative warning.

C. Except as provided in § 41-1092.11, the director may take disciplinary action against a business licensee pursuant to subsection A of this section only if any of the following applies:

1. The business licensee has committed a prior violation of the same type, including any violation by any applicator of the business licensee.

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2. The business licensee failed to follow a written order of the director directing it to correct a deficiency or problem within the time specified.

3. The business licensee has knowingly assumed operations for a business licensee whose license has been revoked and during the first three years after revocation allows the former licensee to play an active role in company policy, decisions, sales or supervision of applicators.

4. The business licensee is convicted of a felony.

5. The business licensee is determined by the director to have committed a violation in connection with a pretreatment, new-construction treatment or final grade treatment.

6. The business licensee uses applicators to provide pest management services that are not registered pursuant to the requirements established under § 3-3603, subsection B, paragraph 19.

7. The business licensee fails to provide written notice immediately following a pest management treatment in or around residential structures of four or fewer units to the person requesting the treatment or to the person's designated agent. The notice shall include the specific pesticide by trade name used in the treatment.

8. The business licensee performing pest management treatments on an ongoing basis to locations other than residential structures of four or fewer units fails to provide written notice to the person who requested the treatments or the person's designated agent. Notice shall be given before the first application of the pesticide and when new or additional pesticides are used or immediately after each treatment.

9. If the treatments are performed in the interior of residential units, the licensee fails to leave a notice in the interior of each treated unit immediately after each treatment. The notice shall include the pesticide by trade name and any other information as required by the pesticide label or local ordinance.

10. A statement of precaution does not accompany each notification of treatment required in paragraphs 7, 8 and 9 of this subsection. Each statement of precaution shall be printed conspicuously, in not less than eight-point type, and shall include the words:

> Warning--pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated or aerated. For more information contact [business license name and business license number] at [telephone number].

11. The business licensee fails within thirty calendar days after completion of a pretreatment, a new-construction treatment, a final grade treatment, an initial corrective treatment project or a wood-destroying insect inspection report to file with the division, in a form approved by the director, the termite action report form and prescribed fee.

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12. The business licensee, within twelve months after completion of a termite pretreatment or new-construction treatment, fails either to file a supplemental termite action report in a form provided by the director that indicates the completion of the final grade treatment or to report in writing why the treatment has not been completed and when it will be completed.

13. The business licensee's applicator applies a pesticide that causes harm to the public, the environment or a nontarget animal.

14. The business licensee fails within thirty calendar days to pay civil penalties imposed under this chapter or rules adopted pursuant to this chapter.

15. The business licensee engages in the business of pest management while the business license is suspended.

D. The director shall commence an inquiry only within five years after the date of the alleged act or omission.

E. The director may issue an advisory notice stating de minimis violations of statutes or rules that carry no penalty, unless the person subject to this chapter wilfully and repeatedly violates the statute or rule. For wilful and repeated violations, the director may take disciplinary action against the person for a violation.

F. The license of a person who does not renew the license and who has been advised in writing that an investigation or complaint is pending at the time the license is due to expire or terminate does not expire or terminate until the investigation or complaint is resolved. The license is suspended on the date it would otherwise expire or terminate until the person renews the license or the investigation or complaint is resolved.

G. The director may summarily suspend a person's license while there is a pending criminal charge against the person for a felony or a misdemeanor involving moral turpitude.

Credits

Added as § 32-2321 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1989, Ch. 186, § 6; Laws 1990, Ch. 273, § 3; Laws 1991, Ch. 167, § 6; Laws 1993, Ch. 234, § 19; Laws 1998, Ch. 142, § 16; Laws 2000, Ch. 113, § 129; Laws 2003, Ch. 115, § 16; Laws 2004, Ch. 208, § 4; Laws 2008, Ch. 309, § 14, eff. July 7, 2008; Laws 2013, Ch. 125, § 20. Renumbered as § 3-3621 and amended by Laws 2016, Ch. 221, §§ 5, 17.

Notes of Decisions (1)

A. R. S. § 3-3621, AZ ST § 3-3621
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A.R.S. § 3-3622
Formerly cited as A.R.S. § 32-2323

§ 3-3622. Joint responsibility; burden of proof

Effective: August 6, 2016
Currentness

A. A business licensee, qualifying party, branch supervisor or applicator may be held jointly responsible for the acts or omissions of another person who is under the supervision of the business licensee, qualifying party, branch supervisor or applicator if the supervising licensee fails to properly train, equip or supervise the other person or fails to maintain records of proper training, equipping or supervising.

B. Failure to timely and fully respond to requests by the director for information relating to training, equipping and supervising is a prima facie showing of a failure to properly train, equip or supervise. A supervising business licensee, qualifying party, branch supervisor or applicator has the burden of proof by a preponderance of the evidence that the supervising person has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the director.

Credits
Added as § 32-2308 by Laws 2005, Ch. 140, § 1. Amended by Laws 2008, Ch. 309, § 7, eff. July 7, 2008. Renumbered as § 32-2323 and amended by Laws 2013, Ch. 125, §§ 10, 23. Renumbered as § 3-3622 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3622, AZ ST § 3-3622
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A.R.S. § 3-3623
Formerly cited as A.R.S. § 32-2324

§ 3-3623. Civil penalties; suspension

Effective: August 6, 2016
Currentness

A. The director may suspend a license, certification or registration without a hearing if the licensee fails within thirty calendar days to pay civil penalties imposed under this chapter or rules adopted pursuant to this chapter.

B. A licensee whose license is suspended under subsection A of this section must apply to the director for reinstatement.

C. A license, certification or registration suspended under subsection A of this section shall be revoked without a hearing after one year of suspension. Revocations under this subsection are not subject to § 3-3603, subsection A, paragraph 7.

D. The division shall not renew a license, certification or registration or broaden a certification until the person suspended under subsection A of this section is reinstated.

Credits
Added as § 32-2324 by Laws 2013, Ch. 125, § 24. Renumbered as § 3-3623 and amended by Laws 2016, Ch. 221, §§ 5, 18.

A. R. S. § 3-3623, AZ ST § 3-3623
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A.R.S. § 3-3624
Formerly cited as A.R.S. § 32-2325

§ 3-3624. Unlawful acts; violations; classification

Effective: August 6, 2016
Currentness

A. A person shall not:

1. Engage in the business of pest management, commence work on a contract or sign, issue or deliver any document expressing an opinion or statement relating to pest management without a business license issued pursuant to this chapter, unless the person is otherwise exempt pursuant to this chapter.

2. Engage in the business of pest management in any category without a qualifying party who is registered in that category.

3. Operate a branch office without a registered branch supervisor under whose direct supervision pesticide applications are made out of that office.

4. Apply pesticides in any category other than wood-destroying organism management or fumigation unless the person is an applicator certified in that category or applies the pesticides under the direct supervision of an applicator certified in that category.

5. Apply pesticides in the category of wood-destroying organism management, aquatic pest management or fumigation unless the person is an applicator certified in that category or the person applies the pesticides under the immediate supervision of an applicator certified in that category.

6. Make recommendations regarding pest management unless the person is a certified applicator.

7. Deny the director or any agent of the director the right to be present on a jobsite in connection with a contemporaneous pest management treatment, including for the purpose of taking pesticide samples and soil samples.

B. The following nonexclusive acts are grounds for disciplinary action:

1. Violating this chapter, rules adopted pursuant to this chapter or a written order of the director.

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2. Making false or fraudulent records or reports.

3. Misrepresenting a material fact in obtaining a license.

4. Applying pesticides in a manner that is inconsistent with the label and labeling of the pesticide or that may cause harm to the public, the environment or nontarget animals.

5. Misusing a pesticide if the misuse is due to the failure of the person to properly train or supervise. Proper training includes training to read and understand the label and labeling and to understand the proper use of application equipment. Proper supervision includes oversight of applicators to ensure general compliance with the label and labeling and all applicable laws.

6. Authorizing, directing or abetting the publication, advertisement, distribution or circulation of any false statement or material misrepresentation concerning a business of pest management.

7. Engaging in the business of pest management or providing pest management services under a suspended license.

8. Being convicted of a felony, a misdemeanor arising from or in connection with a license issued pursuant to this chapter after issuance of the license or a misdemeanor involving moral turpitude.

9. Having had a license, or the equivalent, to apply pesticides or engage in the business of pest management suspended or revoked in another jurisdiction for cause.

10. Making a fraudulent statement or an intentional material misrepresentation in connection with a wood treatment proposal or a wood-destroying insect inspection report.

11. Having three or more de minimis violations of this chapter or rules adopted under this chapter.

12. Failing to provide the director with a current certificate of insurance or proof of financial responsibility.

13. Failing to provide a proper final grade treatment within twelve months after the original pretreatment or new-construction treatment.

14. Providing immediate supervision of more uncertified applicators at a time than is authorized by rule.

15. Failing to make and maintain true and accurate records of treatments performed or wood-destroying insect inspection reports, including those performed under warranty or guarantee, for at least three years after the date of treatment or inspection.

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16. Failing to make treatment records available on request of the property owner or the property owner's authorized agent within three business days.

17. Failing to permit the director or any duly authorized agent to promptly inspect records pertaining to pest management located at an office of a business licensee when an employee or the owner of the business licensee is present at the business office and has access to the records.

18. Failing to timely produce specific records requested pursuant to § 3-3603, subsection B, paragraph 4.

19. Violating the terms of a consent agreement or written order of the director.

C. A person who violates subsection A, paragraph 1 of this section with reckless disregard for the health and safety of other persons or property is guilty of a class 6 felony.

Credits

Added as § 32-2325 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1998, Ch. 142, § 19; Laws 2003, Ch. 115, § 21; Laws 2008, Ch. 309, § 18, eff. July 7, 2008; Laws 2013, Ch. 125, § 26. Renumbered as § 3-3624 and amended by Laws 2016, Ch. 221, §§ 5, 19.

A. R. S. § 3-3624, AZ ST § 3-3624
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A.R.S. § 3-3625
Formerly cited as A.R.S. § 32-2326

§ 3-3625. Business license; principals; definition

Effective: August 6, 2016
Currentness

A. The director shall deny an application for a new business license or a renewal of an existing business license if a principal of the applicant was also a principal of another business that currently owes past due termite action registration form fees, owes civil penalties to the division or has had its business license suspended or revoked within the last five years and was a principal at the time the fees became due or the acts resulting in the disciplinary action occurred.

B. For the purposes of this section, "principal" means a person who owns at least a ten percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.

Credits
Added as § 32-2326 by Laws 2013, Ch. 125, § 27. Renumbered as § 3-3625 and amended by Laws 2016, Ch. 221, §§ 5, 20.

A. R. S. § 3-3625, AZ ST § 3-3625
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A.R.S. § 3-3626
Formerly cited as A.R.S. § 32-2327

§ 3-3626. Injunctive relief

Effective: August 6, 2016
Currentness

In addition to all other remedies, the director, either through the attorney general or the county attorney, may apply to the appropriate court for an order enjoining any act or practice that appears to constitute a violation of this chapter or rules adopted pursuant to this chapter. On a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond.

Credits
Added as § 32-2327 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 2008, Ch. 309, § 19, eff. July 7, 2008; Laws 2013, Ch. 125, § 28. Renumbered as § 3-3626 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3626, AZ ST § 3-3626
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A.R.S. T. 3, Ch. 20, Art. 4, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<The Article 4 heading, Wood-Destroying Organisms, was added by Laws 2013, Ch. 125, § 21, effective September 13, 2013. >

<Former Article 4, Certification of Structural Commercial Applicators, was repealed by Laws 2003, Ch. 115, § 24. >

A. R. S. T. 3, Ch. 20, Art. 4, Refs & Annos, AZ ST T. 3, Ch. 20, Art. 4, Refs & Annos
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A.R.S. § 3-3631
Formerly cited as A.R.S. § 32-2331

§ 3-3631. Termite action report form; exemption

Effective: August 6, 2016
Currentness

A. Within thirty calendar days after completion of a pretreatment, a new-construction treatment, a final grade treatment, an initial corrective treatment or a wood-destroying insect inspection report, a business licensee or certified applicator shall file with the division in a form approved by the director a termite action report form and the prescribed fee. A termite action report is required for termite action only and does not include all wood-destroying organisms.

B. The termite action report form shall include:

1. The address or location of the work or project.

2. The type and date of the work.

3. The name of the business licensee.

4. Any other information required by rule.

C. The director may:

1. Adjust the fee upward or downward to a level that is calculated to produce sufficient revenue to carry out the functions of wood-destroying organism regulation.

2. Establish tiered fees according to the means of submission to encourage electronic submission of the termite action report form.

3. Assess a penalty of not more than one hundred dollars per form for failing to submit the required form or fee, or both, within thirty calendar days.

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D. If the business licensee who performs an initial corrective treatment performed the pretreatment or new-construction treatment at the same site and filed a termite action report form with the division documenting the pretreatment or new-construction treatment, the business licensee is exempt from this section with respect to the initial corrective treatment.

Credits

Added as § 32-2331 by Laws 2013, Ch. 125, § 30. Amended by Laws 2015, Ch. 80, § 3. Renumbered as § 3-3631 and amended by Laws 2016, Ch. 221, §§ 5, 21.

A. R. S. § 3-3631, AZ ST § 3-3631
Current through the Second Regular Session of the Fifty-Second Legislature (2016)

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A.R.S. § 3-3632
Formerly cited as A.R.S. § 32-2332

§ 3-3632. Wood-destroying organisms; treatment proposal; form; retention; exception

Effective: August 6, 2016
Currentness

A. A business licensee shall not commence work on a contract or sign, issue or deliver any documents expressing an opinion or making a statement relating to the presence or absence of wood-destroying organisms in a structure until an inspection is made.

B. Only an applicator certified in the category of wood-destroying organism management shall prepare a treatment proposal on a form approved by the director. The applicator shall deliver a copy of the treatment proposal to the person requesting the proposal or treatment, or the person's designated agent, before beginning treatment. The treatment proposal shall include the following information:

1. The address of the property to be treated.

2. A statement describing that the work is preventative or corrective.

3. A statement describing the evidence of infestation or damage.

4. A diagrammatic description showing the nature and location of evidence of infestation or damage, or both, if applicable.

5. A statement describing the treatment or repair method, including the name of the pesticide or device to be used and a diagrammatic description showing where the treatment or repair will be rendered.

6. The price for the work.

7. The terms for the service agreement provided by the business licensee.

8. The signature and license number of the person who made the inspection of the structure to be treated.

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C. A certified applicator shall also give to the person requesting a proposal or treatment a written recommendation that verifies a particular problem and, in addition to the certified applicator's recommendation for treatment, shall advise the person of alternative treatments and methods, including integrated pest management methods, to alleviate the problem.

D. A treatment proposal shall not be in the same form or be construed as a wood-destroying insect inspection report. A treatment proposal that does not identify infestation by wood-destroying organisms is not a binding statement as to the presence or absence of wood-destroying organisms.

E. A treatment proposal shall be prepared by a certified applicator who has received at least five hours of instruction from an in-house education program of the business licensee on the subject of wood-destroying organisms inspections. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the director's request. The instruction requirement does not apply to certified qualified applicators.

F. If a business licensee performs a treatment pursuant to a treatment proposal, the business licensee shall maintain for three years a record of the treatment and the name and quantity of the pesticide used.

G. This section does not apply to the application of pesticides directly to structural components of wood or wood products, which are not part of an existing structure normally habitable by persons, to prevent or manage wood degradation by wood-destroying organisms.

Credits

Added as § 32-2323 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1998, Ch. 142, § 17; Laws 2001, Ch. 330, § 4; Laws 2003, Ch. 115, § 18; Laws 2004, Ch. 208, § 5; Laws 2008, Ch. 309, § 15, eff. July 7, 2008. Renumbered as § 32-2332 and amended by Laws 2013, Ch. 125, §§ 22, 31. Renumbered as § 3-3632 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3632, AZ ST § 3-3632
Current through the Second Regular Session of the Fifty-Second Legislature (2016)

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A.R.S. § 3-3633
Formerly cited as A.R.S. § 32-2333

§ 3-3633. Wood-destroying insect inspection reports

Effective: August 6, 2016
Currentness

A. Wood-destroying insect inspection reports may be completed only by an applicator who is certified in the category of wood-destroying organism management and who has received at least five hours of instruction from an in-house education program of the business licensee on the subject of wood-destroying insect inspection reports. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the director's request. The instruction requirement does not apply to certified qualified applicators.

B. Wood-destroying insect inspection reports shall be on file in the office of the business licensee within seven calendar days after the completion of an inspection. The business licensee shall retain a copy of all completed wood-destroying insect inspection reports for three years and make the reports available on the director's request.

C. Wood-destroying insect inspection reports are evidence of both the existence or absence of wood-destroying insects and conditions conducive to wood-destroying insects that were visible and accessible to an inspector at the time the inspection was made. A business licensee remains responsible for the accuracy of the inspection and the report as evidence of the presence or absence of infestation and conditions conducive to infestation on the date of inspection, except that a wood-destroying insect inspection report shall not be construed as a guarantee as to the presence or absence of wood-destroying insects and conditions conducive to wood-destroying insects in a structure after the date of inspection.

D. If a certified applicator is exempt from the business license requirement with respect to wood-destroying insect inspections pursuant to rules established by the director, the certified applicator shall fulfill the responsibilities placed on business licensees in this section.

E. A person shall not complete a wood-destroying insect inspection report for a property that the person owns or occupies.

Credits
Added as § 32-2324 by Laws 1988, Ch. 348, § 9, eff. July 13, 1988. Amended by Laws 1993, Ch. 234, § 20; Laws 1998, Ch. 142, § 18; Laws 2003, Ch. 115, § 19; Laws 2004, Ch. 208, § 6; Laws 2008, Ch. 309, § 16, eff. July 7, 2008. Renumbered as § 32-2333 and amended by Laws 2013, Ch. 125, §§ 22, 32. Renumbered as § 3-3633 by Laws 2016, Ch. 221, § 5.

A. R. S. § 3-3633, AZ ST § 3-3633

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Current through the Second Regular Session of the Fifty-Second Legislature (2016)

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F-3

DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-1101)
Title 18, Chapter 2, Article 14, Conformity Determinations; Article 15, Federal Hazardous Air Pollutants; Article 16, Visibility; Regional Haze

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-3**

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

FROM: **Marcus McGillivray, Intern**

DATE : **November 18, 2016**

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 2, Articles 14 (Conformity Determinations), 15 (Forest and Range Management Burns), and 17 (State Hazardous Air Pollutants Program)

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

This five-year-review report from the Arizona Department of Environmental Quality (Department) evaluates 38 rules in A.A.C. Title 18, Chapter 2, regarding conformity determinations and forest and range management burns. The Article 14 rules regarding conformity determinations ensure that federally funded projects do not violate the Clean Air Act (CAA). The Article 15 rules minimize regional haze by regulating forest and range management burns. The Department indicates that the rules are designed to combat harmful air pollutants and conform to federal air quality requirements. The Department did not review Article 17, intending that the rules expire under A.R.S. § 41-1056(J).

In the mid-twentieth century, Congress passed the CAA and multiple amendments to boost its efficiency in reducing the amount of pollutants in the air and the harm to which they contribute. See 42 U.S.C. § 7401 et seq (1970). The CAA established four new regulatory programs: The National Ambient Air Quality Standards (NAAQS), State Implementation Plans (SIPs), New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs).

Once Congress passed the CAA, the Environmental Protection Agency (EPA) began to enforce National Ambient Air Quality Standards (NAAQS), which require states and tribal reservations to adopt laws to regulate certain pollutants and to develop SIPs. The NAAQS target and regulate the emission of six particularly harmful pollutants which are dangerous to human and environmental health and cause damage to human infrastructure. Under the CAA, Arizona is required to submit SIPs, a collection of documentation and regulation to control air pollutants in the area. Articles 14 and 15 are designed to assure Arizona's compliance with the CAA and the corresponding regulatory programs.

The Article 14 conformity determinations are required under the CAA to ensure that federally supported highway and transit project activities are consistent with the purpose of the state air quality implementation plans. See 42 U.S.C. § 7506(c). The conformity determinations assure that all federally funded projects conform to the CAA. When Article 14 was proposed and approved in a new rulemaking in 1995, Arizona was in conformity with the requirements of the CAA; however, major amendments to the CAA took place in 2008 and a few minor ones in 2010, which rendered some of the Article 14 requirements more stringent than federal law. The Department is proposing major restructuring of Article 14 within the next three years to conform to the CAA, to enhance clearness and understandability of the rules, and to eliminate superfluous state rules.

The Article 14 rules being evaluated by the Department relate to Arizona's compliance with Section 176(c)(4)(E) of the CAA, assuring that the Department is furthering the CAA's goal of lowering pollutant emissions. The Article 15 rules regulating controlled burns seek to progress mandated Regional Haze regulation as authorized under Section 169(A) of the CAA.

Proposed Action:

The Department plans for a significant restructuring of Article 14 rules to make the rules clearer, more efficient, and in conformity with corresponding federal law. The Department is currently researching which rules should be repealed, and plans on repealing any rules which are not amended. At this time, the Department estimates that 32 rules in this article will be repealed. The Department plans to submitted a final rulemaking by July 2017 for Article 14 and by March 2019 for Article 15.

Article 14 likely amendments by July 2017:

1. **R18-2-1401**: The rule should conform with federal requirements and accommodate other Article 14 amendments.

2. **R18-2-1402**: The rule should conform to federal law, which will better explain the conformity determinations to the stakeholders.

3. **R18-2-1405**: The rule should require a consultation provision for interagency consultation between the Arizona Department of Transportation (ADOT), the United States Department of Transportation (USDOT), ADEQ, and any County Air Pollution Control Agency. The Department will work with stakeholders on how to best streamline this rule before any changes are made.

4. **R18-2-1430**: The rule should be made consistent with 40 CFR 51.390 and 40 CFR 93.122(a)(4)(ii).

5. **R18-2-1433**: This rule should be made consistent with 40 CFR 51.390 and 40 CFR 93.125(c). Proposed amendments also include clarifying the conformity

determination process for crediting emissions reductions from project-level mitigation or control measures.

6. **R18-2-1438**: The incorporation by reference in 40 CFR 93 should be updated in accordance to *Revisions to the General Conformity Regulations, Final Rule,75 Fed. Reg. 17254* (Apr. 5, 2010).

Article 15 proposed actions by March 2019:

1. **R18-2-1501**: Out-of-date terminology such as "Wildland fire use" should be removed.

2. **R18-2-1503**: Out-of-date terminology such as "Wildland fire use" should be removed.

3. **R18-2-1504**: The Department acknowledges that the current rule requires land managers to model smoke impacts and submit this information with a burn plan, although the land managers are not expected to have the resources or expertise to complete this task. The rule requires smoke modeling of two weeks or more in advance of a burn, which is too far ahead to yield accurate results. The Department will not enforce the modeling requirement until the rule is amended.

4. **R18-2-1506**: Out-of-date terminology such as "Wildland fire use" should be removed. Furthermore, the reference to 40 CFR 51.309 should be removed because the Department plans to use this rule to comply with 50 CFR 51.308 instead.

5. **R18-2-1508**: The Department acknowledges that the fire management technique which forms the basis of this rule is obsolete. The Department plans to amend this rule to alleviate state-federal enforceability dissonance.

6. **R18-2-1510**: Out-of-date terminology such as "Wildland fire use" should be removed.

7. **R18-2-1511**: Out-of-date terminology such as "Wildland fire use" should be removed.

8. **R18-2-1513**: Out-of-date terminology such as "Wildland fire use" should be removed.

Exemption or Request and Approval for Exception from the Moratorium

A moratorium exemption request was submitted for Article 14 on October 26, 2016. The Department plans to submit the moratorium exemption request for Article 15 in January 2018.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Department has certified that they are in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Article 14: The Department states that the rules are only partially effective because they are outdated.

Article 15: The Department indicates that the rules are generally effective with a few exceptions, such as R18-2-1504, 1506, and 1508.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

Yes. On June 8, 2016, Pima Association of Governments (PAG) submitted a comment regarding R18-2-1405. This critique was in response to a Department letter asking for feedback as part of ongoing customer outreach efforts.

R18-2-1405(M)(4) requires ADOT to develop maps and lists of proposed projects that are regionally significant. PAG believes that maps should be identified by the region in which the projects take place, not by ADOT.

R18-2-1405(O) requires that agencies develop procedures for the collection of required information and time frames for the approval of nonfederal projects by agencies that are recipients of Federal Highway Administration funds and Federal Transit Administration funds. PAG recommends that the state rule not include nonfederal projects. The Department, however, disagrees because 40 CFR § 93.105(c)(4) requires the SIP to have a process ensuring that plans for construction of regionally significant nonfederal but federally funded projects are disclosed to the Metropolitan Planning Organization on a regular basis.

R18-2-1405(C) includes the Overall Work Program (OWP) in the list of plans that require air quality consultation. PAG believes the OWP should not require air quality consultation because it is an administrative document. The Department believes this is a misunderstanding of the Overall Work Program and the Unified Planning Work Program. The OWP describes how local, state, and federal funds are allocated to PAG's operation, while the unified planning work program is a written agreement between the MPO and other state air planning agencies over the responsibilities in carrying out the metropolitan transportation planning process and maintaining air quality.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department has general and specific statutory authority.

* A.R.S. §§ 49-104(A)(1), (10) gives the department authority to formulate policies, plans, and programs to protect the environment and to prevent air pollution.

* A.R.S. §49-404 requires the department to maintain a SIP, which enforces the NAAQS as required by the CAA.

* A.R.S. § 49-408 mandates that the SIP be no more stringent than corresponding federal law.

* A.R.S. § 49-422(B) requires the Department to adopt rules that mandate sources of air contaminants to be monitored or sampled to quantify the emission of air pollution.

* A.R.S. § 49-424(4) requires the Department to determine the standard for the quality of the ambient air and the limits of air contaminants necessary to protect the public health.

* A.R.S. § 49-425 mandates that the Department adopts rules which reduce the amount of contaminants emitted into the air from sources within the territory of the state.

* A.R.S. § 49-458 allows the Department to participate in interstate regional haze programs.

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

Yes. The Department has analyzed the rules' consistency with other rules and statutes. The Department made this analysis using A.R.S. §§ 49-104(A)(1), (10), (17),49-408, 49-404, 49-422(B), 49-424(4), 49-425. The Department also used federal statutes to analyze the rule's consistency. 42 U.S.C. § 750(c)(4)(E) (Clean Air Act), 40 C.F.R. Part 93, and 40 C.F.R. Part 51, Subpart T (§ 51.390) were all used in the analysis.

The Department indicates that the Article 14 rules are consistent with state law; but they are inconsistent with federal law and rules. R18-2-1401, 1404, 1405, 1409, 1410, 1414, 1428 and 1438 are inconsistent with federal law. The conformity determinations in Article 14 reflect the SIP requirements of 1995, which have since been changed. In Article 15 the rules are generally consistent with the exceptions of R18-2-1502, 1502, 1506, and 1508.

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

Yes. The Department enforces the rules to the extent that they are no more stringent than federal law. R18-2-1430 and 1433 are rules that the Department enforce insofar as they are not more stringent than federal law. The rules in Article 15 are generally enforced with the exceptions of R18-2-1505, 1507, and 1508.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Department believes the Article 15 rules to generally be clear, concise, and understandable, but concedes that the Article 14 rules should be simplified to enhance understandability.

8. **Has the agency analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

Yes. Some of the rules are more stringent than federal law, due to federal amendments in 2008 and 2010. The Department only enforces such rules insofar as they do not exceed the federal requirements. The Department indicates R18-2-1401, 1404, 1405, 1409, 1410, 1414, 1428, and R18-2-1508 are more stringent than federal law.

b. **There is statutory authority to exceed the requirements of federal law?**

No. A.R.S. § 49-408 explicitly states that the Department's SIP requirements should be no more stringent than federal law.

9. **For rules adopted after July 29, 2010, has the agency analyzed whether:**

None of the rules have been adopted after July 29, 2010

a. **The rules require issuance of a regulatory permit, license or agency authorization?**

N/A

b. **It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?**

N/A

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. The Department proposed to amend the Article 14 rules and submit the rulemaking to GRRC by December 2012; however, no rulemaking was submitted due to resources and time.

11. Has the agency included a proposed course of action?

The Department plans to significantly restructure the entirety of Article 14. In this process, the Department will amend any rule that is not repealed. Furthermore, the Department plans to submit the final rules by July 2017. Moreover, the Department plans to amend R18-2-1501, 1503, 1504, 1506, 1508, 1510, 1511, and 1513 by March 2019 to update archaic field practices and enhance practicability and efficiency.

Conclusion

This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends approval of the report.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-3**

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

FROM: **GRRC Economic Team**

DATE : **November 18, 2016**

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 2, Articles 14 (Conformity Determinations), 15 (Forest and Range Management Burns), and 17 (State Hazardous Air Pollutants Program)

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report.

The rules in Articles 14 outline the conformity determinations that are necessary to comply with the Clean Air Act, which requires states to include state implementation criteria and procedures for conformity consultation, and enforceability. Conformity is the process of ensuring that federal actions and federally funded projects do not prevent the state from contributing to a violation of the National Ambient Air Quality Standards, or interfering with the purpose of a State Implementation Plan mandated by the Clean Air Act.

The rules in Article 15 are necessary to manage and monitor prescribed burn emissions. The rules help to further progress visibility goals mandated by Regional Haze federal regulations protecting visibility in national parks and wilderness areas.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Articles 14 and 15 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

In order to maintain consistency throughout its other rules, ADEQ intends to significantly restructure Articles 14 and 15. In the restructuring process, ADEQ intends to amend or repeal many of its rules in Articles 14 and 15 by July 2017.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT
ENVIRONMENTAL QUALITY

OF

Douglas A. Ducey
Governor

Misael Cabrera
Director

VIA HAND-DELIVERY

August 26, 2016

Ms. Nicole A. Ong
Governor's Regulatory Review Council
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Phoenix, Arizona 85007

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Re: Five-year Review Report for A.A.C. Title 18, Chapter 2, Articles 14, 15, and 17

Dear Ms. Ong:

Enclosed is Arizona Department of Environmental Quality's (ADEQ) Five Year Review Report for Title 18, Chapter 2, Articles 14, 15, and 17, pursuant to A.R.S. § 41-1056 and A.A.C. RI - 6301. ADEQ is electing not to review the rules in Article 17 (State Hazardous Air Pollutants Program) and is allowing them to expire under A.R.S. § 41-1056(J). A more detailed explanation is included in the attached report.

I certify that ADEQ is in compliance with A.R.S § 41-1091 pursuant to A.R.S. § 41-1056(A). Please contact Heidi Haggerty in the Air Quality Division at 602-771-4815, or hh4@azdeq.gov, if you have any questions.

Sincerely,

for MC

Misael Cabrera
Director

Enclosure

FIVE-YEAR-REVIEW REPORT FOR ARIZONA ADMINISTRATIVE CODE (A.A.C.), TITLE 18, CHAPTER 2, ARTICLES 14, 15, & 17
(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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OVERVIEW OF THE FIVE-YEAR-REVIEW REPORT FOR A.A.C., TITLE 18, CHAPTER 2, ARTICLES 14, 15, & 17

Introduction

This five-year review report submitted under A.R.S. § 41-1056 and A.A.C. R1-6-301 covers Articles 14, 15, and 17 of Title 18, Chapter 2 of the Arizona Administrative Code (A.A.C.). The Governor's Regulatory Review Council (GRRC) approved the last five-year review of Articles 14, 15, and 17 in September 2011.

This review is generally consistent with that report in regards to Articles 14 and 15, but not Article 17, which encompasses what ADEQ intended as the state hazardous air pollutant program.

State hazardous air pollutant (HAP) rules are authorized by A.R.S. 49-426.03 through -426.08. In a lawsuit filed by Oak Canyon Manufacturing, Inc. and the Arizona Chamber of Commerce and Industry, an Arizona Superior Court held two provisions of the state Hazardous Air Pollutant (HAP) program in Title 18, Chapter 2, Article 17 to be beyond the Department's statutory authority and vacated them:

> (1) the specification of de minimis amounts in R18-2-1701(13) and Table 1 for federally listed hazardous air pollutants; and
>
> (2) the definition of modification in R18-2-1701(13) to include a change at a source that is below the source thresholds of 1 ton per year for a single HAP and 2.5 tons per year for a combination of HAP before the change but above one of the thresholds after the change.

In Article 17, the very definition of a state HAP under the rules is a "federally listed hazardous air pollutant." Therefore the rules are only applicable to, and only focus on, federally listed HAPs that exceed specified de minimis amounts. The superior court ruled that ADEQ cannot adopt de minimis amounts for federal HAPs. Hence the rules are not enforceable to any sources or pollutants, undermining the entire framework of the state HAPs program.

For the above reasons, ADEQ is allowing all Article 17 rules to expire under A.R.S. § 41-1056(J).

This report reviews Articles 14 and 15, both of which ADEQ intends to amend within the next three years. A rule moratorium request has been drafted to amend Article 14; none has been drafted yet for Article 15. There have been no major changes in Article or 15 since the last five year review report.

Copies of the rule language for Articles 14 and 15 are attached in **Appendix I** *(electronic only)*. Copies of the authorizing statutes for Articles 14 and 15 are

attached in **Appendix II** *(electronic only)*. Copies of the Economic Impact Statements for Articles 14 and 15 are attached in **Appendix III** *(electronic only)*.

Brief Summary of Reviewed Articles

Article 14, Conformity Determinations, is necessary to comply with the Clean Air Act § 176(c)(4)(E), which requires states to include state implementation criteria and procedures for conformity consultation, enforcement, and enforceability. Conformity is the process of ensuring that federal actions and federally funded projects do not prevent the state from contributing to a violation of the National Ambient Air Quality Standards (NAAQS) or interfering with the purpose of a State Implementation Plan (SIP) mandated by the Clean Air Act (CAA) (i.e. the process ensures that federal actions conform to Clean Air Act goals).

Article 15, Forest and Range Management Burns, is necessary to manage and monitor prescribed burn emissions. The rules help to further reasonable progress visibility goals mandated by Regional Haze federal regulations authorized by C.A.A. § 169A, which created a program for protecting visibility in national parks and wilderness areas.

Article 17 is not reviewed in this report.

ARTICLE 14. CONFORMITY DETERMINATIONS

A. Information That Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 15 (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), (10), 49-404, 49-422(B), 49-424(4), 49-425, and 49-408.

2. **Objective of the rules, including the purpose for the existence of the rule.**

   Article 14, Conformity Determinations, is necessary to comply with the Clean Air Act § 176(c)(4)(E), which requires states to include state implementation criteria and procedures for conformity consultation, enforcement, and enforceability. Conformity is the process of ensuring that federal actions and federally funded projects do not prevent the state from contributing to a violation of the National Ambient Air Quality Standards (NAAQS) or interfering with the purpose of a State Implementation Plan (SIP) mandated by the Clean Air Act (CAA) (i.e. the process ensures that federal actions conform to Clean Air Act goals).

   For rule-specific objectives, please see Part B below.

3. **Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

   These rules are only partially effective. The rules are outdated so that their overall effectiveness is questionable. Metropolitan Planning Organizations and Arizona Department of Transportation often refer to federal rules to with transportation conformity requirements, but they follow these Article 14 rules as far as they are consistent with federal law.

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 state statutes and other ADEQ rules. However, Article 14 rules are inconsistent with federal law and rules.

   Conformity rules exist to ensure that federal actions and federally funded transportation projects do not interfere with state and other agency efforts to meet the National Ambient Air Quality Standards (NAAQS).[1]

   On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law, amending CAA § 176(c). SAFETEA-LU significantly streamlined the requirements for transportation conformity state implementation plans (SIP). In response to SAFETEA-LU, EPA promulgated implementing rules on January 24, 2008.

   Article 14 Title 18 Chapter 2 of the Arizona Administrative Code currently reflects SIP requirements as of June 20, 1995. Since 1995, federal transportation conformity rules and SIP requirements have changed so that Article 14 is no longer consistent with federal regulations at 40 CFR §§ 93.100 through 93.129. Much of the federal requirements reflect significant streamlining.

   Since EPA streamlined its SIP requirements in 2008,[2] many of the substantive rules in Article 14 may be repealed or significantly amended. ADEQ is no longer required to submit a SIP that addresses most of the substantive transportation conformity requirements. Clean Air Act § 176(c)(4)(E) and 40 CFR § 51.390 of the conformity rule now only require states to address the following provisions:

   1. 40 CFR § 93.105, which addresses consultation procedures;
   2. 40 CFR § 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not

[1] Although transportation-specific conformity does not apply in lead or sulfur dioxide nonattainment areas.

[2] *Transportation Conformity Rule Amendments to Implement Provisions Contained in the 2005 SAFETEA-LU, Final Rule*, 73 FR 4420, 4430-31 (Jan. 24, 2008).

included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and

3. 40 CFR § 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

EPA has made other changes to transportation conformity rules as recently as 2012, as well. Additionally, EPA's General Conformity Rule in 40 CFR Part 51, Subpart W was last amended in 2010 so that A.A.C. R18-2-1438 is also currently inconsistent with federal law.[3]

The statutes or rules used in determining consistency are as follows:

A.R.S. §§ 49-104(A)(1), (10), 49-404, 49-422(B), 49-424(4), 49-425	State statutes authorizing adoption of rules and standards
A.R.S. § 49-104(A)(17)	State regulations adopted under Title 49 are "to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter" unless authorized by the legislature.
A.R.S. § 49-408	Qualifies that the rules that the director may adopt in furtherance of maintaining the state implementation plan (A.R.S. 49-404) for conformity purposes and also the actions that agencies may take in furtherance of conformity can be no more stringent than federal law, except for consultation procedures.
42 U.S.C. § 7506(c)(4)(E) (Clean Air Act § 176(c)(4)(E))	Mandates that the state adopt SIP criteria and procedures for consultation, and for enforcement and enforceability pursuant to 40 C.F.R. 93.
40 C.F.R. Part 93	Rules to determine conformity of federal actions to state or federal implementation plans
40 C.F.R. Part 51, Subpart T (§ 51.390)	State Implementation Plan revision requirements

[3] *Revisions to the General Conformity Regulations, Final Rule*, 75 Fed. Reg. 17254 (Apr. 5, 2010) (codified at 40 C.F.R. Parts 51 and 93).

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   These rules are enforced as far as they are consistent with federal law. ADEQ does not generally enforce, per se, the substantive transportation conformity rules, but air quality planning does depend on accurate analyses as federally enforced. ADEQ does enforce the consultation procedures in A.A.C. R18-2-1405 and the emission crediting rules A.A.C. R18-2-1430 and -1433 as far they are consistent with federal law.

6. **Clarity, conciseness, and understandability of the rule.**

   Generally, the conformity rules should be simplified to be more clear and understandable.

7. **Summary of the written criticisms of the rule received by the agency within the 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 received one external written criticism in the last five years regarding R18-2-1405 (consultation) in anticipation of possible amendment of the rules. These are summarized in Part B.

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 have been no unexpected changes since the last economic impact statement (EIS) was submitted. As a result of increased population and consequent traffic growth and sprawl, there has no doubt been significant increases in transportation conformity planning and costs. While costs have increased, they are not a direct result of Article 14. As was stated in the EIS, agencies within the state must follow transportation conformity federal regulations because they are federally enforceable, whether or not they are adopted in state rule. Any added state-specific requirements, such as consultation processes, do not significantly increase the overall costs of transportation conformity planning.

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 was submitted.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ previously proposed to consider how best to amend or repeal the rules to reflect the recent 2008 amendments, and to submit new rules to GRRC by December 2012. ADEQ did research into how best to amend Article 14, but the rules have not yet been amended.

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 benefits of the conformity rules generally outweigh the costs. The rules help to prevent air quality impacts of federal actions from causing or contributing to a violation of the National Ambient Air Quality Standards (NAAQS) or interfering with the purpose of a SIP. NAAQS are set for certain "criteria" pollutants (or their precursors): particulate matter, nitrogen oxides, ozone, carbon monoxide, lead, and sulfur dioxide.[4] These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules' underlying objectives.

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.

A version of Article 14 is necessary to comply with the Clean Air Act § 176(c)(4)(E), which requires states to include state implementation criteria and procedures for conformity consultation, enforcement, and enforceability. Some of these rules may be more stringent than the current corresponding federal law, but only because they're now inconsistent with federal law. Also, Arizona is not required to adopt as many rules as we have adopted. Federal law now requires only some state rules in order to meet transportation conformity SIP requirements. EPA has issued guidance as to how a state should implement the rules but the state has discretion in implementation.

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.

N/A

[4] Transportation-specific conformity does not apply for lead or sulfur dioxide.

14. ADEQ's current proposed course of action

ADEQ intends to significantly restructure Article 14. In the restructuring process, ADEQ will amend any rule that is not be repealed. ADEQ will keep some version of the following rules, although likely significantly restructured, to comply with federal requirements: R18-2-1401 (definitions), -1402 (applicability), -1405 (consultation procedures), -1430 (commitments for control measures not in plan prior to conformity determinations), and -1433 (commitments for mitigation measures prior to project-level conformity determinations). The other rules in Article 14 will need to be re-evaluated for possible repeal in the future. ADEQ intends to ensure that consultation requirements, and project specific requirements are as clear and concise as possible. The future rules should reflect a more user-friendly process and a technologically savvy environment. A moratorium exemption request has been drafted internally but has not yet been submitted to the Governor. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. Temporarily leaving the rules as is until amended poses de minimis environmental, public health, or economic impacts.

B. Section by Section Analysis of Rules

R18-2-1401. Definitions

2. Objective of the rules, including the purpose for the existence of the rule.

Provides definitions for terms used in Article 14.

14. Course of action the agency proposes:

Amend. Any future rule will require a version of these definitions. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1402. Applicability

2. Objective of the rules, including the purpose for the existence of the rule.

The rule explains the various requirements of conformity determinations, including when and how often they must be made, and for what areas and pollutants they are required.

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, an agency may indicate that no action is necessary for the rule.

Amend. Any future rule will require a rule for applicability. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1403. Priority

2. Objective of the rules, including the purpose for the existence of the rule.

When assisting or approving any action with air quality-related consequences, federal agencies shall give priority, consistent with statutory requirements for allocation of funds among states or other jurisdictions, to the implementation of those transportation portions of an applicable implementation plan.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1404. Frequency of Conformity Determinations

2. Objective of the rules, including the purpose for the existence of the rule.

The rule provides how often transportation plans, programs and projects need to be shown to conform to air quality plans.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1405. Consultation

2. Objective of the rules, including the purpose for the existence of the rule.

The rule establishes requirements for conducting the interagency consultations between the Arizona Department of Transportation (ADOT), the United States Department of Transportation (USDOT), ADEQ, any County Air Pollution Control Agency established by A.R.S. Title 49, and the United States Environmental Protection Agency (EPA) in order to prepare for and make conformity determinations and develop applicable implementation plans

7. Summary of the written criticisms of the rule received by the agency within the 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 8, 2016, Pima Association of Governments (PAG), the metropolitan planning organization in Pima County, submitted a critique of provisions in A.A.C. R18-2-1405. PAG provided its letter in response to ADEQ's request for feedback on the transportation conformity rules as a part of an ongoing customer outreach effort. PAGs critiques are as follows (ADEQ's response follows each critique. Such responses have not yet been discussed and communicated with PAG, but in the stakeholder process, each issue will be addressed.):

- A.A.C. R18-2-1405(M)(4) requires ADOT to develop maps and lists of proposed projects that are considered regionally significant PAG believes that routes should be identified by the region and not ADOT, as part of the process for the TIP and other transportation plans and the state rule not impose additional requirements on ADOT or other lead agencies.
    - As part of the consultation roles and responsibilities submitted under Arizona's transportation conformity rule MPOs are the lead agencies that determine regionally significant projects. The rule already reflects this. ADOT only determines regionally significant projects where there is no MPO (i.e. isolated rural areas). This is a reasonable gap filler, ensuring that MPOs decide what is regionally significant in their respective areas of jurisdiction.

- A.A.C. R18-2-1405(O) requires that lead agencies develop procedures for the collection of required information and time frames for the approval of nonfederal projects by agencies that are recipients of FHWA or FTA funds. PAG recommends that the state rule not include nonfederal projects.
    - ADEQ must disagree with PAG on this issue. 40 CFR § 93.105(c)(4) requires the SIP to have a process ensuring that plans for construction of regionally significant nonfederal but federally funded projects (including FWWA or FTA projects or those funded under title 23 U.S.C. or the Federal Transit Laws) are disclosed to the MPO on a regular basis.

- A.A.C. R18-2-1405(C) includes the OWP (overall work program) in the list of plans that require Air Quality consultation. PAG believes that the OWP should not require air quality consultation as it is an administrative document.
    - ADEQ believes the comment reflects a misunderstanding between the overall work program and the unified planning work program required in the rule. The overall work program describes how local, state and federal funds are allocated to PAG's operations, including personnel and outside professional services. A unified planning work program under 23 CFR § 450.314 which is a

written agreement between the MPO, state, air quality planning agency, and provider of public transportation over responsibilities in carrying out the metropolitan transportation planning process and maintaining air quality.

ADEQ agrees that an additional layer of consultation for the OWP is not necessary. Funds allocated for transportation projects that require conformity, as well as the determination of conformity required, are already outlined in a metropolitan planning organization's published regional transportation plan and transportation improvement program.

14. Course of action the agency proposes.

Amend. Any future rule will require a consultation rule. ADEQ will need to evaluate with stakeholders how best to streamline and amend this rule, and meet federal requirements as they have changed over the years. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1406. Content of Transportation Rule

2. Objective of the rules, including the purpose for the existence of the rule.

The rule adds the requirements related to horizon years, which means a year for which the transportation plan describes the envisioned transportation system in accordance with R18-2-1406, Content of Transportation Plans, to the plans required under USDOT regulations in order to make conformity determinations.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1407. Relationship of Transportation Plan and TIP Conformity with NEPA Process

2. Objective of the rules, including the purpose for the existence of the rule.

Specify that transportation projects that are fixed for conformity purposes may still be changed for National Environmental Policy Act (NEPA) purposes, and that when a significant change results, the project is treated as a new project.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation

conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1408. Fiscal Constraints for Transportation Plans and TIPs

2. Objective of the rules, including the purpose for the existence of the rule.

Requires that plans and TIPs have to be fiscally constrained for conformity determinations, as required by USDOT's metropolitan planning rule at 23 CFR 450. These USDOT regulations require that proposed projects in plans and TIPs be consistent with already available or projected sources of revenue.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1409. Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General

2. Objective of the rules, including the purpose for the existence of the rule.

Provide general instructions for conformity determinations by specifying in the rule sections that apply to each plan, project, or action, through use of Table 1.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1410. Criteria and Procedures: Latest Planning Assumptions

2. Objective of the rules, including the purpose for the existence of the rule.

Requires conformity determinations to be based on the latest planning assumptions.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1411. Criteria and Procedures: Latest Emissions Model

2. Objective of the rules, including the purpose for the existence of the rule.

Requires the emission estimates for the conformity determination to be based on the latest emission model available.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1412. Criteria and Procedures: Consultation

2. Objective of the rules, including the purpose for the existence of the rule.

Require that conformity determinations be made by following the requirements of R18-2-1405.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This rule may or may not be necessary to meet transportation conformity SIP requirements. Further analysis is needed. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1413. Criteria and Procedures: Timely Implementation of TCMs

2. Objective of the rules, including the purpose for the existence of the rule.

Require that transportation plans and TIPs, as well as Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) projects which are not from a conforming plan, provide for the timely implementation of the transportation control measures (TCMs) in the applicable implementation plan.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1414. Criteria and Procedures: Curretnly Conforming Transportation Plan and TIP

2. Objective of the rules, including the purpose for the existence of the rule.

Specify that there must be a currently conforming transportation plan and currently conforming TIP, that conform with the Mobile Source Emissions Budgets in the SIP, at the time of project approval.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1415. Criteria and Procedures: Projects from a Plan and TIP

2. Objective of the rules, including the purpose for the existence of the rule.

Require that projects come from a conforming transportation plan and program.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1416. Criteria and Procedures: Localized CO and PM10 Violations (Hot Spots)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that FHWA or FTA projects not cause or contribute to any new localized CO or PM10 violations or increase the frequency or severity of any existing CO or PM10 violations in CO and PM10 nonattainment and maintenance areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1417. Criteria and Procedures: Compliance with PM10 Control Measures

2. Objective of the rules, including the purpose for the existence of the rule.

Require that the FHWA or FTA project comply with PM10 control measures in the applicable implementation plan.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1418. Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that the transportation plan be consistent with each motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. Specify how consistency is determined.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1419. Criteria and Procedures Motor Vehicle Emissions Budget (TIP)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that the TIP be consistent with each motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. Specify how consistency is determined.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1420. Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not from a Plan and TIP)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that projects that are not from a conforming transportation plan and conforming TIP be consistent with each motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1421. Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim and Transitional Periods

2. Objective of the rules, including the purpose for the existence of the rule.

Require that the FHWA or FTA project eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1422. Criteria and Procedures: Interim and Transitional Period Reductions in Ozone and CO Areas (Transportation Plan)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that conforming transportation plans contribute to emissions reductions in ozone and CO nonattainment areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1423. Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that conforming TIPs contribute to emissions reductions in ozone and CO nonattainment areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1424. Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that projects that are not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1425. Criteria and Procedures: Interim Period Reductions for PM10 and NO2 areas (Transportation Plan)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that conforming transportation plans contribute to emission reductions or not increase emissions in PM10 and NO2 nonattainment areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1426. Criteria and Procedures: Interim Period Reductions for PM10 and NO2 areas (TIP)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that conforming TIPs contribute to emission reductions or not increase emissions in PM10 and NO2 nonattainment areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1427. Criteria and Procedures: Interim Period Reductions for PM10 and NO2 areas (Project Not from a Plan and TIP)

2. Objective of the rules, including the purpose for the existence of the rule.

Require that projects that are not from a conforming transportation plan and TIP contribute to emission reductions or not increase emissions in PM10 and NO2 nonattainment areas.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1428. Transition from the Interim Period to the Control Strategy Period

2. Objective of the rules, including the purpose for the existence of the rule.

Require that for the period after submission of a control strategy SIP revision and before EPA final action on the control strategy SIP, transportation plans and TIPs are required to be consistent with the emissions budget in the submitted control strategy SIP.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1429. Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under 23 U.S.C. or the Federal Transit Act

2. Objective of the rules, including the purpose for the existence of the rule.

Specify when federally funded projects may go forward.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1430. Procedures for Determining Regional Transportation-related Emissions

2. Objective of the rules, including the purpose for the existence of the rule.

Specify procedures and criteria for the regional emission analysis.

14. Course of action the agency proposes.

Amend. ADEQ will need to amend this rule to ensure consistency with 40 CFR 51.390 and the language in 40 CFR 93.122(a)(4)(ii). ADEQ will need to clarify the regional conformity determination process for crediting emissions reductions from control measures not included in the approved transportation improvement program (TIP) or transportation plan.

R18-2-1431. Procedures for Determining Localized CO and PM10 Concentrations (Hot-spot Analysis)

2. Objective of the rules, including the purpose for the existence of the rule.

Describe specific procedures for determining, as required under R18-2-1416, whether the concentrations of CO or PM10 when summed with background concentrations, make air quality worse at specific locations.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1432. Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan or Implementation Plan Submission

2. Objective of the rules, including the purpose for the existence of the rule.

Provide requirements regarding how motor vehicle emissions budgets used in conformity determinations may otherwise be used.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1433. Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures

2. Objective of the rules, including the purpose for the existence of the rule.

Require that certain implementation and operation commitments be obtained from a project sponsor or operator before a conformity determination can be made.

14. Course of action the agency proposes.

Amend. ADEQ will need to amend this rule to ensure consistency with 40 CFR 51.390 and the language in 40 CFR 93.125(c). ADEQ will need to clarify the conformity determination process for crediting emissions reductions from project-level mitigation or control measures.

R18-2-1434. Exempt Projects

2. Objective of the rules, including the purpose for the existence of the rule.

List the transportation projects that are exempt from conformity determinations.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1435. Projects Exempt from Regional Emissions Analyses

2. Objective of the rules, including the purpose for the existence of the rule.

List the types of transportation projects for which no regional emission analysis is required before a conformity determination.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1436. Special Provisions for Nonattainment Areas Which are Not Required to Demonstrate Reasonable Further Progress and Attainment

2. Objective of the rules, including the purpose for the existence of the rule.

Provide alternatives for determining conformity in nonattainment areas when the SIP is not required to contain an emission budgets or attainment demonstration.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

R18-2-1437. [Reserved]

R18-2-1438. General Conformity for Federal Actions

2. Objective of the rules, including the purpose for the existence of the rule.

Provide requirements that certain federal actions that are not transportation-related must conform to applicable implementation plans and incorporates federal subpart by reference.

14. Course of action the agency proposes.

Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. See Part A above for more details.

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 15, unless otherwise stated below or in Part B:

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), 49-404, 49-422(B), 49-424(4), 49-425, 49-458, and 49-458.01.

2. Objective of the rules, including the purpose for the existence of the rule.

Article 15, Forest and Range Management Burns, is necessary to manage and monitor prescribed burn emissions. The rules help to further reasonable progress visibility goals mandated by Regional Haze federal regulations authorized by C.A.A. § 169A, which created a program for protecting visibility in national parks and wilderness areas.

For rule-specific objectives, please see Part B below.

(For item 3, rule effectiveness, see the analyses in Part B 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 state statutes and other rules made by ADEQ. Unless otherwise specified in Part B below for R18-2-1502, -1502, -1506, and -1508, the rules are consistent with the federal statutes and rules. As an enhanced smoke management program for Regional Haze, Article 15 was written to attain certain emissions reduction goals to improve visibility in national parks and wilderness areas. The Article 15 was last amended in 2004 to meet the requirements of Regional Haze rule 40 CFR 51.309. Also, while the rules are currently consistent with current federal rules and statutes, some policy changes since 2004 have rendered some of the fire management terminology, namely wildland fire use, obsolete. Some federal rules, including the exceptional events rule, are currently being amended to account for these federal fire management policy changes, among other reasons. Part B points out areas in the Article that have become obsolete.

As mentioned above, the Regional Haze framework and Exceptional Events rules and framework are currently in flux. The recently proposed exceptional events rule revision[5] and the proposed regional haze rule revision[6] will affect Article 15 consistency with federal law in the future. Once these rules are finalized, Article 15 may need to be amended to ensure consistency. The proposed and anticipated final regional haze rules reveal that emissions reductions resulting from the current Article 15 enhanced smoke management program rules will likely be creditable towards anthropogenic emissions

[5] *Treatment of Data Influenced by Exceptional Events, Proposed Rule*, 80 Fed. Reg. 72840 (Nov. 20, 2015).
[6] *Protection of Visibility: Amendments to Requirements for State Plans, Proposed Rule*, 81 Fed. Reg. 26942 (May 4, 2016).

reduction reasonable progress goals as an pursuant to the revised 40 C.F.R. § 51.308.

The statutes or rules used in determining consistency are as follows:

A.R.S. §§ 49-104(A)(1), (10), 49-404, 49-422(B), 49-424(4), 49-425	State statutes authorizing adoption of rules and standards
A.R.S. § 49-104(A)(17)	State regulations adopted under Title 49 are "to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter" unless authorized by the legislature.
A.R.S. § 49-458	State Regional haze program authority
A.R.S. § 49-458.01	State mandate to submit rules to EPA in furtherance of SIP revisions "to address regional haze visibility impairment in mandatory federal Class I areas"
Clean Air Act § 169A	Visibility protection for federal Class I areas (Regional Haze)
40 C.F.R. Part 51, Subpart P[7] (particularly 40 C.F.R. §§ 51.308 and 51.309)	Protection of Visibility (Regional Haze regulations)

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

With some exceptions (R18-2-1505, -1507, -1508) the rules in Article 15 are generally enforced and there are no substantial issues with enforcement. For various reasons, including federal policy changes, wildland fire use requirements are not enforced and sources are not required to model emissions impacts.

6. Clarity, conciseness, and understandability of the rule.

The rules in Article 15 are generally clear, concise, and understandable.

7. Summary of the written criticisms of the rule received by the agency within the 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

[7] EPA is currently significantly revising these rules. Article 15 will still be necessary after the revision but the rules in Article 15 may need to be amended to remain consistent with federal regulations.

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 external written criticisms since the last five-year review report.

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.**

   These rules were last amended by final rulemaking at 10 A.A.R. 388 (Feb. 6, 2004). Economic impact was addressed in that rulemaking. There has been no identified change in impact since that last amendment. EIS is attached.

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 was submitted to ADEQ.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

    Not applicable. No changes were proposed in the last 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.**

    ADEQ surveyed and consulted with the air quality monitoring section within the agency and determined that except as stated in Part B below for R18-2-1508 (wildland fire use authorization), probable benefits generally outweigh costs and the rule imposes the least burden to achieve their objective.

    The rules are designed to, and generally effective in, protecting visibility in federal Class I areas. Controlling visibility is in part accomplished by controlling fuel combustion smoke emissions from prescribed burns, which emit particulate matter (PM), and nitrogen oxides (NO_x) which is a precursor of PM. ADEQ's enhanced smoke management program reduces smoke impacts due to prescribed/controlled burning of nonagricultural fuels with particular regard to heavy forest fuels. All state lands, state parks, state forests, and federally managed lands in Arizona are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning. Table 1 below details the estimated tons of $PM_{2.5}$ that have been averted due to the program.

Year	Tons of $PM_{2.5}$ Averted[8]	Percentage of $PM_{2.5}$ Averted
2009	11,916	47%
2010	7,100	61%
2011	3,986	69%
2012	3,986	69%
2013	4,344	59%
2014	7,127	61%

Table 1 – Estimated Averted $PM_{2.5}$ Emissions

As shown in Table 1, these rules are extremely effective at reducing particulate matter emissions in furtherance of visibility. While the goal of these rules is to improve visibility, controlling these pollutants have the added benefit of improving air quality for health purposes. PM and NO_x, also "criteria" pollutants subject to National Ambient Air Quality Standards. Concentrations these pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials.

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.

ADEQ has reviewed all of the rules in Article 15 and concluded that (except as stated in Part B for A.A.C. R18-2-1508 regarding wildland fire use regulation) none of the rules is more stringent than a corresponding federal law. All of the rules are currently in the State Implementation Plan and enforceable as federal rules.[9] To comply with the current regional haze rules, ADEQ opted to implement a smoke management program. In order to comply with the proposed regional haze rule, the state will review the effectiveness Article 15 as an enhanced smoke management program and use the resulting

[8] ADEQ calculates annual $PM_{2.5}$ emissions and emissions averted using Western Regional Air Partnership (WRAP) recommended Emission Reduction Techniques (ERTs) rations applied to non-agricultural forest and range management burns. *See generally* http://www.wrapair.org/forums/fejf/documents/ert/index.html.

[9] *Revisions to Arizona SIP, Final Rule*, 71 Fed. Reg. 28270 (May 16, 2006).

emissions reductions to meet federally required reasonable progress emissions reductions goals.

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.

N/A - These rules were adopted in 1996 and last amended in 2004.

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, an agency may indicate that no action is necessary for the rule.

The current course of action that ADEQ intends to take for each of the rules is listed in Part B below. Looking towards the future, however, because a new regional haze rule is expected to be finalized within the next several months, some of the Article 15 rules may be subject to additional changes in order to maintain consistency with federal requirements.

B. Section by Section Analysis of Rules

R18-2-1501. Definitions

2. Objective of the rules, including the purpose for the existence of the rule.

To provide definitions for specific terms used in Article 15 to ensure that Article 15 rules are clear.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

Effectiveness of the definitions could be improved. While the definitions generally provide clarity, fire management terms have changed over the years with federal policy revisions.

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 definitions are currently consistent with state and federal statutes and rules. However, some of the definitions could be changed or removed to comport with current federal policy[10] and proposed regional haze rules.[11]

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

[10] GUIDANCE FOR IMPLEMENTATION OF FEDERAL WILDLAND FIRE MANAGEMENT POLICY, February 2009, *available at* http://www.nifc.gov/policies/policies_documents/GIFWFMP.pdf .
[11] *Proposed Regional Haze Rule*, *supra* note 6.

or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in some of the definitions. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1502. Applicability

2. Objective of the rules, including the purpose for the existence of the rule.

The objective of the rule is to limit the applicability of rules to state and federal or state land managers (excluding Indian Trust lands) and to private or municipal burners who have entered into an agreement with 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 clarifying applicability and limits of ADEQ's jurisdiction under the rule.

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 rule is consistent with current federal regional haze rules and is consistent with the Clean Air Act in that ADEQ has no jurisdiction over Indian lands according to § 302 of the Act.

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, an agency may indicate that no action is necessary for the rule.

None.

R18-2-1503. Annual Registration

2. Objective of the rules, including the purpose for the existence of the rule.

This rule outlines a process by which land managers annually register their planned burns with ADEQ. The rule also ensures that land managers and ADEQ consult with each other to evaluate the smoke management program as a whole and cooperatively establish an annual emission goal to minimize prescribed fire emissions to the maximum extent feasible.

3. **Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

   The annual cooperative goal is especially helpful to ensure that thousands of tons of $PM_{2.5}$ are averted each year. Realized averted emissions are shown in Table 1 in Part A above.

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, an agency may indicate that no action is necessary for the rule.**

    ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and references to this phrase should be removed from rule. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1504. Prescribed Burn Plan

2. **Objective of the rules, including the purpose for the existence of the rule.**

   This rule requires land managers to submit detailed burn plans in advance of the prescribed burn date to help to limit and provide predictability for emissions expected from a prescribed burn.

3. **Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

   Land managers submit many of their planned burns at the beginning of the year with their registrations. This provides ADEQ with plenty of notice to evaluate air quality impacts from planned burns. The few that are submitted up to 14 days prior to burns still allow ADEQ enough notice to generally project the overall impacts of planned burns. The modeling requirement, however, is not an effective requirement. Modeling a year or two weeks before a burn is too far in advance for the modeling results to be sufficiently accurate.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   ADEQ does not enforce the modeling requirement in the prescribed burn plan rule for two main reasons. Land managers are not generally modelers or meteorologists and should not be held accountable for requirements outside of their scope of work. Also, modeling two weeks or more in advance of a burn is too far ahead of time for a model to produce accurate results. The program operates better when ADEQ to evaluates a planned burn in detail, if appropriate and as needed.

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, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. The rule requires land managers to model smoke impacts and submit this information with a Prescribed Burn Plan. Land managers do not and should not necessarily be expected to have the resources or expertise to model, and further, modeling two weeks or more in advance of a burn is too far ahead of time for the model to yield accurate results. ADEQ instead evaluates the planned burns 24-48 hours prior to them as needed. ADEQ intends to submit this rule to the Council in March of 2019. Until the rule is amended, ADEQ will not enforce the modeling requirement on behalf of land managers and will instead model each burn plan on a case by case basis as necessary.

R18-2-1505. Prescribed Burn Requests and Authorization

2. Objective of the rules, including the purpose for the existence of the rule.

This rule requires land managers to submit detailed daily burn requests to ADEQ for each day of a prescribed burn in order to give a more specific notice of expected smoke impacts. The rule also outlines how to obtain approval from ADEQ to ignite the burn to ensure that conditions are appropriate to allow smoke impacts in the area.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

This rule is effective in ensuring that land managers formally request to burn and provide ADEQ with the most recent information available regarding a planned burn. Using this information, ADEQ specifically evaluates and projects smoke impacts. Using this information, ADEQ decides whether a burn request should be approved or disapproved. When necessary, ADEQ has used this rule to disapprove burn requests.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

ADEQ uses this rule to approve or disapprove burn plans as necessary, but works with land managers as needed to modify burn plans without impeding land managers' goals.

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, an agency may indicate that no action is necessary for the rule.

None.

R18-2-1506. Smoke Dispersion Evaluation

2. Objective of the rules, including the purpose for the existence of the rule.

This rule outlines criteria for ADEQ to approve, approve with conditions, or disapprove daily burn requests in R18-2-1505 based on listed smoke management factors.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

Upon survey of Air Quality Division Assessment Section staff, ADEQ finds the smoke dispersion factors to be very useful guidelines in determining whether a burn request should be approved, disapproved, or approved with conditions. Hence the rule is effective in providing useful approval criteria.

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.

In considering the regional haze rule changes,[12] this Article will likely be used for protection of national visibility under 40 CFR 51.308 rather than 40 CFR 51.309. Other than "wildland fire use" being mentioned in the rule, the rule is consistent with federal and state law and policies, as stated in Part A above.

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, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. Also, the reference to 40 CFR 51.309 should be removed because ADEQ will likely use this rule to comply with 50 CFR 51.308, instead. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

2. Objective of the rules, including the purpose for the existence of the rule.

This rule requires land managers to report on the previous day's prescribed burn result, including the acreage and fuel types burned and the emissions

[12] *Proposed Regional Haze Rule*, *supra* note 6.

reduction and smoke management techniques used. The rule also requires ADEQ to keep records of this information. This information collection helps to verify emissions impacts and compare this to the annual goals.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

This rule has been effective ADEQ to estimate actual emissions reductions and impacts.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Subsection (D) of the rule, which requires land managers to make wildfire information available to ADEQ, is not enforced. Over the years, ADEQ has found that it is inappropriate and not beneficial to collect wildfire information. This subsection should be removed when the rule is amended. There are more effective ways for the public to be aware of wildfire activity as this information is reported elsewhere. It is also not ADEQ's purview to track wildfire activity.

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, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. Over the years, ADEQ has found that it is inappropriate and not beneficial to collect wildfire information. This subsection should be removed when the rule is amended. There are more effective ways for the public to be aware of wildfire activity. It is also not ADEQ's purview to track wildfire activity. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Interagency Consultation; Status Reporting

2. Objective of the rules, including the purpose for the existence of the rule.

This rule outlines criteria for identifying a wildland fire use event and requires federal and state land managers to complete wildland fire use form to submit to ADEQ for the agency to approve or disapprove wildland fire use request. The rule is supposed to help to reduce emissions from naturally ignited fires that are managed in the same way as prescribed fires.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

Wildland fire use is no longer considered a viable and safe fire management technique. Wildfires are instead simply managed as wildfires according to

federal policy. Because the technique no longer exists, the rule is no longer effective at managing it.

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.**

   While the rule should be amended to reflect current federal policies, it is still technically in the federally enforceable state implementation plan. In order to avoid a SIP gap and maintain consistency with current federal law, it would be better to later repeal the rule (and amend related rules) and at the same time request the EPA to remove it from the SIP.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   This rule is not and will not be enforced before Article 15 rules are amended. Air Quality Assessment Section and representatives from the forest service assures ADEQ that land managers are fully aware that this rule is not enforced.

   Wildland fire use is an antiquated term referring to a particular firefighting framework where a fire is ignited by natural causes, such as lightning and the fire and managed using the same controls and management objectives as prescribed burning. In such a situation, “a fire manager deliberately allows a wildfire to continue to burn over a certain land area rather than immediately extinguish it or block its progress into that area."[13] In other words, a wildland fire use fire is a type of wildfire.

   Wildland fire use has historically allowed land managers to take credit for prescribed burning acreage by allowing it to burn and then applying full suppression after a certain acreage threshold. Through the wildland fire use framework, a number of acres from certain managed wildfires were considered burned by prescribed fires, even though the fires were naturally ignited. Because this policy, part of the acreage burned in a wildland fire use fire counted as prescribed burning, and some as simply wildfire burning. Accordingly, emissions resulting from the fire were also split into anthropogenic and biogenic emissions. This rule was created to track the differences in these types of emissions. However, whether and how a wildfire should be managed is best decided by land managing fire experts, rather than ADEQ. ADEQ manages and regulates only prescribed burns, not any type of wildfire predominately located on wildland.

   ADEQ does not add value by approving wildland fire use burn plans. In fact, it is safer for firefighters and the public to leave such decisions solely to the discretion of wildland managers. The rule requires land managers to a plan to ADEQ before managing a wildfire within the framework of wildland fire use. Because this framework no longer exists, it is well understood among land managers that this requirement is no longer applicable to any wildfires.

[13] *Treatment of Data Influenced by Exceptional Events, Proposed Rule*, *supra* note 5 at 72868.

Wildfires are now managed as land managers see fit. There is no safety risk allowing the rule to remain at this time because the wildland fire use framework no longer exists according to nationwide fire management policies.

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.

This rule does not impose the least burden and cost to achieve its objective of reducing emissions. Regulating a wildfire in this manner could pose a potential safety risk and interferes with land manger priorities. For this reason, the rule is not and will not be enforced before the rules are amended.

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, an agency may indicate that no action is necessary for the rule.

The fire management technique that forms the basis of this rule is obsolete. The rule should likely be repealed and removed from the SIP at the same time the other rules are amended in order to avoid state-federal enforceability dissonance. ADEQ intends to submit this rule to the Council in March of 2019. In the meantime, as all land managers are aware, land managers are to assume that ADEQ would not respond to a wildfire management plan and by default the land managers should assume any wildfire management is approved by default until the rule is repealed.

R18-2-1509. Emission Reduction Techniques

2. Objective of the rules, including the purpose for the existence of the rule.

This rule lists the control measures for increasing burn efficiency and reducing air emissions. It lists and requires the implementation of as many emissions reduction techniques as feasible for each burn.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

This rule is effective in listing the available emission reduction techniques that land managers shall implement during a prescribed burn, which ensures that the annual goals are met.

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, an agency may indicate that no action is necessary for the rule.

None.

R18-2-1510. Smoke Management Techniques

2. Objective of the rules, including the purpose for the existence of the rule.

This rule lists the smoke management measures allowing for maximum possible smoke dispersion. It lists and requires the implementation of as many smoke management techniques as feasible for each burn.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

This rule is effective in listing the available smoke management techniques (except for the now obsolete wildland fire use) that land managers shall implement during prescribed burns, ensuring that the annual goals are met.

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, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1511. Monitoring

2. Objective of the rules, including the purpose for the existence of the rule.

This rule describes how ADEQ may require land managers monitor air quality and weather before or during prescribed burns to assess smoke impacts. The rule also lists reporting and recordkeeping requirements if monitoring is indeed required. This rule helps ADEQ verify actual emissions impacts and use of smoke reduction techniques.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

This rule has been effective to help ADEQ keep watch of how a fire could be affecting sensitive populations because land managers can be required to monitor concentrations.

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, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1512. Burner Qualifications

2. Objective of the rules, including the purpose for the existence of the rule.

This rule requires that all burn projects are conducted by authorized land managers trained in prescribed burn and smoke management techniques that meet ADEQ specifications. The rule ensures that only qualified personnel implement smoke and emissions reduction techniques in a manner that properly protects air quality during burns.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

For several reasons, such as safety, only qualified personnel trained in prescribed fire and smoke management techniques are permitted to conduct burn projects. However, having this rule in place is an effective backstop to ensure that emissions are being controlled appropriately and through cooperative training.

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, an agency may indicate that no action is necessary for the rule.

None.

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

2. Objective of the rules, including the purpose for the existence of the rule.

This rule requires the Director and federal and state land managers to have a program in place for regional public education and outreach regarding smoke management and prescribed fires. It requires ADEQ to make registration, burn approvals, and burn activity information available to the public. This rule allows for appropriate public notice of burning activity and informs the public how ADEQ and land managers are working together to ensure that burns, which are necessary for various reasons, are conducted safely and to protect air quality as much as possible.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

This rule is effective in ensuring that ADEQ and land managers are adequately informing the public regarding prescribed burns. As a part of its education and outreach program, ADEQ has a main website, http://smoke.azdeq.gov, where approved and active burns are currently listed. Historically, ADEQ has listed this information on its legacy website, but ADEQ's new website launched at the beginning of July 2016, and is currently under construction. ADEQ intends to post a link to http://smoke.azdeq.gov on its new website as soon as practicable.

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, an agency may indicate that no action is necessary for the rule.

ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. To leave the term in implies that in part, ADEQ declares or announces wildfires, which is really a forest service duty. ADEQ intends to submit this rule to the Council in March of 2019.

R18-2-1514. Surveillance and Enforcement

2. Objective of the rules, including the purpose for the existence of the rule.

This rule describes how the agency may inspect, verify, and audit burn information, and actions the agency may take regarding enforcement. This rule ensures that ADEQ can effectively enforce all rules in the article applicable to land managers.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

ADEQ has not had problems with enforcement, and the rule is effective in ensuring that compliance persists.

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, an agency may indicate that no action is necessary for the rule.

None.

R18-2-1515. Forms; Electronic Copies; Information Transfers

2. Objective of the rules, including the purpose for the existence of the rule.

This requires ADEQ to make all forms and reports available in both paper form and electronically. Gives option for ADEQ to require electronic transfer of burn forms if desired. The goal is to ensure that ADEQ makes required forms and reports easily available and easy to submit.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rule is broad enough to allow for ADEQ's current requested method of submitting information, requests, and forms through http://smoke.azdeq.gov/ .

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, an agency may indicate that no action is necessary for the rule.

None.

Appendix I

Copies of Articles 14 and 15 Rules

1. The permitting authority evaluates and verifies the authenticity of the credit with the emissions bank;
2. The permitting authority determines that there will be no adverse impact on air quality; and
3. The permitting authority completes the permitting action and submits the credit certificate to the Director.

D. After the permitting authority notifies the Director that the requirements of this Section have been met, the Director shall delist the credits in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1207. Credit Withdrawal

Any party purchasing certified credits listed in the emissions bank for the purpose of credit retirement, or any source withdrawing its own credits from the emissions bank, shall submit a CUA specified in R18-2-1204(A) with the surrendered certificates to the Director. Upon receipt of the CUA and surrendered certificates, the Director shall delist the credits in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1208. Fees

A. A source generating a credit shall pay a non-refundable administrative fee of $200.00 to the Director when submitting the CGA. This fee is in addition to the fees specified in R18-2326.

B. A source utilizing a credit shall pay a non-refundable administrative fee of $200.00 to the Director when submitting the CUA. This fee is in addition to the fees specified in R18-2326.

C. The Director shall not assess an administrative fee to a person:
1. Purchasing a credit for retirement;
2. Amending ownership information contained in the registry; or
3. Withdrawing a credit from the bank. **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

ARTICLE 13. EXPIRED

Article 13, consisting of Sections R18-2-1301 through R18-21307, rules expired under A.R.S. § 41-1056(J), effective April 30, 2013 (Supp. 13-3).

Article 13, consisting of Sections R18-2-1301 through R18-21307, made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2).

R18-2-1301. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1302. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1303. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1304. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1305. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1306. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1307. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

ARTICLE 14. CONFORMITY DETERMINATIONS

R18-2-1401. Definitions

Terms used in this Article but not defined in this Article, Article 1 of this Chapter, or A.R.S. § 49-401.01 shall have the meaning given them by the CAA, Titles 23 and 40 U.S.C., other EPA regulations, or other USDOT regulations, in that order of priority. The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. § 49-401.01 shall apply to this Article:
1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "ADOT" means the Arizona Department of Transportation.
3. "Applicable implementation plan" is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.
4. "CAA" means the Clean Air Act, as amended.
5. "Cause or contribute to a new violation" for a project means either of the following:

a. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented.
b. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

6. "Consultation" means that one party confers with another identified party, provides access to all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds in accordance with the procedures established in R18-2-1405.
7. "Control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).
8. "Control strategy period" with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, or ozone, as appropriate. This period ends when the state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.
9. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.
10. "Design scope" means the design aspects of a facilitywhich will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
11. "EPA" means the United States Environmental Protection Agency.
12. "FHWA" means the Federal Highway Administration ofUSDOT.
13. "FHWA or FTA project" means any highway or transitproject which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.
14. "FTA" means the Federal Transit Administration ofUSDOT.
15. "Forecast period" with respect to a transportation planmeans the period covered by the transportation plan pursuant to 23 CFR 450.
16. "Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:
    a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
    b. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
    c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
17. "Horizon year" means a year for which the transportationplan describes the envisioned transportation system in accordance with R18-2-1406.
18. "Hot-spot analysis" means an estimation of likely futurelocalized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.
19. "Incomplete data area" means any ozone nonattainment area which EPA has classified, in 40 CFR 81, as an incomplete data area.
20. "Increase the frequency or severity of a violation" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.
21. "ISTEA" means the Intermodal Surface TransportationEfficiency Act of 1991.
22. "Local transportation agency" means a city, town, orcounty.
23. "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA.
24. "Maintenance period" with respect to a pollutant or pollutant precursor means that period of time beginning when a state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.
25. "Metropolitan planning organization (MPO)" means theorganization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

26. "Milestone" means an emissions level and the date onwhich it is required to be achieved as described in § 182(g)(1) and § 189(c) of the CAA.
27. "Motor vehicle emissions budget" means that portion ofthe total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or Director of ADEQ, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated

    by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.
28. "National ambient air quality standards (NAAQS)"means those standards established pursuant to § 109 of the CAA.
29. "NEPA" means the National Environmental Policy Act of1969, as amended (42 U.S.C. 4321 et seq.).
30. "NEPA process completion" with respect to FHWA or FTA, means the point at which there is a specific action to do any of the following:
    a. Make a formal final determination that a project is categorically excluded.
    b. Make a Finding of No Significant Impact.
    c. Issue a record of decision on a Final Environmental Impact Statement under NEPA.
31. "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.
32. "Not classified area" means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.
33. "Phase II of the interim period" with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following:
    1. Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or the Director of ADEQ and have been subject to a public hearing.
    2. The date that the CAA requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the state's failure to submit any such plans and the state, MPO, and USDOT have received notice of such finding of the state's failure to submit any such plans.
34. "Project" means a highway project or transit project.
35. "Recipient of funds designated under 23 U.S.C. or theFederal Transit Act" means any agency at any level of state, county, or city government, including any political subdivision or MPO, that routinely receives 23 U.S.C. or Federal Transit Act funds to construct FHWA or FTA projects, operate FHWA or FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.
36. "Regional transportation agency" means a regional transit authority established pursuant to A.R.S. Title 28, Chapter 20 or Chapter 24, or a formal association of political subdivisions involved in regional transportation issues.
37. "Regionally significant transportation project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.
38. "Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under CAA § 182(h) as a rural transport area.
39. "Standard" means a national ambient air quality standard.
40. "Statewide transportation improvement program (STIP)"means a staged, multi-year, intermodal program of transportation projects covering the state, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR 450.
41. "Statewide transportation plan" means the official intermodal statewide transportation plan that is developed through the statewide planning process for the state, developed pursuant to 23 CFR 450.
42. "Submarginal area" means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR 81.
43. "Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.
44. "Transit project" means an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For

analytical purposes, it shall be defined inclusively enough to:

a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.

b. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made.

c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

45. "Transitional area" means any ozone nonattainment areawhich EPA has classified as transitional in 40 CFR 81.

46. "Transitional period" with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor or Director of ADEQ and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in R18-2-1428.

47. "Transportation control measure (TCM)" means anymeasure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other mea-

sure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule.

48. "Transportation improvement program (TIP)" means astaged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and developed pursuant to 23 CFR 450.

49. "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR 450.

50. "Transportation project" means a highway project or atransit project.

51. "USDOT" means the United States Department of Transportation.

52. "VMT" means the number of vehicle miles traveled.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1402. Applicability

A. Except as provided for in subsection (F) or R18-2-1434, conformity determinations are required for all of the following:

1. The adoption, acceptance, approval, or support of transportation plans developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
2. The adoption, acceptance, approval, or support of TIPs developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
3. The approval, funding, or implementation of FHWA or FTA projects.

B. Conformity determinations are not required under this Article for individual projects which are not FHWA or FTA projects. However, R18-2-1429 applies to such projects if they are regionally significant.

C. The provisions of this Article shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

D. The provisions of this Article apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

E. The provisions of this Article apply with respect to emissions of the following precursor pollutants:

1. Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under § 182(f) of the CAA that additional reductions of NO_x would not contribute to attainment).
2. Nitrogen oxides in nitrogen dioxide areas.
3. Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if either of the following apply:
   a. During the interim period, the EPA Regional Administrator or the Director of ADEQ has made a finding (including a finding in an applicable implementation plan or a submitted implementation plan revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified ADOT or the MPO where one exists and USDOT.
   b. During the transitional, control strategy, and maintenance periods, the applicable implementation plan or implementation plan submission establishes a budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy.

F. Projects subject to this Article for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications, and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

G. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major

steps to advance the project have occurred within the most recent three-year period.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2). **R18-2-1403. Priority**

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1404. Frequency of Conformity Determinations

A. Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA or FTA projects shall be made according to the requirements of this Section and the applicable implementation plan.

B. Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by USDOT.

C. All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by the MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification provisions contained in R18-2-1405. The conformity determination shall be based on the transportation plan and the revision taken as a whole.

D. An existing conformity determination shall lapse unless conformity of existing transportation plans is redetermined:

1. By May 25, 1995, unless previously redetermined consistent with 40 CFR 51, subpart T.
2. Within 18 months after EPA approval of an implementation plan revision which either:
   a. Establishes or revises a transportation-related emissions budget (as required by CAA §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide); or
   b. Adds, deletes, or changes TCMs.
3. Within 18 months after EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

E. In any case, conformity determinations shall be made no less frequently than every three years, or the existing conformity determination will lapse.

F. A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by USDOT.

G. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification procedures under R18-2-1405.

H. After an MPO adopts a new or revised transportation plan, TIP conformity shall be redetermined by the MPO and USDOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in R18-2-1434. Otherwise, the existing conformity determination for the TIP shall lapse.

I. In any case, TIP conformity determinations shall be made no less frequently than every three years or the existing TIP conformity determination shall lapse.

J. FHWA or FTA projects shall be found to conform before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA or FTA project if none of the following major steps has occurred within the most recent three-year period: 1. NEPA process completion,

2. Start of final design,
3. Acquisition of a significant portion of the right-of-way,
4. Approval of the plans, specifications, and estimates.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1405. Consultation

A. Consultation procedures as described in this Section shall be undertaken by all of the following entities and shall include the public and affected local and regional transportation agencies in preparing for and making conformity determinations and in developing applicable implementation plans:

1. An MPO where one exists.
2. The Arizona Department of Transportation (ADOT).
3. The United States Department of Transportation (USDOT).
4. The Arizona Department of Environmental Quality (ADEQ).
5. The county air pollution control agency established pursuant to A.R.S. Title 49 where one exists.
6. The United States Environmental Protection Agency (EPA).

B. The following elements shall be used to implement the consultation processes under subsection (M), with the exception of subsection (M)(8), and under subsection (N), with the exception of subsections (N)(2) and (N)(3), and shall include all affected agencies and interested members of the public, and may be conducted at separate times or in combination:

1. Providing to the affected agencies and interested members of the public information describing the upcoming decision process,
2. Distributing or providing access to draft documents,
3. Providing an opportunity for informal question and answer on the draft document or proposed decision,
4. Providing an opportunity for formal written comment,
5. Writing and distributing both a response to comments and the final document or decision.

C. An MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, and any local transportation agency shall undertake a consultation process in accordance with this Section with each other, with the local or regional offices of EPA, FHWA and FTA, with affected regional transportation agencies, and with the public on the development of the following as described in subsections (D) through (G):

1. The implementation plan, including the emission budget and list of TCMs in the applicable implementation plan;
2. The unified planning work program under 23 CFR §

450.314;

3. The transportation plan and TIP;
4. The statewide transportation plan and STIP;
5. Any revisions to the preceding documents;
6. All transportation conformity determinations.

D. ADEQ, or the MPO in a county having a population greater than 250,000 persons, shall be the lead agency responsible for preparing an implementation plan, the associated emission budgets, and the list of TCMs in the plan. The lead agency shall also be responsible for assuring the adequacy of the consultation process. The concurrence of ADEQ on each implementation plan is required before ADEQ adopts the plan and transmits it to EPA for inclusion in the state implementation plan pursuant to A.R.S. § 49-406.

E. ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the transportation plan and the TIP. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the unified planning work program under 23 CFR 450.314.

F. ADOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the statewide transportation plan and the STIP.

G. ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to determinations of transportation conformity, except that the entity authorized to adopt or approve a project shall be the lead agency responsible for project-level conformity determinations for projects outside of the transportation plan or TIP and shall assure the adequacy of the consultation process.

H. Each lead agency described in subsections (D) through (G) shall:

1. Confer with all other agencies having an interest in the document or decision to be developed;
2. Provide access to all information needed for meaningful input;
3. Solicit early and continuing input from those agencies;
4. Conduct the public consultation process described in subsection (P);
5. Assure policy-level contact with agencies;
6. With the exception of notifications pursuant to subsection (M)(8), prior to taking any action required pursuant to subsections (D) through (G), consider the views of each agency and the public and respond to significant comments in a timely, substantive written manner prior to taking any final action and assure that such views and written response are made part of the record of any action.

I. FHWA and FTA shall be responsible for assuring timely action on final findings of conformity for transportation plans, TIPs,

and federally funded projects, including the basis for those findings, after consulting with other agencies as provided in this Section. FHWA and FTA shall also be responsible for providing guidance on conformity and the transportation planning process to agencies in consultation. FHWA and FTA may rely on the consultation process initiated by ADOT or the MPO where one exists and shall not be required to duplicate that process.

J. EPA shall be responsible for reviewing and approving updated motor vehicle emissions factors and providing guidance on conformity criteria and procedures to agencies in consultation.

K. Each lead agency subject to a consultation process under this Section, including any federal agency, shall provide or notice the availability of each final document that is the product of the consultation process, together with all supporting information, to each other agency and members of the public that have participated in the consultation process within 15 days of adopting or approving the document or making the determination. An agency may supply a checklist of available supporting information, which other participating agencies or the public may use to request all or part of the supporting information, in lieu of generally distributing all supporting information.

L. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.

M. A consultation process involving an MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public shall be undertaken for the following:

1. Evaluating and choosing each model and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses including vehicle miles traveled (VMT) forecasting. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
2. Determining whether the responsible agency identified in R18-2-1433 has demonstrated that the requirements of R18-2-1416, R18-2-1418 and R18-2-1419 are satisfied without a particular mitigation or control measure. The consultation process pursuant to this subsection shall be initiated by the responsible agency.
3. Making a determination, as required by R18-21429(C)(2), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for making a determination, as required by R18-2-1429(C)(2), whether a project that is outside of a TIP is included in the regional emissions analysis, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
4. Determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis and which projects should be considered to have a significant change in design

concept and scope from the transportation plan or TIP. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis.

5. Evaluating whether exempt projects as described in R182-1434 and R18-2-1435 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
6. Making a determination, as required by R18-2-1413, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or to substitute TCMs or other emission reduction measures. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
7. Identifying, as required by R18-2-1431, projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
8. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in R18-2-1434. Notice shall be provided by the MPO and need not be provided prior to final action. Notice shall be provided by ADOT for revisions and amendments affecting the state transportation plan and the state TIP. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
9. Project-level conformity determinations pursuant to R182-1416. The consultation process pursuant to this subsection shall be initiated by the recipient of the funds designated under 23 U.S.C. or the Federal Transit Act.

N. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, appropriate political subdivisions, regional transportation agencies, if any, and the public shall be undertaken for the following:

1. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in R18-2-1404 and including any changes in planning assumptions that may trigger a new conformity determination. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
2. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a consultation process involving the MPO and ADOT for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area. The consultation process pursuant to this subsection shall be initiated by ADOT. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
4. The design, schedule, and funding of research and data collection efforts and regional transportation model development. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
5. Determining that a conforming project approved with mitigation no longer requires mitigation. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

O. The following consultation processes involve recipients of funds designated under 23 U.S.C. or the Federal Transit Act:

1. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act and any agency created under state law that sponsors or approves transportation projects shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA or FTA projects, including projects for which alternative locations, design concept or scope, or the no-build option are still being considered, are disclosed as soon as practicable to ADOT or the MPO where one exists, so as to assure that any significant changes to the design concept or scope of those plans are disclosed as soon as practicable. The political subdivision having authority to adopt or approve a regionally significant transportation project, and any agency that becomes aware of any such project through applications for approval, permitting, funding, or otherwise shall disclose such project to ADOT or the MPO if one exists as soon as practicable. To help assure timely disclosure, the political subdivision having authority to adopt or approve any potential regionally significant transportation project shall disclose to ADOT or the MPO on a schedule prescribed by ADOT or the MPO, whichever is appropriate, each project for which alternatives have been identified through the NEPA process and, in particular, any preferred alternative that may be a regionally significant project. The consultation process shall include assuming the location, design concept, and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow ADOT or the MPO to perform a regional emissions analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

2. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act, any agency created under state law that sponsors or approves transportation projects, and the public shall be undertaken for the development of procedures as described in R18-2-1429. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

P. Public involvement processes shall be conducted according to the requirements of this subsection.

1. ADOT or the MPO, where one exists, when making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, that meets the following minimum requirements:
   a. Includes a process that provides complete information, timely public notice, full public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs.
   b. Requires a minimum public comment period of 45 days before the public involvement process is initially adopted or revised.
   c. Provides timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects, including but not limited to central city and other local jurisdiction concerns.
   d. Provides reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the federal-aid highway and transit programs are being considered.
   e. Requires adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs and approval of changes in plans and TIPs. In nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP, and major amendments. Public notice shall include mailing of notice to a list of all persons who have requested notice of actions covered by this Article.
   f. Demonstrates explicit consideration and response to public input received during the planning and program development processes.
   g. Seeks out and considers the needs of those traditionally underserved by existing transportation systems, including but not limited to low-income and minority households.
   h. When significant written and oral comments are received on a draft transportation plan or TIP, including the financial plan, as a result of the public involvement process or the consultation process required by this Section, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP.
   i. If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and it raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available.
   j. ADOT or the MPO where one exists shall specifically address in writing all public comments that known plans for a regionally significant transportation project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.
   k. Public involvement processes shall be periodically reviewed by ADOT or the MPO in terms of their effectiveness in assuring that the process provides full and open access to all.
   l. These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decisionmaking processes.
   m. Metropolitan public involvement processes shall be coordinated with statewide public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and to reduce redundancies and costs.
2. Local and regional transportation agencies when making conformity determinations on regionally significant transportation projects shall establish and implement a public involvement process which meets, at a minimum, the following requirements:
   a. Provides to the affected agencies and interested members of the public information describing the upcoming decision process.
   b. Distributes or provides access to draft documents and all information needed for meaningful input.
   c. Solicits early and continuing input from interested agencies and the public.
   d. Provides an opportunity for informal question and answer on the draft document or proposed decision.
   e. Provides an opportunity for formal written comment.
   f. Provides for writing and distributing both a response to comments and the final document or decision. The response to comments shall consider the views of each agency and the public. The response to comments shall be made in a timely, substantive written manner prior to taking any final action and shall be made part of the record of any action.

Q. Any conflict among state agencies or between state agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the directors of the involved agencies. In the first instance, such entities shall make every effort to

resolve any differences, including personal meetings between the directors of such entities or their policy-level representatives, to the extent possible. Within 14 calendar days after ADOT or the MPO has notified ADEQ of its decision, ADEQ may appeal a proposed determination of conformity, or other policy decision under this Article, to the Governor. ADEQ must provide notice of any appeal under this subsection to ADOT or the MPO. If ADEQ does not appeal to the Governor within 14 days, ADOT or the MPO may proceed with the final determination or decision. If ADEQ appeals to the Governor, the final conformity determination or policy decision shall have the concurrence of the Governor. The Governor may delegate to another official or agency within the state the role of hearing any appeal under this subsection and of deciding whether to concur in the determination or decision but may not delegate these functions to the director or staff of ADEQ, to any local air quality agency, to ADOT, to any state transportation commission or board, to an MPO, or to any agency that has responsibility for any of these functions.

R. The following procedures shall govern the consultation process regarding regionally significant transportation projects as defined in R18-2-1401(37):

1. By September 1, 1995, ADOT or the MPO where one exists shall develop and make available, for each nonattainment or maintenance area, consistent with A.R.S. § 49-408(A), the following:
   a. A map of the highway or transit facilities in the nonattainment or maintenance area that serve regional transportation needs.
   b. Guidance on which undertakings to implement or modify a highway facility are not transportation projects as defined in this Article, because they are not of sufficient length to address environmental matters on a broad scope.
   c. Guidance on which types of transportation projects are normally included in the regional transportation model.
2. The map and guidance described in subsection (R)(1) shall be produced only after consultation with ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, and the public. The map developed pursuant to subsection (R)(1) shall be updated prior to the commencement of the next TIP or STIP development cycle, unless no changes have occurred. The guidance developed pursuant to subsection (R)(3) shall be revised as necessary to reflect changes in the regional transportation model.
3. ADOT or the MPO where one exists shall develop and initiate the consultation process described in subsection (H) for a proposed list of transportation projects to be considered regionally significant. The consultation process shall include the MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public. The list shall include information supporting the proposed classification.
4. In determining whether a facility serves regional transportation needs, ADOT or the MPO where one exists shall consider at a minimum whether the facility:
   a. Would be classified as a principal arterial based on average daily traffic or other factors, if not for limitations that the USDOT places on the percentage of streets that can be so classified.
   b. For all other roadways, whether the facility:
      i. Serves regional mobility needs, as opposed to local access.
      ii. Carries regional traffic from one principal arterial to another.
      iii. Is a modification that expands a facility such that it would serve regional transportation needs.
5. For the purposes of this Article, a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region, does not serve regional transportation needs.
6. None of the following attributes, by itself, shall require a transportation project to be included in the modeling of a metropolitan area's transportation network:
   a. The connection of a facility that does not serve regional transportation needs to a facility that does serve regional transportation needs.
   b. The addition or modification of a lane other than a through lane.

S. An agency having a role or responsibility under this Section may delegate that role or responsibility to another entity pursuant to the applicable state law but shall notify all other parties

to the consultation process of this fact when the delegation occurs and shall also provide to the other parties the name, address, and telephone number of one or more contact persons representing the entity that is accepting the delegated role or responsibility.

T. The provisions of this Section apply only to TIP and STIP planning cycles beginning with the cycles next following the effective date of this Section. The provisions of 40 CFR 51, Subpart T, continue to apply to all TIP and STIP planning cycles in progress at the time of the effective date of this Section. The provisions of this Section apply to consultation on projects and TIP amendments as of the effective date of this Section.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1406. Content of Transportation Plans

A. For transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas, the following shall apply:

1. The transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.
2. The agency or organization developing the transportation plan, after consultation pursuant to R18-2-1405, may choose any years to be horizon years, subject to the following restrictions:
   a. Horizon years may be no more than 10 years apart.
   b. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
   c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.
   d. The last horizon year shall be the last year of the transportation plan's forecast period.

3. For these horizon years all of the following apply:
   a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including landuse forecasts, in accordance with implementation plan provisions and R18-2-1405.
   b. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system.
   c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

B. Ozone or CO nonattainment areas which are reclassified from moderate to serious shall meet the requirements of subsection (A) within two years from the date of reclassification.

C. Transportation plans for other areas shall meet the requirements of subsection (A) at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of R18-2-1409 through R18-2-1427.

D. The requirements of this Section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1407. Relationship of Transportation Plan and TIP Conformity with the NEPA Process

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in R18-2-1409 through R18-2-1427 for projects not from a TIP before NEPA process completion.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1408. Fiscal Constraints for Transportation Plans and TIPs

Transportation plans and TIPs shall demonstrate that they are fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR 450 in order to be found in conformity. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1409. Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General A. In order to be found to conform, each transportation plan, program, and FHWA or FTA project shall satisfy the applicable criteria and procedures in R18-2-1410 through R18-2-1427 as listed in Table 1 of this Section and shall comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA or FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

B. The following table indicates the criteria and procedures in R18-2-1410 through R18-2-1427 which apply for each action in each time period:

Table 1. Conformity Criteria

DURING ALL PERIODS

Action	Criteria
Transportation Plan	R18-2-1410, R18-2-1411, R182-1412, R18-2-1413(B)
TIP	R18-2-1410, R18-2-1411, R182-1412, R18-2-1413(C)
Project (from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1414, R18-21415, R18-2-1416, R18-2-1417
Project (not from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(D), R18-2-1414, R18-2-1416, R18-21417

PHASE II OF THE INTERIM PERIOD

Action	Criteria
Transportation Plan	R18-2-1422, R18-2-1425
TIP	R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1421, R18-2-1424, R18-2-1427

TRANSITIONAL PERIOD

Action	Criteria
Transportation Plan	R18-2-1418, R18-2-1422, R182-1425

TIP	R18-2-1419, R18-2-1423, R182-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1420, R18-2-1421, R182-1424, R18-2-1427

CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	R18-2-1418
TIP	R18-2-1419
Project (from a conforming plan and TIP)	No additional criteria
Project (not from a conforming plan and TIP)	R18-2-1420

R18-2-1410. The conformity determination must be based on the latest planning assumptions.

R18-2-1411. The conformity determination must be based on the latest emission estimation model available.

R18-2-1412. The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by 40 CFR 51.396.

R18-2-1413. The transportation plan, TIP, or FHWA or FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

R18-2-1414. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

R18-2-1415. The project must come from a conforming transportation plan and program.

R18-2-1416. The FHWA or FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

R18-2-1417. The FHWA or FTA project must comply with PM_{10} control measures in the applicable implementation plan.

R18-2-1418. The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

R18-2-1419. The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

R18-2-1420. The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

R18-2-1421. The FHWA or FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

R18-2-1422. The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

R18-2-1423. The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

R18-2-1424. The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

R18-2-1425. The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

R18-2-1426. The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

R18-2-1427. The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1410. Criteria and Procedures: Latest Planning Assumptions

A. During all periods the conformity determination, with respect to all other applicable criteria in R18-2-1411 through R18-21427, shall be based upon the most recent complete planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of subsections (B) through (F).

B. Assumptions, including vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth shall be derived from the estimates of current and future population, employment, travel, and congestion most recently used by ADOT or the MPO where one exists. Population estimates shall be consistent with the estimates developed by the Arizona Department of Economic Security pursuant to A.R.S. § 41-1954(A). The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by R18-2-1405. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1411. Criteria and Procedures: Latest Emissions Model A. During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by EPA before they are used in the conformity analysis.

B. Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model, or during any grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or

before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2). **R18-2-1412. Criteria and Procedures: Consultation**

All conformity determinations shall be made according to the consultation procedures in R18-2-1405. This criterion applies during all periods. Until the implementation plan revision required by 40 CFR 51.396 is approved by EPA, the conformity determination shall be made according to the procedures in R18-2-1405. Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1413. Criteria and Procedures: Timely Implementation of TCMs

A. During all periods the transportation plan, TIP, or FHWA, or FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan.

B. For transportation plans, this criterion is satisfied if the following two conditions are met:

1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.
2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

C. For TIPs, this criterion is satisfied if all of the following conditions are met:

1. An examination of the specific steps and funding source needed to fully implement each TCM indicates that TCMs which are eligible for funding under 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if

   such TCMs are behind the schedule established in the applicable implementation plan, the MPO and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.
2. If federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs, (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, the TIP cannot be found to conform.
3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

D. For FHWA or FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1414. Criteria and Procedures: Currently Conforming Transportation Plan and TIP

During all periods there shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and USDOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by USDOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of R18-2-1404. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1415. Criteria and Procedures: Projects from a Plan and TIP

A. During all periods the project shall come from a conforming transportation plan and program. Otherwise, the project shall satisfy all criteria in Table 1 of R18-2-1409 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (B) and from a conforming program if it meets the requirements of subsection (C).

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy R18-2-1406, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility.
2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if all of the following conditions are met:

1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from

those which were described in the TIP, or in a manner which would significantly impact use of the facility.

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures shall be obtained from the project sponsor or operator as required by R18-2-1433 in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1416. Criteria and Procedures: Localized CO and PM_{10} Violations (Hot Spots)

A. During all periods any FHWA or FTA project shall not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.

C. For projects which are not of the type identified by R18-21431(A) or R18-2-1431(D), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration shall be performed according to the requirements of R18-21431(B).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1417. Criteria and Procedures: Compliance with PM_{10} Control Measures

During all periods any FHWA or FTA project shall comply with PM_{10} control measures in the applicable implementation plan. This condition is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1418. Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan)

A. The transportation plan shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met:

B. A regional emissions analysis shall be performed as follows:

1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan or implementation plan submission establishes an emissions budget: a. VOC as an ozone precursor.
   b. NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment.
   c. CO.
   d. PM_{10} (and its precursors VOC or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions).
   e. NO_x (in NO_2 nonattainment or maintenance areas).
2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant transportation projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
3. The emissions analysis methodology shall meet the requirements of R18-2-1430.
4. For areas with a transportation plan that meets the content requirements of R18-2-1406(A), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation.
5. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), the emissions analysis shall be performed for all of the following: a. The last year of the plan's forecast period.
   b. The attainment year, if the attainment year is in the time span of the transportation plan.
   c. Any other years in the time span of the transportation plan such that there is not a gap of more than 10 years between analysis years. Emissions in milestone years which are between these analysis years may be determined by interpolation.

C. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in subsection (B)(1) the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year.
2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions bud-
   get established in the applicable implementation plan or implementation plan submission for that year.
3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment

year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year.

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1419. Criteria and Procedures: Motor Vehicle Emissions Budget (TIP)

A. The TIP shall be consistent with the motor vehicle emissions budgets in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met.

B. For areas with a conforming transportation plan that fully meets the content requirements of R18-2-1406(A), this criterion may be satisfied without additional regional emissions analysis if:

1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state or local matching funds and funds for state or local funding-only projects are consistent with the revenue sources expected over the same period; and
2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
   a. The TIP contains all projects which shall be started in the TIP's time-frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
   b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and c. The design concept and scope of each regionally significant transportation project in the TIP is not significantly different from that described in the transportation plan.
3. If the requirements in subsections (B)(1) and (B)(2) are not met, then either:
   a. The TIP may be modified to meet those requirements; or
   b. The transportation plan shall be revised so that the requirements in subsections (B)(1) and (B)(2) are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subsections (B)(1) and (B)(2).

C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall meet all of the following requirements:

1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
2. The analysis methodology shall meet the requirements of R18-2-1430(C).
3. The regional emissions analysis shall satisfy the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R182-1418(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1420. Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not from a Plan and TIP)

A. The project which is not from a conforming transportation plan and a conforming TIP shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant transportation projects expected in the area, do not exceed the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.

B. For areas with a conforming transportation plan that meets the content requirements of R18-2-1406(A):

1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that all of the following apply:
   a. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years.
   b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years.
   c. The design concept and scope of the project is not significantly different from that described in the transportation plan.
2. If the requirements in subsection (B)(1) are not met, a regional emissions analysis shall be performed as follows:
   a. The analysis methodology shall meet the requirements of R18-2-1430.
   b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan. The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP.

c. The regional emissions analysis shall meet the requirements of R18-2-1418(B)(1), R18-21418(B)(4) and R18-2-1418(C).

C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant transportation projects expected in the nonattainment or maintenance area. This criterion may be satisfied if all of the following apply:

1. The analysis methodology meets the requirements of R18-2-1430(C).
2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
3. The regional emissions analysis satisfies the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-21418(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1421. Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim and Transitional Periods

A. Each FHWA or FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.

C. For projects which are not of the type identified by R18-21431(A), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of R18-2-1431(B).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1422. Criteria and Procedures: Interim and Transitional Period Reductions in Ozone and CO Areas (Transportation Plan)

A. A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).

B. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

C. Define the Baseline scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All in-place regionally significant highway and transit facilities, services and activities.
2. All ongoing travel demand management or transportation system management activities.
3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan or TIP; or have completed the NEPA process. For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the Baseline scenario and shall be included in the Action scenario as described in subsection (D), if one of the following major steps has not occurred within the most recent three-year period:
   a. NEPA process completion;
   b. Start of final design;
   c. Acquisition of a significant portion of the right-ofway;
   d. Approval of the plans, specifications and estimates.

D. Define the Action scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant transportation projects in the nonattainment area. The Action scenario will include all of the following except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All facilities, services, and activities in the Baseline scenario;
2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or

utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
6. Completion of all expected regionally significant nonFHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Base-
line and Action scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between the analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1423. Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP)

A. A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).

B. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than 10 years apart. The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

C. Define the Baseline scenario as the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All in-place regionally significant highway and transit facilities, services, and activities.
2. All ongoing travel demand management or transportation system management activities.
3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition, except for hardship acquisition and protective buying; come from the first three years of the previously conforming TIP; or have completed the NEPA process. For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the Baseline scenario if one of the following major steps has not occurred within the most recent three-year period:
   a. NEPA process completion.
   b. Start of final design.
   c. Acquisition of a significant portion of the right-ofway.
   d. Approval of the plans, specifications, and estimates. Such a project shall be included in the Action scenario, as described in subsection (D).

D. Define the Action scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant transportation projects in the nonattainment area in the time-frame of the transportation plan. It will include all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All facilities, services, and activities in the Baseline scenario;
2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
6. Completion of all expected regionally significant nonFHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios, and determine the difference

in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1424. Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP)

A transportation project shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of R18-21422 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1425. Criteria and Procedures: Interim Period Reductions for PM_{10} and NO_2 Areas (Transportation Plan)

A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either subsections (B) or (C) are met.

B. Demonstrate that implementation of the plan and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area, and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT, and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1422(C), and the Action scenario, as defined in R18-2-1422(D).
3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified ADOT, the MPO where one exists and USDOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. The analysis shall address the periods between the analysis years and the periods between 1990, the first milestone year if any, and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.
4. Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

C. Demonstrate that when the projects in the transportation plan and all other regionally significant transportation projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportationrelated precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

1. Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the control strategy implementation plan for that area includes a baseline emissions inventory for a different year.
2. Estimate the emissions of the applicable pollutant or pollutants from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant transportation projects in the nonattainment area, according to the requirements of R18-21430. Emissions shall be

estimated for analysis years which are no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

3. Demonstrate that for each analysis year the emissions estimated in subsection (C)(2) are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1426. Criteria and Procedures: Interim Period Reductions for PM_{10} and NO_2 Areas (TIP)

A. A TIP shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either subsection (B) or subsection (C) are met.

B. Demonstrate that implementation of the plan and TIP and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated, according to the requirements of R18-21425(B)(1).
2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1423(C), and the Action scenario, as defined in R18-2-1423(D).
3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios as required by R18-21425(B)(3), and make the demonstration required by R18-2-1425(B)(4).

C. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant transportation projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by R18-2-1425(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1427. Criteria and Procedures: Interim Period Reductions for PM_{10} and NO_2 Areas (Project Not from a Plan and TIP)

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of R18-2-1425 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and R18-2-1425(B) is used to demonstrate satisfaction of this criterion, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1428. Transition from the Interim Period to the Control Strategy Period

A. For areas which submit a control strategy implementation plan revision after November 24, 1993:

1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by one year from the date the CAA requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.
   a. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in subsection (A)(1) and such transportation plans and TIPs are consistent with the motor vehicle emissions budget in the applicable implementation plan or any previously submitted control strategy implementation plan revision.
   b. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, the MPO where one exists, and USDOT, which initiates the sanction process under CAA §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new projectlevel conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding subsection (A)(2), if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

B. For areas which have not submitted a control strategy implementation plan revision:

1. For areas whose CAA deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the state, the MPO where one exists, and USDOT of the state's failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m) all of the following shall apply:
   a. No new transportation plans or TIPs may be found to conform beginning 120 days after the CAA deadline.
   b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
2. For areas whose CAA deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has
   been remedied and acknowledged by a letter from the EPA Regional Administrator:
   a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
   b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

C. For areas which have not submitted a complete control strategy implementation plan revision:

1. For areas where EPA notifies the state, the MPO where one exists, and USDOT after November 24, 1993, that the control strategy implementation plan revision submitted by the state is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
   a. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding.
   b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
   c. Notwithstanding subsections (C)(1)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
2. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
   a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
   b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
   c. Notwithstanding subsections (C)(2)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

D. For areas which submitted a control strategy implementation plan before November 24, 1993:

1. The transportation plan and TIP shall have been demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made. From and after February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding subsection (D)(2), if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply until November 25, 1994. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

E. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of subsections (E)(1) and (2) shall be met.

1. Before a FHWA or FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, ADEQ shall be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the Action scenario, as required by R18-2-1422 through R18-2-1427, compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
2. In the event of unresolved disputes on such project-level conformity determinations, ADEQ may escalate the issue to the governor consistent with the procedure in R18-21405, which applies for ADEQ comments on a conformity determination.

F. Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures:

1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by subsections (A)(1) and (D)(1)) does not require new emissions analysis and does not have to satisfy the requirements of R182-1410 and R18-2-1411 if all of the following are met:
   a. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions.
   b. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
2. A redetermination of conformity as described in subsection (F)(1) is not considered a conformity determination for the purposes of R18-2-1404(E) or R18-2-1404(I) regarding the maximum intervals between conformity determinations. Conformity shall be determined according to all the applicable criteria and procedures of R18-21409 within three years of the last determination which did not rely on subsection (F)(1). **G.** Ozone nonattainment areas:
1. The requirements of subsection (B)(1) apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which CAA §§ 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which CAA § 182(b)(1) requires to be submitted to EPA November 15, 1993.
2. The requirements of subsection (B)(1) apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by CAA § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of subsection (B)(1) apply in this case even if the area has submitted the 15% emission reduction demonstration required by CAA § 182(b)(1).
3. The requirements of subsection (A) apply when the implementation plan revisions required by CAA §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.

H. Nonattainment areas which are not required to demonstrate reasonable further progress and attainment. If an area listed in R18-2-1436 submits a control strategy implementation plan revision, the requirements of subsections (A) and (E) apply. Because the areas listed in R18-2-1436 are not required to demonstrate reasonable further progress and attainment and therefore have no CAA deadline, the provisions of subsection (B) do not apply to these areas at any time.

I. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by CAA § 175A is submitted to EPA, the requirements of subsection (A) or (D) apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

J. This Section does not become effective until June 1, 1996.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1429. Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under 23 U.S.C. or the Federal Transit Act A. This Section shall not apply to any of the following:

1. A transportation project that is a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region.
2. An exempt project listed in R18-2-1434.

B. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a transportation project, regardless of funding source, without first determining whether the transportation project is regionally significant. In making this determination, the recipient shall not take any action that is inconsistent with the procedures developed by ADOT or the MPO pursuant to R18-2-1405(R).

C. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless both of the following apply:

1. There is a currently conforming transportation plan and TIP consistent with the requirements of R18-2-1414.
2. The requirements of one of the following are met:

a. The project comes from a conforming plan and program consistent with the requirements of R18-21415.

b. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

c. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget in the applicable implementation plan consistent with the requirements of R18-2-1420.

d. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of R18-2-1424 (in ozone and CO nonattainment areas) or R18-2-1427 (in PM_{10} and NO_2 nonattainment areas).

e. During the transitional period, the project satisfies the requirements of both subsections (1)(2)(c) and (d).

D. Pursuant to the consultation process established in R18-21405(O), ADOT or the MPO where one exists shall, not later than September 1, 1995, develop and make available the procedures to be used by any recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act to comply with subsections (B) and (C). These procedures may be revised periodically, as needed, using the same consultation process. At a minimum, such procedures shall provide for the following:

1. The minimum information required by the recipient to make determinations in compliance with subsections (B) and (C);
2. The time-frames for action to be taken by the recipient;
3. For transportation projects determined to be regionally significant, the documentation necessary to demonstrate that the requirements of 23 CFR 450.324(e), (g), and (h) have been met.

E. After a transportation project is adopted or approved, no subsequent act defined as adoption or approval under this Section or under procedures developed to implement this Section shall be subject to subsection (B) or (C), unless project's design concept or scope have changed significantly since the project was first adopted or approved.

F. A regionally significant transportation project found to be in conformity, either as a result of a TIP or a separate project analysis, shall retain such conformity finding, irrespective of subsequent analysis, unless the project fails to meet the conditions of its approval or undergoes a significant change in scope. In any event, a conformity determination shall lapse after three years in the absence of a redetermination; except that a project undergoing NEPA approval shall retain its conformity determination, unless none of the following major steps has occurred within the most recent three-year period:

1. NEPA process completion;
2. Start of final design;
3. Acquisition of a significant portion of the right-of-way;
4. Approval of the plans, specifications, and estimates.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1430. Procedures for Determining Regional Transportation-related Emissions

A. The following are general requirements for determining regional transportation-related emissions:

1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant transportation projects expected in the nonattainment or maintenance area, including FHWA or FTA projects proposed in the transportation plan and TIP and all other regionally significant transportation projects which are disclosed to ADOT or the MPO as required by R18-2-1405. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects shall be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the CAA requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
4. Notwithstanding subsection (A)(3), during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in R18-2-1418 through R18-2-1420, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of R18-2-1418 through R18-2-1420 are satisfied.

5. A regional emissions analysis for the purpose of satisfying the requirements of R18-2-1422 through R18-2-1424 may account for the programs in subsection (A)(4), but the same assumptions about these programs shall be used for both the Baseline and Action scenarios.
6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to R18-2-1405 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

B. For serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in subsections (B)(1) through (5).

1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess all of the following attributes:
   a. The modeling methods and the functional relationships used in the model shall in all respects be in accordance with acceptable professional practice and reasonable for purposes of emission estimation.
   b. The network-based model shall be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year.
   c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used.
   d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits.
   e. Free-flow speeds on network links shall be based on empirical observations.
   f. Peak and off-peak travel demand and travel times shall be provided.
   g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available.
   h. The model shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged.
   i. A dependence of trip generation on the accessibility of destinations via the transportation system, including pricing, is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
   j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
   k. Consideration of emissions increases from construction-related congestion is not specifically required.
2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor or factors shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of USDOT and EPA.
3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area and on roadways outside the urban transportation planning area.
4. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

C. For areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995:

1. Procedures which satisfy some or all of the requirements of subsection (A) shall be used in all areas not subject to subsection (A) in which those procedures have been the previous practice of the MPO.
2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods shall account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in

population and historical growth trends for vehicle miles travelled per person. These methods shall also consider future economic activity, transit alternatives, and transportation system policies.

D. This subsection applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

1. Conformity demonstrations for projects in these areas may satisfy the requirements of R18-2-1420, R18-21424, and R18-2-1427 with one regional emissions analysis which includes all the regionally significant transportation projects in the nonattainment or maintenance area or portion thereof.
2. The requirements of R18-2-1420 shall be satisfied according to the procedures in R18-2-1420(C), with references to the "transportation plan" taken to mean the statewide transportation plan.
3. The requirements of R18-2-1424 and R18-2-1427 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area or portion thereof.
4. The requirement of R18-2-1429(A)(2) shall be satisfied if all of the following are met:
   a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area or portion thereof and supports the most recent conformity determination made according to the requirements of R18-2-1420, R18-2-1424 or R18-2-1427 (as modified by subsections (D)(2) and (D)(3)), as appropriate for the time period and pollutant.
   b. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis or in a manner which would significantly impact use of the facility.

E. For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

F. In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider constructionrelated fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1431. Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-spot Analysis)

A. In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement (A) (1987) and supplement (B) (1993), EPA publication no. 450/278-027R, incorporated by reference and on file with the Department and with the Secretary of State), unless, after the interagency consultation process described in R18-2-1405 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies
   as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service;
5. Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

B. In cases other than those described in subsection (A), other quantitative methods may be used if they represent reasonable and common professional practice.

C. CO hot-spot analyses shall include the entire project and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration may be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

D. PM_{10} hot-spot analysis shall be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM_{10} hot-spot analysis shall be determined through the interagency consultation process required in R18-2-1405. In PM_{10} nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this subsection for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

E. Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

F. PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are enforceable written commitments from the project sponsor or operator to the implementation of such measures, as required by R18-21433(A).

G. CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1432. Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan or Implementation Plan Submission

A. In interpreting an applicable implementation plan or implementation plan submission with respect to its motor vehicle emissions budget, ADOT or the MPO where one exists and USDOT may not infer additions to the budget that are not explicitly intended by the implementation plan or submission. Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to ADOT or the MPO and USDOT in the emission budget for conformity purposes, ADOT or the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans or submissions which demonstrate that after implementation of control measures in the implementation plan any of the following apply:

1. Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone.
2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment.
3. Emissions will be lower than needed to provide for continued maintenance.

B. If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the state may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

C. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan or implementation plan submission allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

D. If the applicable implementation plan or implementation plan submission estimates future emissions by geographic subarea of the nonattainment area, ADOT or the MPO where one exists and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan or implementation plan submission explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

E. If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination for the entire nonattainment area. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1433. Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures

A. Prior to determining that a transportation project is in conformity, ADOT, the MPO where one exists, other recipient of funds designated under 23 U.S.C. or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations enforceable written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by R18-2-1418 through R18-21420 and R18-2-1422 through R18-2-1424 or used in the project-level hot-spot analysis required by R18-2-1416 and R18-21421.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and comply with the obligations of such commitments.

C. Enforceable written commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and that project sponsors shall comply with such commitments.

D. During the control strategy and maintenance periods, if ADOT, the MPO, or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of R18-2-1416, R18-2-1418, and R18-2-1419 are satisfied without the mitigation or control measure and so notifies the agencies involved in the interagency consultation process required under R18-2-1405. ADOT or the MPO where one exists and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of R18-2-1418 and R18-2-1419 and that the project still satisfies the requirements of R18-2-1416, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. **Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2). **R18-2-1434. Exempt Projects**

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if ADOT or the MPO where one exists in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.

Table 2
Exempt Projects
SAFETY

1. Railroad or highway crossing.
2. Hazard elimination program.
3. Safer non-federal-aid system roads.
4. Shoulder improvements.
5. Increasing sight distance.
6. Safety improvement program.
7. Traffic control devices and operating assistance other than signalization projects.
8. Railroad or highway crossing warning devices.
9. Guardrails, median barriers, crash cushions.
10. Pavement resurfacing or rehabilitation.
11. Pavement marking demonstration.
12. Emergency relief (23 U.S.C. 125).
13. Fencing.
14. Skid treatments.
15. Safety roadside rest areas.
16. Adding medians.
17. Truck climbing lanes outside the urbanized area.
18. Lighting improvements.
19. Widening narrow pavements or reconstructing bridges (noadditional travel lanes). 20. Emergency truck pullovers.

MASS TRANSIT

1. Operating assistance to transit agencies.
2. Purchase of support vehicles.
3. Rehabilitation of transit vehicles. (In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)
4. Purchase of office, shop, and operating equipment for existing facilities.
5. Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
6. Construction or renovation of power, signal, and communications systems.
7. Construction of small passenger shelters and information kiosks.
8. Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
9. Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
10. Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet. (In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)
11. Construction of new bus or rail storage or maintenance facilities categorically excluded in 23 CFR 771.

AIR QUALITY

1. Continuation of ride-sharing and van-pooling promotion activities at current levels. 2. Bicycle and pedestrian facilities.

OTHER

1. Specific activities which do not involve or lead directly to construction, such as:
   a. Planning and technical studies.
   b. Grants for training and research programs.
   c. Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
   d. Federal-aid systems revisions.
2. Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action.
3. Noise attenuation.
4. Advance land acquisitions (23 CFR 712 or 23 CFR 771).
5. Acquisition of scenic easements.
6. Plantings, landscaping, etc.
7. Sign removal.
8. Directional and informational signs.
9. Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
10. Repair of damage caused by natural disasters, civil unrest, orterrorist acts, except projects involving substantial functional, locational or capacity changes.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1435. Projects Exempt from Regional Emissions Analyses

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies pursuant to R182-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3
Projects Exempt From Regional Emissions Analyses

1. Intersection channelization projects.
2. Intersection signalization projects at individual intersections.
3. Interchange reconfiguration projects.
4. Changes in vertical and horizontal alignment.
5. Truck size and weight inspection stations.
6. Bus terminals and transfer points.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1436. Special Provisions for Nonattainment Areas Which are Not Required to Demonstrate Reasonable Further Progress and Attainment A. This Section applies in the following areas:

1. Rural transport ozone nonattainment areas,
2. Marginal ozone areas,

3. Submarginal ozone areas,
4. Transitional ozone areas,
5. Incomplete data ozone areas,
6. Moderate CO areas with a design value of 12.7 ppm or less,
7. Not classified CO areas.

B. The criteria and procedures in R18-2-1422 through R18-21424 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in R18-21418 through R18-2-1420, except as otherwise provided in subsection (C).

C. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in R18-2-1418 through R18-2-1420 apply in lieu of the procedures in R18-21422 through R18-2-1424.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1437. Reserved

R18-2-1438. General Conformity for Federal Actions The following subparts of 40 CFR 93, Determining Conformity of Federal Actions to State or Federal Implementation Plans, and all accompanying appendices, adopted as of July 1, 1994, and no future editions, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans (58 FR 63253, November 30, 1993).

Historical Note

Adopted effective January 31, 1995 (Supp. 95-1).

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

R18-2-1501. Definitions

In addition to the definitions contained in A.R.S. § 49-501 and R182-101, in this Article:

1. "Activity fuels" means those fuels created by human activities such as thinning or logging.
2. "ADEQ" means the Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Burn plan" means the ADEQ form that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
5. "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
6. "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
7. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
8. "Emission reduction techniques (ERT)" means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
9. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
   a. United States Forest Service,
   b. United States Fish and Wildlife Service,
   c. National Park Service,
   d. Bureau of Land Management,
   e. Bureau of Reclamation,
   f. Department of Defense,
   g. Bureau of Indian Affairs, and
   h. Natural Resources Conservation Service.
10. "F/SLM" means a federal land manager or a state landmanager.
11. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. "Mop-up" means the act of extinguishing or removingburning material from a prescribed fire to reduce smoke impacts.
13. "National Wildfire Coordinating Group" means thenational inter-agency group of federal and state land managers that shares similar wildfire suppression programs and has established standardized inter-agency training courses and qualifications for fire management positions.
14. "Non-burning alternatives to fire" means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
15. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
16. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a pub-

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2. Marginal ozone areas,
3. Submarginal ozone areas,
4. Transitional ozone areas,
5. Incomplete data ozone areas,
6. Moderate CO areas with a design value of 12.7 ppm or less,
7. Not classified CO areas.

B. The criteria and procedures in R18-2-1422 through R18-21424 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in R18-21418 through R18-2-1420, except as otherwise provided in subsection (C).

C. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in R18-2-1418 through R18-2-1420 apply in lieu of the procedures in R18-21422 through R18-2-1424.

Historical Note
Adopted effective June 15, 1995 (Supp. 95-2).

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1. "Activity fuels" means those fuels created by human activities such as thinning or logging.
2. "ADEQ" means the Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Burn plan" means the ADEQ form that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
5. "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
6. "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
7. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
8. "Emission reduction techniques (ERT)" means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
9. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
   a. United States Forest Service,
   b. United States Fish and Wildlife Service,
   c. National Park Service,
   d. Bureau of Land Management,
   e. Bureau of Reclamation,
   f. Department of Defense,
   g. Bureau of Indian Affairs, and
   h. Natural Resources Conservation Service.
10. "F/SLM" means a federal land manager or a state landmanager.
11. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. "Mop-up" means the act of extinguishing or removingburning material from a prescribed fire to reduce smoke impacts.
13. "National Wildfire Coordinating Group" means thenational inter-agency group of federal and state land managers that shares similar wildfire suppression programs and has established standardized inter-agency training courses and qualifications for fire management positions.
14. "Non-burning alternatives to fire" means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
15. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
16. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or

modified state, under certain burn and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction or residential burning under R18-2-602.

17. "Prescribed fire manager" means a person designated bya F/SLM as responsible for prescribed burning for that land manager.
18. "Smoke management prescription" means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
19. "Smoke management techniques (SMT)" means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.
20. "Smoke management unit" means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.
21. "State land manager (SLM)" means any department,agency, or political subdivision of the state government including the following:
    a. State Land Department,
    b. Department of Transportation,
    c. Department of Game and Fish, and
    d. Parks Department.
22. "Wildfire" means an unplanned wildland fire subject to appropriate control measures. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.
23. "Wildland fire use" means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning. **Historical Note**

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1502. Applicability

A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.

B. A private or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.

C. The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.

D. Notwithstanding subsection (C), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.

E. ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1). **R18-2-1503. Annual Registration, Program Evaluation and Planning**

A. Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.

B. Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year.

C. A F/SLM shall include the following information on the registration form:

1. The F/SLM's name, address, and business telephone number;
2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;
3. All prescribed burn projects and potential wildland fire use areas planned for the next year;
4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to support the annual emissions goal for each prescribed burn project;
5. Planned use of any smoke management techniques for each prescribed burn project;
6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use;
7. A list of all burn projects that were completed during the previous year;
8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and
9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas.

D. After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.

E. A F/SLM may amend a registration at any time with a written submission to ADEQ.

F. ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.

G. ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLMs to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction

techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.

H. At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. Revisions to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. To facilitate the Daily Burn authorization process under R18-2-1505, the F/SLM shall include on the Burn Plan form:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Burn prescription;
3. Smoke management prescription;
4. The number of acres to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
6. A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
7. Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is nonattainment for particulates, a carbon monoxide nonattainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
8. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
9. After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1505. Prescribed Burn Requests and Authorization A. Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the "Daily Burn Request" form supplied by ADEQ. The Daily Burn Request form shall include:

1. The contact information of the F/SLM conducting the burn;
2. Each day of the burn;
3. The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;
4. Projected smoke impacts; and
5. Any local conditions or circumstances known to the F/ SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.

B. After consultation with the F/SLM, ADEQ may request additional information related to the burn, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process.

C. The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.

D. An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:

1. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal.
2. If ADEQ fails to address a Burn Request by 10:00 p.m. of the business day on which the request is submitted, the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received.
3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.

E. If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public when necessary. After consultation with ADEQ, the smoke management prescription or burn plan may be modified.

F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire. **Historical Note**

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under R18-2-1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active wildland fire use incidents, and active multiple-day burns, and consideration of potential long-term emissions estimates;

3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;
9. Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Act and 40 CFR 51.309;
10. Assessment of duration and intensity of smoke emissionsto minimize cumulative impacts;
11. Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon monoxide non-attainment areas, or other smoke-sensitive areas; and
12. Protection of the National Ambient Air Quality Standards.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1). **R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting**

A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2:00 p.m. of the business day following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:
1. Any known conditions or circumstances that could impact the Daily Burn decision process;
2. The date, location, fuel type, fuel loading, and acreage accomplishments;
3. The ERTs and SMTs described in R18-2-1509 and R182-1510, respectively, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.

B. The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.

C. ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.

D. The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1). **R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting**

A. In order for ADEQ to participate in the wildland fire use decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.

B. For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such designation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:
1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Anticipated burn prescription;
3. Anticipated smoke management prescription;
4. The estimated daily number of acres, quantity, and type of fuel to be burned;
5. The anticipated maximum allowable perimeter or size with map;
6. Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;
7. The anticipated duration of the wildland fire use incident; 8. The anticipated long-range weather trends for the site;
9. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and
10. Modeling or monitoring of smoke impacts, if requestedby ADEQ after consultation with the F/SLM.

C. ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.

D. The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.

E. The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident

when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.

F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1509. Emission Reduction Techniques

A. Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.

B. Emission Reduction Techniques include:

1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales, or public firewood access, when economically feasible;
2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
4. Burning only fuels essential to meet resource management objectives;
5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
8. Burning fuels in piles;
9. Using a backing fire in grass fuels;
10. Burning fuels with an air curtain destructor, as defined inR18-2-101, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
11. Extinguishing or mopping-up of smoldering fuels;
12. Chunking of piles and other consolidations of burningmaterial to enhance flaming and fuel consumption, and to minimize smoke production;
13. Burning before litter fall;
14. Burning before green-up of fuels;
15. Burning before recently cut large fuels cure in areas withactivity; and
16. Burning just before precipitation to reduce fuel smoldering and consumption.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1510. Smoke Management Techniques

A. Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.

B. Smoke management techniques include:

1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
2. Igniting burns under good-to-excellent ventilation conditions;
3. Suspending operations under poor smoke dispersion conditions;
4. Considering smoke impacts on local community activities and land users;
5. Burning piles when other burns are not feasible, such as when snow or rain is present;
6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;
7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons. **Historical Note**

Adopted effective October 8, 1996 (Supp. 96-4).

Former Section R18-2-1510 renumbered to R18-2-1511; new

R18-2-1510 made by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1511. Monitoring

A. ADEQ may require a F/SLM to monitor air quality before or during a prescribed burn or a wildland fire use incident if necessary to assess smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference method as well as other techniques.

B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long-term established remote automated weather station.

C. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is

within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other smokesensitive area:

1. Smoke plume measurements, using a format supplied by ADEQ; and
2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.

D. An F/SLM shall make monitoring information required under subsection (C) available to ADEQ on the business day following the burn ignition.

E. The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1511 renumbered to R18-2-1512; new R18-2-1511 renumbered from R18-2-1510 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1512. Burner Qualifications

A. All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.

B. A Prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following:

1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management; or
2. Attendance at an ADEQ-approved smoke management workshop.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1512 renumbered to R18-2-1513; new R18-2-1512 renumbered from R18-2-1511 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

A. The Director shall conduct a public education and awareness program in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. The program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.

B. ADEQ shall make annual registration, prescribed burn approval, and wildfire and wildland fire use activity information readily available to the public and to facilitate regional coordination efforts and public notification.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1513 renumbered to R18-2-1514; new R18-2-1513 renumbered from R18-2-1512 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1514. Surveillance and Enforcement

A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with actual conditions, smoke dispersion, and air quality impacts. Onground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.

B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.

C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.

D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than $10,000 per day per violation under A.R.S. § 49-463. **Historical Note**

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1514 repealed; new R18-2-1514 renumbered from R18-2-1513 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1515. Forms; Electronic Copies; Information Transfers A. ADEQ shall make available on paper and in electronically readable format any form required to be developed by ADEQ and completed by a F/SLM.

B. After consultation with an F/SLM, ADEQ may require the F/ SLM to provide data in a manner that facilitates electronic transfers of information.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

ARTICLE 16. VISIBILITY; REGIONAL HAZE

Article 16, consisting of Sections R18-2-1601 through R18-21606, made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

R18-2-1601. Definitions

In addition to the definitions contained in Articles 1 and 4 of this Chapter and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. "Best available retrofit technology (BART)" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant emitted by an existing stationary facility. The emission limitation is established on a case-by-case basis under R18-2-1605.
2. "Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation before August 7, 1962, and was in

existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. A person who determines potential to emit shall count fugitive emissions to the extent quantifiable.

a. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
b. Coal cleaning plants (thermal dryers);
c. Kraft pulp mills;
d. Portland cement plants;
e. Primary zinc smelters;
f. Iron and steel mill plants;
g. Primary aluminum ore reduction plants;
h. Primary copper smelters;
i. Municipal incinerators capable of charging more than 250 tons of refuse per day;
j. Hydrofluoric, sulfuric, and nitric acid plants;
k. Petroleum refineries;
l. Lime plants;
m. Phosphate rock processing plants;
n. Coke oven batteries;
o. Sulfur recovery plants;
p. Carbon black plants (furnace process);
q. Primary lead smelters;
r. Fuel conversion plants;
s. Sintering plants;
t. Secondary metal production facilities;
u. Chemical process plants;
v. Fossil-fuel boilers of more than 250 million British thermal units per hour heat input;
w. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;
x. Taconite ore processing facilities;
y. Glass fiber processing plants; and
z. Charcoal production facilities.

3. "Federal Land Manager" means the secretary of the department, or the secretary's designee, with authority over the Federal Class I area.
4. "Mandatory Federal Class I Area" means any area identified in 40 CFR 81.400 through 81.436.

Appendix II

Authorizing Statutes for Articles 14 and 15

AUTHORIZING STATUTES FOR

A.A.C. ARTICLES 14 and 15

A.R.S. §§ 49-104, -404, -408 -422, -424, -425, -458, and -458.01

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 assure 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. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Assist the department of health services in recruiting and training state, local and district health department personnel.

15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This provision shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter.
Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at 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 H, 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, onsite 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 shall:

(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. After July 20, 2011, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rule making 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 35146 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.

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.

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-408. Air quality conformity; definition

A. Any revision to the state implementation plan adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T shall be no more stringent than required under those regulations. No state agency, metropolitan planning organization or local transportation agency shall take action that is more stringent than required under federal law in performing any of the following functions:

1. Determining which projects require conformity determinations pursuant to 40 Code of Federal Regulations, part 93, any state implementation plan revisions adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T, or the conformity requirements set forth in the federal implementation plan at 40 Code of Federal Regulations, part 52, subpart D.

2. Determining which projects constitute regionally significant projects within the meaning of any of the regulations identified in paragraph 1.

3. Making conformity determinations pursuant to any of the regulations identified in paragraph 1.

B. Notwithstanding any other provisions of this section, the director may adopt consultation procedures for the public or affected agencies which supplement the requirements of 40 Code of Federal Regulations, part 51, subpart T.

C. For purposes of this section "local transportation agency" means any city, town, county or other local or regional government or agency that receives federal funds designated under Title 23 United States Code or the federal transit act.

49-422. Powers and duties

A. In addition to any other powers vested in it by law, the department may:

1. Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to sections 35-146 and 35-147, in the account of the department.

2. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.

3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:

(a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.
(b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.

(c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:

1. The actual or potential emissions or air pollution may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.

3. An adequate scientific basis for the monitoring, sampling or quantification method exists.

4. The monitoring, sampling or quantification method is reasonably accurate.

5. The cost of the method is reasonable in light of the use to be made of the data.

D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.

F. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:

1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.

2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.

3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility. **49-424. Duties of department**

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.

2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.

3. Establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to section 49-406, subsection A and the county air pollution control department or district.

4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.

5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.

6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.

7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.

8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.

9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.

10. Compile and publish from time to time reports, data and statistics with respect to those matters studied and investigated by the department.

11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment or maintenance area and any other PM-10 nonattainment or maintenance areas that are designated in this state from and after December 31, 2011. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:

(a) Projected meteorological conditions for the PM-10 nonattainment or maintenance area, including all of the following:

(i) Wind speed and direction.

(ii) Stagnation.

(iii) Recent precipitation.

(iv) Potential for precipitation.

(b) Existing concentrations of air pollution at the time of the forecast.

(c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

49-425. Rules; hearing

A. The director shall adopt such rules as 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.

49-458. Regional haze program; authority

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 Code of Federal Regulations part 51, subpart P and the clean air act.

49-458.01. State implementation plan revision; regional haze; rules

A. The director shall submit to the administrator state implementation plan revisions to address regional haze visibility impairment in mandatory federal class I areas. The state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan:

1. The applicable time period.
2. A monitoring strategy for regional haze visibility impairment.
3. Calculations of baseline visibility conditions and natural visibility conditions.
4. Comprehensive emissions tracking strategies for clean air corridors.
5. Implementation of stationary source emissions reduction strategies.
6. Provisions addressing mobile source emissions.
7. Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.
8. Provisions addressing the impact of dust emissions on visibility impairment.

9. Provisions relating to pollution prevention.
10. Best available retrofit technology requirements.
11. A report that assesses emissions control strategies for stationary source emissions of oxides of nitrogen and particulate matter and the degree of visibility improvement that would result from implemented strategies.
12. A long-term strategy that addresses regional haze visibility impairment.
13. Additional measures necessary to make reasonable progress toward remedying existing and preventing future regional haze in mandatory federal class I areas.
14. For the Arizona Grand Canyon visibility transport commission class I areas, a projection of the improvement in visibility conditions that are expected from the implementation of all measures set forth in the implementation plan.
15. For the eight other Arizona mandatory federal class I areas, provisions for the establishment of reasonable progress goals.
16. Periodic progress reports.

B. The department may establish intrastate market trading programs and participate in interstate market trading programs as necessary to submit an approvable plan under subsection A.

C. The director may adopt rules necessary for the revisions to the state implementation plan that address regional haze.

D. Except as provided in subsection E, the department may meet the requirements of subsection A by submitting plan revisions under 40 Code of Federal Regulations section 51.308 or section 51.309.

E. The department may submit a plan revision under 40 Code of Federal Regulations section 51.309 only if the revision contains a determination pursuant to 40 Code of Federal Regulations section 51.309 (d)(5)(ii) that mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand Canyon visibility transport commission class I areas.

DEPARTMENT OF HEALTH SERVICES (F-16-1201)
Title 9, Chapter 1, Article 5, Sliding Fee Schedules

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-4**

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

FROM: Shama Thathi, Staff Attorney

DATE : November 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-1201)**
Title 9, Chapter 1, Article 5, Sliding Fee Schedules

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is "to protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2010, Ch. 8, § 3.

This five-year-review report covers six rules in A.A.C. Title 9, Chapter 1, Article 5, related to sliding fee schedules. The sliding fee schedule is used by providers when providing services to uninsured individuals with family income at or below 200% of the federal poverty level through the Primary Care Provider and Rural Primary Care Provider Loan Repayment Programs, the J-1 Visa Waiver Program, and the National Interest Waiver Program.

Under the Loan Repayment Programs, the Department repays loans for physicians and dentists working in medically underserved areas. The J-1 Visa Waiver Program allows a state agency to request that the federal government waive the foreign residency requirement for a foreign physician who will serve in a federally designated healthcare shortage area. The National Interest Waiver Program allows a foreign physician to work in the United States in a medically underserved area without obtaining labor certification by the U.S. Department of Labor.

The rules provide the criteria for determining family members and family income of an uninsured individual, requirements for submission and content of a sliding fee schedule, sliding fee schedule approval time-frames, and discounted fee requirements and limitations. Family members and family income are used to determine whether an uninsured individual is eligible to receive a provider's sliding fee schedule discounted fee for medical services. As of June 2016,

there are 43 providers participating in the Primary Care Provider Loan Repayment Program, four providers participating in the Rural Private Primary Care Provider Loan Repayment Program, 99 providers participating in the J-1 Visa Waiver Program, and the Department submitted three letters of support for physicians that meet the National Interest Waiver Program requirements.

Year that Each Rule was Last Amended or Newly Made

All of the rules were made by final rulemaking on December 4, 2006.

Proposed Action

The Department does not plan to amend the rules because it believes they are sufficient to protect public health and safety.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Department indicates that it is in compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Department indicates that the rules are effective in achieving their objectives, with the exception of R9-1-502, as the criteria used to determine if an individual is an uninsured individual's family member should be clarified.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Department indicates that it has not received any written criticisms of these rules in the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to A.R.S. §§ 36-132(A)(7) and 36-136(F) as general authority. Under A.R.S. § 36-136(F), the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." The Department also cites applicable specific statutory authority in the report.

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

Yes. The Department indicates that the rules are consistent with other rules and statutes, with the exception of R9-1-505, which contains an outdated reference in subsection (D).

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

Yes. The Department indicates that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that the rules are clear, concise, and understandable with two exceptions. R9-1-501 should be amended to remove the definitions of "business day" and "OASDI," as well as replace the definition of "fetus" with "viable fetus." Additionally, R9-1-504 does not specify how many days before April 1 a provider may submit a sliding fee schedule. With the other Department programs accepting initial and renewal applications based on a program's established needs, the rule would be clearer if it stated "A sliding fee schedule submitted to the Department each year required by the applicable Department's program's initial or renewal application submission date."

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are consistent with, and not more stringent than, the requirements of National Health Services Corps (NHSC) Loan Repayment Program. See 42 C.F.R. § 62.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. The rules were adopted before July 29, 2010.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. In the five-year-review report approved in 2011, the Department intended to amend all of the rules and submit a Notice of Final Rulemaking to the Council by November 2014. However, due to the Department's priorities and the availability of resources, the Department was unable to amend the rules.

Conclusion

The Department does not plan to amend the rules unless it becomes necessary to prevent a specific threat to public health and safety. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-4**

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

FROM: GRRC Economic Team

DATE : November 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-1201)**
Title 9, Chapter 1, Article 5, Sliding Fee Schedules

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking was reviewed for Article 5.

The Article 5 rules reviewed were intended to increase access to medical services for uninsured individuals by establishing standards for providers to adhere to when determining and applying discounted fees for medical services provided to uninsured individuals. The rules established sliding fee schedule content and approval, and criteria for determining an uninsured individual's eligibility based on family members and family income.

Key stakeholders that are impacted by the Article 5 rules include the Department, healthcare providers participating in the program, and uninsured families in use of the program. The Department notes that as of June 2016, the Department had 43 providers participating in the Primary Care Provider Loan Repayment Program, four providers participating in the Rural Primary Care Provider Loan Repayment Program, 99 providers participating in the J-1 Visa Waiver Program, and three letters of support issued for providers in the National Interest Waiver Program. All but one program (the Rural Primary Care Provider Loan Repayment Program) saw an increase in provider participants in the last 5 years.

The Department concludes that the economic impact has generally been as consistent with the 2006 EIS for providers, uninsured individuals, and the public. The Department also stated that it has benefited moderately from the previous changes to Article 5 sliding-fee-schedule rules because the Department's other programs have also adopted the sliding fee schedule.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department states that the rules are necessary, yet have a minimal effect on both cost and benefit for providers and uninsured individuals affected by the rules. The Department itself received a moderate benefit from the rules. The Department expected that the improved access to care for uninsured individuals would offset any increased discounted fee paid for medical services. The Department also determined that the rules had no measurable impact to the public.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was received by the Department that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

September 26, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 1, Article 5, Sliding Fee Schedules

Dear Ms. Ong:

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 1, Article 5 is due to the Council no later than October 31, 2016. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 1, Article 5, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific statutes, and the 2006 Economic Impact Statement are included in the package. The Department intends to take the action described in the report.

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:tk
Enclosures

ARIZONA DEPARTMENT
OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 1. DEPARTMENT OF HEALTH SERVICES – ADMINSTRATION

ARTICLE 5. SLIDING FEE SCEDULES

October 2016

TITLE 9. HEALTH SERVICES

CHAPTER 1. DEPARTMENT OF HEALTH SERVICES – ADMINISTRATION

ARTICLE 5. SLIDING FEE SCHEDULES

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TITLE 9. HEALTH SERVICES

CHAPTER 1. DEPARTMENT OF HEALTH SERVICES – ADMINISTRATION

ARTICLE 5. SLIDING FEE SCHEDULES

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(A)(7) requires the Arizona Department of Health Services (Department) to prepare sanitary and public health rules. A.R.S. § 36-136(F) requires the Department to promulgate rules necessary for the proper administration and enforcement of the laws relating to public health. A.R.S. § 36-2907.06 authorizes the Department to implement a primary care program to establish contracts with community health centers to provide uninsured individuals medical services at discounted fees based on a Department-approved sliding fee schedule required in A.R.S. § 36-2907.06(E).

The Department implemented the primary care program and promulgated sliding fee schedule rules at Arizona Administrative Code (A.A.C.) Title 9, Chapter 2, Article 1, Tobacco Tax-funded Programs effective December 1995. In 2006, the Department repealed 9 A.A.C. 2, Article 1, amended the sliding fee schedule rules, and adopted amended sliding fee schedule rules in 9 A.A.C. 1, Administration, as new Article 5, Sliding Fee Schedules. Due to budget restrictions, the primary care program was unfunded in 2010, and the Department no longer contracts with community health centers. Currently, the Department's Primary Care Provider Loan Repayment Program under A.R.S. § 36-2172, the Rural Private Primary Care Provider Loan Repayment Program under A.R.S. § 36-2174, and the J-1 Visa Waiver Program and National Interest Waiver Program under A.R.S. § 36-104(16) utilize the sliding fee schedule rules.

The rules in 9 A.A.C. 1, Article 5 provide the criteria for determining family members and family income of an uninsured individual, requirements for submission and content of a sliding fee schedule, sliding fee schedule approval time-frames, and discounted fee requirements and limitations. Family members and family income are used to determine whether an uninsured individual is eligible to receive a provider's sliding fee schedule discounted fee for medical services provided to the uninsured individual by the provider defined in R9-1-501. As of June 2016, the Department has 43 providers participating in the Primary Care Provider Loan Repayment Program, four providers participating in the Rural Private Primary Care Provider Loan Repayment Program, 99 providers participating in the J-1 Visa Waiver Program, and three letters of support for providers in the National Interest Waiver Program. In addition to the Department approving a sliding fee schedule for a provider, when approving the provider's initial or

renewal application, the Department approves the sliding fee schedule for the provider's service site where the provider will provide or provides medical services to uninsured individuals.

The Department has determined that the rules in 9 A.A.C. 1, Article 5 are effective, clear, concise, and understandable. The rules are consistent with state statutes and federal laws, enforced as written, and provide the least burden on and cost to uninsured individuals, providers, the public, and the Department. The Department has not received any written criticism in the past five years.

The Department has determined that the rules are necessary and the matters identified in this report do not create an issue that would make rulemaking a priority for the Department. The Department's rulemaking priorities take into account emergency conditions to protect public health and safety, legislative mandates, court orders, voter approved propositions, and available resources. With the rules sufficient to protect public health and safety, the Department does not plan to amend the rules in 9 A.A.C. 1, Article 5 before the next five-year-review report is due. However, the Department will amend the rules, including the matters identified, should an issue occur that affects public health or safety or prevents the Department from meeting its regulatory objectives.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statutes

The general statutory authority for the rules in Article 5 are A.R.S. §§ 36-136(A)(7) and 36-136(F).

The specific statutory authority for the rules in Article 5 are A.R.S. §§ 36-104(16), 36-2172(B), 36-2174(A) and 36-2907.06.

2. The purpose of the rule

The purpose of the rules in Article 5 is to increase access to medical services for uninsured individuals by establishing standards for providers to adhere to when determining and applying discounted fees for medical services provided to uninsured individuals. The rules establish sliding fee schedule content and approval, and criteria for determining an uninsured individual's eligibility based on family members and family income.

3. Analysis of effectiveness in achieving the objective

Except for R9-1-502, the rules in Article 5 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

Except for R9-1-505, the rules in Article 5 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rules in Article 5 are enforced without difficulty to the Department, providers, and uninsured individuals.

7. Summary of the written criticisms of the rule received within the last five years

The Department did not receive any written criticisms of the rules in Article 5 in the past five years.

8. Economic, small business, and consumer impact comparison

The 2006 Economic, Small Business, and Consumer Impact Statement (EIS) states that under the new rules, the Department will approve sliding fee schedules used by providers under other Department programs. The Department anticipated the cost to the Department as minimal-to-moderate based on the new rules being clearer and easier to use. For providers participating in the Department's programs, the Department anticipated providers would incur a minimal cost for preparing and submitting a sliding fee schedule for approval and for assessing discounted fees

according to the sliding fee schedule. A substantial benefit to providers was anticipated because the new rules added a single administrative fee up to $25 that a provider may assess for medical services provided to uninsured individuals with an income at or below 100 percent of the federal poverty guidelines.

The Department anticipated that uninsured individuals with a family income more than 100 percent of the federal poverty guidelines would see a minimal increase in fees for medical services received from providers. The Department expected that the improved access to care uninsured individuals would experience would offset any single administrative fee or increased discounted fee paid for medical services. The Department also determined that the new rules had no measureable impact to the public, stating, "Non-quantifiable [costs and] benefits from controlling the total bill for health care in the state."

In the Department's 2011 Five-Year-Review Report, the Department stated that in 2010-2011: 15 providers participated in the Primary Care Provider Loan Repayment Program; five providers participated in the Rural Primary Care Provider Loan Repayment Program; 26 providers participated in the J-1 Visa Waiver Program; and two letters of support were issued for providers in the National Interest Waiver Program. In addition, the Department indicated that in 2009-2010 the primary care program had 19 contractors operating 138 community health centers. As of June 2016, the Department has 43 providers participating in the Primary Care Provider Loan Repayment Program; four providers participating in the Rural Primary Care Provider Loan Repayment Program; 99 providers participating in the J-1 Visa Waiver Program; and three letters of support were issued for providers in the National Interest Waiver Program.

In its economic impact comparison analysis of the rules, the Department has determined that the increase in the number of providers in the Department's other programs and the closure of the primary care program has had a minimal effect both in cost and benefit for providers and uninsured individuals affected by the rules. The Department anticipates that the economic impact of the rules is consistent with the 2006 EIS for providers, uninsured individuals, and the public. The Department also expects that the Department has received a moderate increase in the benefit of the rules has occurred since the Department's other programs utilize the sliding fee schedule rules.

9. <u>Summary of business competitiveness analyses of the rules</u>

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2011 Five-Year-Review Report, the Department intended to amend and submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by November 2014, subject to the Department's priorities, the length of the rules moratorium, and the availability of resources. The Department did not amend the rules as intended.

12. Analysis of stringency compared to federal laws

Except for R9-1-506, the rules in Article 5 are consistent with federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules were adopted before July 29, 2010.

14. Proposed course of action

The Department has determined that the rules are necessary and the matters identified in this report do not create an issue or priority for the Department. The Department's rulemaking priorities take into account emergency conditions to protect public health and safety, legislative mandates, court orders, voter-approved propositions, and available resources. With the rules sufficient to protect public health and safety, the Department does not plan to amend the rules in Article 5 before the next five-year-review report. However, the Department will amend the rules, including the matters identified in this report, should an issue occur that affects public health and safety or prevents the Department from meeting its regulatory objectives.

INFORMATION FOR INDIVIDUAL RULES

R9-1-501. Definitions

2. <u>Objective of the rule</u>

The objective of the rule is to define terms used in the Article to help members of the public read and understand the rules, as well as allow for consistent interpretation of the rules.

6. <u>Analysis of clarity, conciseness, and understandability in achieving the objective</u>

The rule is clear, concise, and understandable in achieving its objective; however, it could be improved. For example, the term "business day" is only used once in R9-1-505(D). The rule could be clearer if the term were described in the rule where the term is used rather than defining the term in this Section. The term "OASDI" is an antiquated term for a social insurance program that today is commonly recognized as the Social Security Act, 42 U.S.C. 1395. The term "OASDI" is used in definitions (11) and (37). Since "Social Security tax" is already used in definitions (11) and (37), deleting the term "OASDI" from those definitions could improve the understandability of the rules. Additionally, the term "fetus" means "the same as in A.R.S. § 36-2152." However, Laws 2009, Ch. 172 deleted the term "fetus" from A.R.S. § 36-2152. The term "viable fetus" in A.R.S § 36-2301.01 could be used in place of the term "fetus."

11. <u>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</u>

Even though the rule contains antiquated and outdated terms described in paragraph 6, the Department and providers continue to use the rules without increase in cost or burden. The Department has determined that the economic impact of the rule is consistent with the 2006 EIS and provides the least burden and cost to the Department and regulated persons.

R9-1-502. Family Member Determination

2. <u>Objective of the rule</u>

The objective of the rule is to establish criteria for a provider to use to determine the number of an uninsured individual’s family members.

3. <u>Analysis of effectiveness in achieving the objective</u>

Although the rule is effective, the rule could be improved if the criteria determining if an individual is an uninsured individual's family member were clarified. A.R.S. § 36-2172 requires

the Department in its Primary Care Provider Loan Repayment Program to "prescribe application and eligibility requirements that are consistent with the requirements" of the National Health Service Corps (NHSC) Loan Repayment Program. The NHSC in its NHSC Sliding Fee Discount Program Information Package[1] states that eligibility is based on income and family size only. Family is defined as: a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together; all such people (including related subfamily members) are considered as members of one family. If the criteria used for determining the number of an uninsured individual's family members were less prescriptive, the effectiveness of the rule would increase by allowing more uninsured individuals access to medical services.

6. Analysis of clarity, conciseness, and understandability in achieving the objective

The rule is clear, concise, and understandable in achieving its objective.

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

Although paragraph 3 contains a matter that could improve the rules, the Department and providers continue to use the rules without increase in cost or burden. The Department has determined that the economic impact of the rule is consistent with the 2006 EIS and provides the least burden and cost to the Department and regulated persons.

R9-1-503. Family Income Determination

2. Objective of the rule

The objective of the rule is to establish criteria for a provider to use to determine an uninsured individual's family income, which allows the provider to determine the sliding fee schedule discounted fee an uninsured individual will pay for medical service received from the provider.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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

[1] NHSC Sliding Fee Discount Program Information Package: https://nhsc.hrsa.gov/downloads/discountfeeschedule.pdf

The Department has determined that the economic impact of the rule is consistent with the 2006 EIS and provides the least burden and cost to the Department and regulated persons.

R9-1-504. Sliding Fee Schedule Submission and Contents

2. <u>Objective of the rule</u>

The objectives of the rule is to establish the contents of a fee-percentage or flat-fee sliding fee schedule used by a provider who provides medical services to uninsured individuals and the submission date a sliding fee schedule is required to be submitted to the Department for approval.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable, but the rule would be clearer if the rule did not specify that "By April 1 of each year, a provider shall submit to the Department the provider's sliding fee schedule..." For the primary care program, the Department specified an April 1 submission date with the intent that the Department would begin reviewing all sliding fee schedules received on April 1. Additionally, the rule in R9-1-505 requires the Department to approve or deny a sliding fee schedule within 32 days from the day the sliding fee schedule is received by the Department. Also, the other Department programs require a provider to submit their sliding fee schedule with the provider's initial or renewal application. A provider, requesting to participate or requesting to continue participation in the Primary Care Provider Loan Repayment Program or the Rural Primary Care Provider Loan Repayment Program under 9 A.A.C. 15, Article 1, is required to submit their application in June, April, or October of each year. In the J-1 Visa Waiver program, a provider is required to submit their application in October of each year, and, in the National Interest Waiver Program, a provider is not required to submit their application at any specific time but as needed. Since the rule does not specify how many days before April 1 a provider may submit a sliding fee schedule and with the other Department programs accepting initial and renewal applications based on a program's established needs, the rule would be clear if the rule specified that "A sliding fee schedule submitted to the Department each year required by the applicable Department's program's initial or renewal application submission date."

11. <u>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</u>

Even though the rule contains an outdated submission date described in paragraph 6, the Department and providers continue to use the rules without increase in cost or burden. The

Department has determined that the economic impact of the rule is consistent with the 2006 EIS and provides the least burden and cost to the Department and regulated persons.

R9-1-505. Sliding Fee Schedule Approval Time-frames

2. Objective of the rule

The objective of the rule is to establish the requirements for administrative and substantive review of a sliding fee schedule submitted to the Department and written notice granting or denying approval of a provider's sliding fee schedule.

4. Analysis of consistency with state and federal statutes and rules

The rule is clear, concise, and understandable in achieving its objective. However, the rule in R9-1-505 (D) contains a citation to A.A.C. R2-5-402 that has been repealed. The correct citation is A.A.C. R2-5A-101.

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

Even though the rule contains an outdated rule citation described in paragraph 4, the Department and providers continue to use the rules without increase in cost or burden. The Department has determined that the economic impact of the rule is consistent with the 2006 EIS and provides the least burden and cost to the Department and regulated persons.

R9-1-506. Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule

2. Objective of the rule

The objective of the rule is to establish limitations for discounted fees a provider may charge an uninsured individual based on current federal poverty guidelines and to establish requirements regarding a single administrative fee a provider may charge for medical services to an uninsured individual.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

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

Even though the rule allows for a single administrative fee described in paragraph 12, the Department and providers continue to use the rules without increase in cost or burden. The Department has determined that the economic impact of the rule is consistent with the 2006 EIS and provides the least burden and cost to the Department and regulated persons.

12. <u>Analysis of stringency compared to federal laws</u>

A.R.S. § 36-2172 requires the Department in its Primary Care Provider Loan Repayment Program to "prescribe application and eligibility requirements that are consistent with the requirements" of the National Health Service Corps (NHSC) Loan Repayment Program according to 42 Code of Federal Regulations part 62. In R9-1-506(E), a provider may charge an uninsured individual a single administrative fee for medical services, not to exceed $25, in lieu of a sliding fee schedule discounted fee. The Department determined that even though 42 CFR 62 does not include a single administrative fee; NHSC does, in its Sliding Fee Discount Program Information Package, permit adopt of a nominal charge for medical services. The Department determined that a single administrative fee is equivalent to a nominal charge; and the Department considers the rule consistent with federal law, since the single administrative fee is by definition a discounted fee for an uninsured individual and the amount of the single administrative fee is nominal and reasonable.

ATTACHMENT A - Rules

ARTICLE 5. SLIDING FEE SCHEDULES

R9-1-501. Definitions

In this Article, unless otherwise specified:

1. "Administrative fee" means a fee payable by an uninsured individual that is established and charged according to R9-1-506(E).
2. "AHCCCS" means the Arizona Health Care Cost Containment System.
3. "Business day" means the same as in A.R.S. § 10-140.
4. "Calendar year" means January 1 through December 31.
5. "Child" means an individual under age 19.
6. "Consideration" means valuable compensation for something received or to be received.
7. "Correctional facility" means the same as in A.R.S. § 13-2501.
8. "Costs of producing rental income" means payments made by a rental-income recipient that are attributable to the premises or the portion of the premises generating the income, including payments for:

a. Property taxes,
b. Insurance premiums,
c. Mortgage principal and interest,
d. Utilities, and
e. Maintenance and repair.

9. "Costs of producing self-employment income" means payments made by a self-employment-income recipient that are attributable to generating the income, including payments for:

a. Equipment, machinery, and real estate;
b. Labor;
c. Inventory;
d. Raw materials;
e. Insurance premiums;
f. Rent; and
g. Utilities.

10. "Current federal poverty guidelines" means the most recent annual update of the U.S. Department of Health and Human Services' Poverty Guidelines published in the Federal Register.

11. “Deduction” means a dollar amount subtracted from a payment, before an individual receives the payment, for:

a. Federal income tax,

b. Social Security tax,

c. Medicare tax,

d. State income tax,

e. Insurance other than OASDI,

f. Pension, or

g. Other dollar amounts required by law or authorized by the individual to be subtracted.

12. “Department” means the Department of Health Services.

13. “Detention facility” means a place of confinement, including:

a. A juvenile facility under the jurisdiction of:

i. A county board of supervisors, or

ii. A county jail district authorized by A.R.S. Title 48, Chapter 25;

b. A juvenile secure care facility under the jurisdiction of the Department of Juvenile Corrections; or

c. A facility for individuals who are not United States citizens and who are in the custody of the U.S. Immigration and Customs Enforcement, Department of Homeland Security.

14. “Earned income” means work-related payments received by an individual, including:

a. Wages,

b. Commissions and fees,

c. Salary,

d. Profit from self-employment,

e. Profit from rent received from an individual or entity, and

f. Any other work-related monetary payments received by an individual.

15. “Family income” means the dollar amount determined according to R9-1-503(B).

16. “Family member” means an individual, determined according to R9-1-502, whose income is included in family income.

17. “Fee percentage” means a part of a provider’s usual charges for medical services that is:

a. Expressed in hundredths, and

b. Established by a provider in a sliding fee schedule for medical services rendered to an uninsured individual.

18. “Fetus” means the same as in A.R.S. § 36-2152.
19. “Flat fee” means a dollar amount that is:

a. Established by a provider in a sliding fee schedule for a medical service or group of medical services rendered to an uninsured individual, and
b. Less than the provider’s usual charges for the medical service or group of medical services.

20. “Gift” means money, real property, personal property, a service, or anything of value other than unearned income for which the recipient does not provide consideration of equal or greater value.
21. “Hospital services” means the same as in A.A.C. R9-10-201.
22. “Income” means combined earned and unearned income.
23. “Inpatient services” means hospital services provided to an individual who will receive the services for 24 consecutive hours or more.
24. “Interrupted income” means income that stops for at least 30 continuous days during the current calendar year and then resumes.
25. “KidsCare” means the children’s health insurance program, a federally funded program administered by AHCCCS under A.R.S. Title 36, Chapter 29, Article 4.
26. “Lowest contracted charge” means the smallest reimbursement a provider has agreed to accept for a medical service:

a. Determined by the provider’s review of all the contracts between the provider and third party payors as defined in A.R.S. § 36-125.07(C), that:

i. Cover the medical service, and
ii. Are in effect at the time the medical service is provided to an uninsured individual; and

b. Subject to limitations of federal or state laws, rules, or regulations.

27. “Medical services” means the same as in A.R.S. § 36-401.
28. “Medicare tax” means the dollar amount subtracted from a payment for the health care insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
29. “New income” means income that begins at least 30 days after the start of the current calendar year.
30. “OASDI” means old age, survivors, and disability insurance.
31. “Profit” means the remainder after subtracting:

a. The costs of producing rental income from the rent received from an individual or entity, or

b. The costs of producing self-employment income from the self-employment.

32. “Provider” means an individual or entity that:

a. Provides medical services;

b. Participates in a program that requires participants to use a sliding fee schedule, such as a program authorized under A.R.S. §§ 36-104(16), 36-2907.06, 36-2172, or 36-2174;

c. Includes:

i. A dentist licensed under A.R.S. Title 32, Chapter 11;

ii. A physician licensed under A.R.S. Title 32, Chapter 13 or Chapter 17;

iii. A registered nurse practitioner defined in A.R.S. § 32-1601 and licensed under A.R.S. Title 32, Chapter 15;

iv. A physician assistant licensed under A.R.S. Title 32, Chapter 25 and practicing according to A.R.S. § 32-2531;

v. A health care institution licensed under A.R.S. Title 36, Chapter 4; or

vi. An office or facility that is exempt from licensing under A.R.S. § 36-402(A)(3); and

d. Excludes an individual or entity when the individual or entity provides:

i. Inpatient services,

ii. Medical services at a correctional facility, or

iii. Medical services at a detention facility.

33. “Secure care” means the same as in A.R.S. § 41-2801.

34. “Self employment” means earning income from one’s own business, trade, or profession rather than receiving a salary or wages from an employer.

35. “Sliding fee” means flat fee or fee percentage that increases or decreases based on one or more factors.

36. “Sliding fee schedule” means a document containing a provider’s flat fees or fee percentages based on:

a. Family members determined according to R9-1-502, and

b. Family income determined according to R9-1-503.

37. “Social Security tax” means the dollar amount subtracted from a payment for OASDI under Title II of the Social Security Act, 42 U.S.C. 401 et seq.

38. “State health benefits risk pool” means:

a. A state-established organization qualifying under 26 U.S.C. 501(c)(26);

b. A state-established qualified high risk pool described in Section 2744(c)(2) of the Public Health Service Act, 42 U.S.C. 300gg-44(c)(2); or

c. A state-sponsored arrangement, for which the state specifies the membership, primarily established and maintained to provide health insurance coverage for state residents with a medical condition or a history of a medical condition that:

i. Prevents them from obtaining coverage for the condition through insurance or from a health maintenance organization, or

ii. Enables them to obtain coverage for the condition only at a rate substantially more than the rate available through the state-sponsored arrangement.

39. "Support payment" means a dollar amount, received at regular intervals by an individual, for food, shelter, furniture, clothing, and medical expenses.

40. "Terminated income" means income received during the current calendar year that stops and will not resume.

41. "Training stipend" means a dollar amount, received at regular intervals by an individual, during a course or program for the development of the individual's skills.

42. "Unearned income" means payments received by an individual that are not gifts and not earned income, including:

a. Unemployment insurance;

b. Workers' compensation;

c. Disability payments;

d. Social Security payments;

e. Public assistance payments, excluding food stamps;

f. Periodic insurance or annuity payments;

g. Retirement or pension payments;

h. Strike benefits from union funds;

i. Training stipends;

j. Child support payments;

k. Alimony payments;

l. Military family allotments or other support payments from a relative or other individual not residing with the recipient;

m. Investment income;

n. Royalty payments;

o. Periodic payments from estates or trusts; and

p. Any other monetary payments received by an individual that are not gifts, earned income, capital gains, lump-sum inheritance or insurance payments, or payments made to compensate for personal injury.

43. "Uninsured individual" means an individual who does not have health care coverage under any of the following:

a. A group health plan as defined in Section 2792(a)(1) of the Public Health Service Act, 42 U.S.C. 300gg-91(a)(1), including a small employer's group health plan under A.R.S. Title 20, Chapter 13 or under the laws of another state;

b. A church plan as defined in section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(33);

c. Medicare, the health insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.;

d. Medicaid, the program that pays for medical assistance for certain individuals and families with low incomes and resources, through AHCCCS or another state's Medicaid agency, under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., excluding a state program for distribution of pediatric vaccines under 42 U.S.C. 1396s;

e. Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or Tricare, the medical and dental care programs for members of the armed forces, certain former members, and their dependents under 10 U.S.C. 1071 et seq. and 32 CFR 199;

f. A medical care program of the Indian Health Service or of a tribal organization;

g. The Federal Employees Health Benefits Program for U.S. government employees, certain former employees, and their family members under 5 U.S.C. 8901 et seq. and 5 CFR 890 and 891;

h. Peace Corps plans under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e), including:

i. Medical and dental care for Peace Corps applicants, Peace Corps volunteers, and minor children living with Peace Corps volunteers under 32 CFR 728.59;

ii. Form PC-127C authorization for payment for evaluation of the Peace Corps related conditions of former Peace Corps volunteers;

iii. Treatment of the Peace Corps related conditions of former Peace Corps volunteers under 32 CFR 728.53; and

iv. CorpsCare coverage for the non-Peace Corps related conditions of former Peace Corps volunteers and their dependents.

i. A state health benefits risk pool;

j. An individual policy or contract issued by:

i. An insurer for medical expenses, including a preferred provider arrangement;

ii. A health care services organization under A.R.S. Title 20, Chapter 4, Article 9 or a health maintenance organization as defined in Section 2792(b)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91(b)(3); or

iii. A nonprofit hospital, medical, dental, or optometric service corporation as defined in A.R.S. § 20-822, including Blue Cross Blue Shield of Arizona, or organized under the laws of another state;

k. An individual policy or contract made available through the Healthcare Group of Arizona administered by AHCCCS under A.R.S. §§ 36-2912, 36-2912.01, and 36-2912.02;

l. A health insurance plan of a state or of a political subdivision as defined in A.R.S. § 35-511 or determined under the laws of another state;

m. A policy or contract issued to a member of a bona fide association as defined in section 2791(d)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91(d)(3); or

n. KidsCare or another state's children's health insurance program under Title XXI of the Social Security Act, 42 U.S.C. 1397aa et seq.

44. "Variable income" means income in a dollar amount that changes from payment to payment.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

R9-1-502. Family Member Determination

A provider shall determine the family members of an uninsured individual seeking medical services.

1. A family with one member consists of:

a. A non-pregnant child who does not live with:

i. A parent;

ii. A spouse;

iii. An individual with whom the child has a common biological or adopted child;

iv. A biological or adopted child; or

v. A biological or adopted child of an individual with whom the child has a common biological or adopted child; or

b. A non-pregnant individual who is at least age 19 who does not live with:

i. A spouse;

ii. An individual with whom the individual who is at least age 19 has a common biological or adopted child;

iii. A biological or adopted child; or

iv. A biological or adopted child of an individual with whom the individual who is at least age 19 has a common biological or adopted child.

2. A family with two or more members consists of:

a. An individual and:

i. The biological or adopted children who live with the individual; and

ii. If the individual or a child under subsection (2)(a)(i) is pregnant, each fetus;

b. Two individuals, who have a common biological or adopted child and who live together, and:

i. The common biological or adopted children living with the two individuals;

ii. The biological or adopted children of either individual living with the two individuals; and

iii. If an individual or a child under subsection (2)(b)(i) or subsection (2)(b)(ii) is pregnant, each fetus; or

c. Two individuals, who are married to each other, who live together, and who do not have a common biological or adopted child, and

i. The biological or adopted children of either individual living with the two individuals; and

ii. If an individual or a child under subsection (2)(c)(i) is pregnant, each fetus.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

R9-1-503. Family Income Determination

A. A provider shall establish flat fees or fee percentages for medical services rendered to uninsured individuals with family incomes, including earned and unearned income, equal to or less than 200 percent of the current federal poverty guidelines.

B. A provider shall determine an uninsured individual's family income by:

1. Multiplying a weekly payment received by a family member, before deductions, by 52;

2. Multiplying a biweekly payment received by a family member, before deductions, by 26;

3. Multiplying a monthly payment received by a family member, before deductions, by 12;

4. For variable income received by a family member:

a. Adding at least four payments, before deductions;

b. Dividing the sum obtained in subsection (B)(4)(a) by the number of payments included; and

c. Multiplying the quotient obtained in subsection (B)(4)(b) by 52, 26, or 12 as applicable;

5. Counting the actual payments received by a family member, before deductions, for:

a. Interrupted income,

b. New income, and

c. Terminated income; and

6. Adding the dollar amounts calculated under subsections (B)(1) through (B)(5).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

R9-1-504. Sliding Fee Schedule Submission and Contents

A. By April 1 of each year, a provider shall submit to the Department the provider's sliding fee schedule, including:

1. A sliding fee schedule with fee percentages,
2. A sliding fee schedule with flat fees, or
3. A sliding fee schedule with fee percentages and a sliding fee schedule with flat fees.

B. A sliding fee schedule with fee percentages shall contain:

1. A statement that the sliding fee schedule applies to charges for all medical services provided to uninsured individuals by or through the provider;
2. The current federal poverty guidelines;
3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a 100 percent reduction; and
4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three fee percentage levels that increase as family income increases.

C. A sliding fee schedule with flat fees shall contain:

1. The requirements listed in subsections (B)(1) and (B)(2);
2. The flat fee for each medical service or group of medical services;

3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a $0 flat fee for each medical service or group of medical services included under subsection (C)(2); and
4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three flat fee levels that increase as family income increases for each medical service or group of medical services included under subsection (C)(2).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

R9-1-505. Sliding Fee Schedule Approval Time-frames

A. The overall time-frame described in A.R.S. § 41-1072(2) for a request for sliding fee schedule approval is 32 days.

1. A provider and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. An extension of the substantive review time-frame and the overall time-frame shall not exceed eight days.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a request for sliding fee schedule approval is 11 days, beginning on the day the Department receives the request.

1. Except as provided in subsections (B)(3) and (B)(4), the Department shall mail to a provider a written notice of administrative completeness when the provider's request for sliding fee schedule approval is complete.
2. If a request for sliding fee schedule approval is incomplete, the Department shall mail to the provider a written notice of administrative deficiencies that:

a. Lists the missing documents or incomplete information, and
b. Suspends the administrative completeness review time-frame and the overall time-frame from the date on the notice of administrative deficiencies:

i. Until the date the Department receives a complete request for sliding fee schedule approval; or
ii. For 60 days, whichever comes first.

3. If the Department does not receive all the additional documents or information required under subsection (B)(1) within 60 days after the date on the notice of administrative deficiencies, the Department deems the request for sliding fee schedule approval withdrawn.
4. If the Department approves a sliding fee schedule during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) for a request for sliding fee schedule approval is 21 days, beginning on the date on the Department's notice of administrative completeness under subsection (B)(1).

1. The Department shall mail to a provider a written notice granting or denying approval according to A.R.S. § 41-1076 by the last day of the substantive review time-frame and the overall time-frame.
2. If the Department issues to a provider a written request for additional information according to A.R.S. § 41-1075(A), the request for additional information suspends the substantive review time-frame and the overall time-frame from the date on the request for additional information:

a. Until the date the Department receives all the information requested; or
b. For 60 days, whichever comes first.

3. If the Department does not receive all the information requested under subsection (C)(2) within 60 days after the postmark date of the request for additional information, the Department shall deny sliding fee schedule approval.

D. If a time-frame's last day falls on a Saturday, Sunday, or state service holiday listed in A.A.C. R2-5-402, the Department considers the next business day the time-frame's last day.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

R9-1-506. Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule

A. A provider:

1. Shall not charge an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines the fee determined according to subsection (C) or subsection (D), and
2. May charge an individual described in subsection (A)(1) only the single administrative fee determined according to subsection (E).

B. A provider may charge an uninsured individual with a family income more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines the fee determined according to subsection (C), subsection (D), or subsection (E).

C. If a provider uses a sliding fee schedule with fee percentages, an uninsured individual's fee for medical services shall not exceed the dollar amount calculated by applying the fee percentage for the individual's family income to the lowest contracted charge for each medical service provided.

D. If a provider uses a sliding fee schedule with flat fees, an uninsured individual's fee for medical services shall not exceed the lowest contracted charge for each medical service provided.

E. A provider may:

1. Establish a single administrative fee that does not exceed $25; and
2. Charge the administrative fee to:

a. Uninsured individuals with a family income equal to or less than 100 percent of the current federal poverty guidelines; and

b. Uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines only in lieu of the fee calculated under subsection (C) or subsection (D).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

ATTACHMENT B – General and Specific Statutes

36-136. Powers and duties of director; compensation of personnel

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 the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the 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 the 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 the state, the director may inspect any person or property in transportation through the 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 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.

D. 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.

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 assure 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.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, 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.

H. 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, 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 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 assure 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 that takes place at a workplace, 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 and that is displayed in an area of less than ten linear feet.

(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 developmentally disabled individuals, 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.

5. Prescribe reasonably necessary measures to assure 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 assure 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 assure 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.

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.

I. 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.

J. 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.

K. 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.

L. 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.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a private home that is used as a cooking school and that prepares and offers food to students is exempt from the rules prescribed in subsection H of this section if all of the following are true:

1. Only one cooking school meal per day is prepared and served.

2. The meal is served to not more than fifteen cooking school students.

3. The students are informed by a statement contained in a published advertisement, mailed brochure and placard posted at the cooking school's registration that the food is prepared in a kitchen that is not regulated and inspected by the department or by a local health authority.

36-2907.06. Qualifying community health centers; contracts; requirements; definition

A. Subject to the availability of monies as prescribed in section 36-2921, the administration shall enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with the department of health services to contract with qualifying community health centers to provide primary health care services to indigent or uninsured Arizonans. The department of health services shall enter into one year contracts with qualifying community health centers for the centers to provide the following primary health care services:

1. Medical care provided through licensed primary care physicians and licensed mid-level providers as defined in section 36-2171.

2. Prenatal care services.

3. Diagnostic laboratory and imaging services that are necessary to complete a diagnosis and treatment, including referral services.

4. Pharmacy services that are necessary to complete treatment, including referral services.

5. Preventive health services.

6. Preventive dental services.

7. Emergency services performed at the qualifying community health center.

8. Transportation for patients to and from the qualifying community health center if these patients would not receive care without this assistance.

B. Each contract shall require that the qualifying community health center provide the services prescribed in subsection A of this section to persons who the center determines:

1. Are residents of this state.

2. Are without medical insurance policy coverage.

3. Do not have a family income of more than two hundred per cent of the federal poverty guidelines as established annually by the United States department of health and human services.

4. Have provided verification that the person is not eligible for enrollment in the Arizona health care cost containment system pursuant to this chapter.

5. Have provided verification that the person is not eligible for medicare.

C. The department of health services shall directly administer the program and issue requests for proposals for the contracts prescribed in this section. Contracts established pursuant to subsection A of this section shall be signed by the department and the contractor before the transmission of any tobacco tax and health care fund monies to the contractor.

D. Persons who meet the eligibility criteria established in subsection B or G of this section shall be charged for services based upon a sliding fee schedule approved by the department of health services.

E. In awarding contracts the department of health services may give preference to qualifying community health centers that have a sliding fee schedule. Monies shall be used for the number of patients that exceeds the number of uninsured sliding fee schedule patients that the qualifying community health center served during fiscal year 1994. Each qualifying community health center shall make its sliding fee schedule available to the public on request. The contract shall require the qualifying community health center to apply a sliding fee schedule to all of its uninsured patients.

F. The department of health services may examine the records of each qualifying community health center and conduct audits necessary to determine that the eligibility determinations were performed accurately and to verify the number of uninsured patients served by the qualifying community health

center as a result of receiving tobacco tax and health care fund monies by the contract established pursuant to subsection A of this section.

G. Contracts established pursuant to subsection A of this section shall require qualifying community health center contractors to submit information as required pursuant to section 36-2907.07 for program evaluations.

H. For the purposes of this section "qualifying community health center" means a community based primary care facility that provides medical care in medically underserved areas as provided in section 36-2352, or in medically underserved areas or medically underserved populations as designated by the United States department of health and human services, through the employment of physicians, professional nurses, physician assistants or other health care technical and paraprofessional personnel.

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.

41-1079 . Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.

2. The applicable licensing time frames.

3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

CRIMINAL JUSTICE COMMISSION (F-16-1202)
Title 10, Chapter 4, Article 3, Criminal Justice Enhancement Fund; Article 5, Full-Service Forensic Crime Laboratory Account

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-5**

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

FROM: **Marcus McGillivray, Intern**

DATE : **November 18, 2016**

SUBJECT: **ARIZONA CRIMINAL JUSTICE COMMISSION (F-16-1202)**
Title 10, Chapter 4, Articles 3 (Criminal Justice Enhancement Fund) and 5 (Full-service Forensic Crime Laboratory Account)

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Two Articles in A.A.C. Title 10 Chapter 4 regarding the Arizona Criminal Justice Commission (Commission) are the subject of this five-year-review. This review covers Article 3 regarding the Criminal Justice Enhancement Fund (Fund) and Article 5 about the Full-Service Crime Laboratory Account (Account).

The Commission was statutorily created in 1982. The Commission administers grants, funds, and programs which aid the criminal justice process in Arizona. These grants include the Crime Victim Compensation Program, the Crime Victim Assistance Program, the Criminal Justice Enhancement Fund, the Drug and Gang Enforcement Account Grants, and the Full-Service Forensic Crime Laboratory Account.

The Commission uses the Account to make grants to cities, counties, and states to improve the efficiency of full-service crime laboratories. The Fund is used to distribute monies to certain recipients, including the Department of Public Safety (DPS), The Arizona Supreme Court, the Attorney General's Office, and County Sheriffs to aid criminal justice efforts. The rules in Article 3 were newly made in a rulemaking put into effect in September 2011. A five-year-review was approved by the Council for the Article 5 rules in August 2011, at which time the Commission indicated no plan to amend or repeal any rules. This five-year-review report evaluates five rules in Article 3 and four rules in Article 5.

Proposed Action

The Commission does not intend any proposed actions, except to correct the website address in R10-4-502(A).

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Commission has certified its compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Commission had indicated that the rules are effective in achieving their objectives. The Arizona Auditor General stated that the Commission has established an effective grant-awarding and monitoring process.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

No. The Commission has not received any written criticisms on these rules.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

General: Yes. A.R.S. §§ 41-2405(A)(8) and 41-2421(J)(5) give the Commission general statutory authority. Section 41-2405(A)(8) grants the Commission authority to adopt rules for the purposes of allocating funds and to promote the effective and efficient use of the monies. Section 41-2421(J)(5) states that 14.29% of the funds should be distributed to the full-service forensic crime laboratories.

Specific: Yes. A.R.S. § 41-2401(G) states the distribution of Fund monies should be made pursuant to section 41-2405 and the Commission's rules. A.R.S. § 41-2421(J)(5) sets forth the contribution amount that the Commission will grant to the full-service forensic crime laboratories.

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Commission has analyzed the rules' consistency with other rules and statutes and has determined that no other law is applicable.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Commission enforces the rules as written without difficulty.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The rules are generally clear, concise and understandable, except for the incorrect website address in R10-4-502(A).

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. There are no corresponding federal laws.

b. There is statutory authority to exceed the requirements of federal law?

N/A

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

The Article 3 rules were made after July 2010.

a. The rules require issuance of a regulatory permit, license or agency authorization?

None of the rules requires issuance of a regulatory permit, license, or agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

N/A

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

This is the first 5YRR since the Article 3 rules went into effect in September, 2011. The Commission did not propose any course of action for Article 5 in the last 5YRR.

11. Has the agency included a proposed course of action?

The Commission does not plan any proposed course of action. The Commission will update the incorrect web site address in R10-4-502(A) when it is necessary for a substantive purpose.

Conclusion

This Report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends approval of the report.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-5**

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

FROM: **GRRC Economic Team**

DATE : **November 18, 2016**

SUBJECT: **ARIZONA CRIMINAL JUSTICE COMMISSION (F-16-1202)**
Title 10, Chapter 4, Articles 3 (Criminal Justice Enhancement Fund) and 5 (Full-service Forensic Crime Laboratory Account)

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Commission rulemaking completed in 2011 was reviewed for Article 5. The most recent EIS completed in 2006 was reviewed for Article 3.

The Article 3 rules reviewed address procedures involved in administering the Criminal Justice Enhancement Fund (CJEF). The CJEF receives funds from surcharges levied on fines and penalties. These funds are then dispersed to various law enforcement agencies in Arizona.

The Article 5 rules reviewed address procedures involved in administering the Full-Service Forensic Crime Laboratory Program (CLAB). The CLAB also receives funds from surcharges levied on fines and penalties. Eligible laboratories can apply for grants from this fund in order to increase their efficiency and effectiveness.

Key stakeholders that are impacted by the Article 3 rules are the Commission, the Arizona Department of Public Safety, the Arizona Department of Law, the Arizona Supreme Court, and fifteen county sheriff departments. The Commission notes that the guidelines for documenting the use of the funds impose minimal costs on the fund recipients.

Key stakeholders that are impacted by the Article 5 rules are the Commission and Arizona's seven full-service forensic crime laboratories. The Commission notes that laboratories could choose to not apply for grants if they believed that the process was too burdensome.

In FY 2015, the Commission distributed funds from the CJEF in as follows:

- $3.0 million- Arizona Department of Public Safety
- $3.6 million- Arizona Department of Law
- $2.1 million- Arizona Supreme Court
- $4.5 million- County sheriff departments

In FY 2016, the Commission distributed funds from the CLAB as follows:

- $800,000 to full-service forensic crime laboratories

The Commission concludes that the economic impact has generally been as predicted in the prior EIS for the rules in Article 3. The Commission notes that it distributed fewer funds from the CLAB in 2016 than 2006 due to less availability of funds. The Commission received no appeals of the methods of distributions from the CLAB in Article 5.

2. <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The rules of the CJEF only directly impact three state agencies and fifteen county sheriff departments. The Commission states that the reporting requirements for the funds impose a minimal burden to ensure that the funds are used in the manner intended by the legislature.

The rules of the CLAB only directly impact Arizona's seven full-service forensic laboratories. Funds are awarded through grants. The Commission notes that grant proposals are not mandatory for laboratories, and if the costs outweighed the benefits, laboratories would not apply for CLAB grants. Reporting requirements for CLAB grantees impose minimal burdens that do not exceed the benefits.

3. <u>Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?</u>

No analysis was submitted to the Commission by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. <u>Conclusion</u>

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Criminal Justice Commission

Chairperson
SEAN DUGGAN, Chief
Chandler Police Department

Vice-Chairperson
SHEILA POLK
Yavapai County Attorney

JOSEPH ARPAIO
Maricopa County Sheriff

MARK BRNOVICH
Attorney General

JOE R. BRUGMAN, Chief
Safford Police Department

DAVID K. BYERS, Director
Administrative Office of the Courts

KELLY "KC" CLARK
Navajo County Sheriff

DAVE COLE
Former Judge

CHRIS GIBBS, Mayor
City of Safford

DREW JOHN
Graham County Supervisor

ELLEN KIRSCHBAUM,
Chairperson
Board of Executive Clemency

BARBARA LAWALL
Pima County Attorney

October 4, 2016

RECEIVED
OCT 0 4 2016
GRRC

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

RE: Five-year-review Report on 10 A.A.C. 4, Articles 3 (Criminal Justice Enhancement Fund) and 5 (Full-service Forensic Crime Laboratory Account)

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the Arizona Criminal Justice Commission submits for your approval a report on a review of the referenced rules. The Commission reviewed all referenced rules.

As required under A.R.S. § 41-1056(A), the Commission certifies that it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact me at (602) 364-1156. Thank you for your consideration.

Sincerely,

Andrew T. LeFevre
Executive Director

FRANK MILSTEAD, Director
Department of Public Safety

BILL MONTGOMERY
Maricopa County Attorney

CHARLES RYAN, Director
Department of Corrections

DAVID SANDERS
Pima County Chief Probation Officer

DANIEL SHARP, Chief
Oro Valley Police Department

HE-STON SILBERT
Law Enforcement Leader

VACNT
Sheriff

Executive Director
Andrew T. LeFevre

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Our mission is to sustain and enhance the coordination, cohesiveness, productivity and effectiveness ofthe Criminal Justice System in Arizona

ARIZONA CRIMINAL JUSTICE COMMISSION

Five-year-review Report: A.A.C. Title 10, Chapter 4, Articles 3 (Criminal Justice Enhancement Fund) and 5 (Full-service Forensic Crime Laboratory Account)

October 2016

Five-year-review Report

A.A.C. Title 10. Law

Chapter 4. Arizona Criminal Justice Commission

INTRODUCTION

The Arizona Criminal Justice Commission was established in 1982 to carry out various coordinating, monitoring, and reporting functions regarding the administration and management of criminal justice programs in Arizona. This report focuses on rules developed for two of the programs.

The Criminal Justice Enhancement Fund provides funding for the various Arizona county attorneys to improve processing of criminal cases. Under A.R.S. § 41-2421(J)(5), the Fund receives a 14.29 percent allocation of a seven percent penalty assessment on fines, penalties, and forfeitures imposed by the courts for criminal and civil motor vehicle violations and a portion of the monies collected by the Supreme Court and Court of Appeals. The Arizona Criminal Justice Commission is required to distribute Fund monies to the Arizona Department of Public Safety, Attorney General, Administrative Office of the Courts, and the sheriff in each county. The distribution to each county is based on a composite index formula using Superior Court felony filings and county population.

The goal of the Arizona Criminal Justice Commission Full-service Forensic Crime Laboratory Program is to improve the efficiency and effectiveness of the state's various full-service crime laboratories. To achieve this, the Commission seeks to have laboratory results posted on an automated site for prosecutors and law enforcement. Although not required by rule, the Commission requests laboratories that receive monies from the Full-service Forensic Crime Laboratory Account support that goal.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 41-2405(A)(8) and 41-2421(J)(5)

1. Specific statute authorizing the rule:

   R10-4-301: A.R.S. § 41-2401(G)

   R10-4-302: A.R.S. § 41-2401(G)

   R10-4-303: A.R.S. § 41-2401(G)

   R10-4-304: A.R.S. § 41-2401(G)

   R10-4-305: A.R.S. § 41-2401(G)

   R10-4-501: A.R.S. § 41-2421(J)(5)

   R10-4-502: A.R.S. § 41-2421(J)(5)

   R10-4-503: A.R.S. § 41-2421(J)(5)

   R10-4-504: A.R.S. § 41-2421(J)(5)

2. Objective of the rule including the purpose for the existence of the rule:

   R10-4-301. 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. This facilitates understanding by those who use the rules.

   R10-4-302. Contact Information Required: The objective of the rule is to ensure the Commission has accurate information regarding the head of recipient agencies. This facilitates timely communication with the agencies.

   R10-4-303. Fund Guidelines Required: The objective of the rule is to specify the guidelines a recipient agency must have regarding handling, allocating, expending, and assessing the impact of Fund monies. This ensures monies received by the agencies are protected from misuse and expended as required by law.

   R10-4-304. Records Required: The objective of the rule is to specify the records a recipient agency is required to maintain. The records enable the Commission and Arizona Auditor General to assess that Fund monies are expended as required by law.

   R10-4-305. Complaints: The objective of the rule is to provide the procedure for complaining to the Commission that Fund monies are being expended in a manner

inconsistent with statute. The complaint procedure protects the public and ensures Fund monies are expended as required by law.

R10-4-501. 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. This facilitates understanding by those who use the rules.

R10-4-502. Grant Solicitation Process: The objective of the rule is to establish the procedure the Commission will use to inform potential grant applicants when funds are available for distribution and to specify the information the Commission will make available to potential applicants. This facilitates the grant application process.

R10-4-503. Grant Application Evaluation; Decision of the Commission: The objective of the rule is to describe the procedure the Commission uses to evaluate a grant application and list the factors on which a grant decision is based. This facilitates the grant application process by enabling an applicant to prepare an application that addresses important factors.

R10-4-504. Reports: The objective of the rule is to inform grant recipients when reports are due and the information required in a report. This enables grantees to comply timely with reporting requirements.

3. <u>Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:</u>

   The Commission believes the rules are effective in achieving their objectives. The Commission is able to distribute monies as required by law. No recipient of monies from either the Fund or Account has suggested rule changes. In a recent report, the Arizona Auditor General commented that the Commission has established effective grant-awarding and monitoring processes. No complaints have been received regarding misspent monies or challenging the awards made.

4. <u>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:</u>

No federal law is applicable to distribution of the monies in either the Criminal Justice Enhancement Fund or the Full-service Forensic Crime Laboratory Account.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

   The Commission enforces the rules as written without difficulty.

6. Clarity, conciseness, and understandability of the rule:

   The rules are clear, concise, and understandable except R10-4-502(A) contains an incorrect web site address for the Commission. The correct address is www.azcjc.gov.

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 Commission received no written criticism of the rules during the last five years.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

   2006 EIS (Full-service Forensic Crime Laboratory Account)

   The EIS prepared when the rules were made in 2006 was available. The Commission believes the economic, small business, and consumer impact statement prepared was accurate.

   There are still seven full-service forensic crime laboratories in Arizona, all of which are accredited. During FY2016, the Arizona Department of Public Safety, which operates three of the full-service forensic crime laboratories, used Account monies to combat immigration violence, gang violence, human smuggling, and drug trafficking. Some of the monies were used to assist county attorneys' offices. The Phoenix Police Department used Account

monies to purchase equipment and supplies, provide training, and fund overtime in an effort to increase trained staff. The Mesa Police Department used Account monies to convert old casework records to an electronic format and increase safety in the forensic laboratory building. The Scottsdale Police Department used Account monies to fund a Forensic Scientist Supervisor for the forensic laboratory and the Tucson Police Department used the monies to fund a DNA Criminalist position and pay overtime.

During FY2016, the Commission distributed $800,000 to the full-service forensic crime laboratories. This is less than was distributed in 2006 because the Account contained fewer monies. The Commission believes this is because there are fewer peace officers writing tickets resulting in less money. The Commission received no appeals of its decisions regarding the manner in which Account monies are distributed.

2011 EIS (Criminal Justice Enhancement Fund)

The EIS prepared when the rules were made in 2011 was available. The Commission believes the economic, small business, and consumer impact statement prepared was accurate. Recipients of monies from the Fund receive substantial economic benefit as a result of receiving the monies and incur minimal costs to develop guidelines regarding handling, allocating, and use of the monies and to maintain records regarding expenditure and impact of the monies.

The Commission is responsible for distributing only part of the monies in the Fund (See A.R.S. § 41-2401(G)). Recipients of Fund monies distributed by the Commission include the Arizona Departments of Public Safety and Law, the Supreme Court, and county sheriffs. The Department of Law passes the monies received to the fifteen country attorneys for use in enhancing prosecutions. During FY2015, the Commission distributed almost $3 million to the Arizona Department of Public Safety, $3,598,505 to the Department of Law, $2,108,988 to the Supreme Court, and $4,500,567 to the country sheriffs for jail enhancement.

During 2015, the Commission received no complaints alleging Fund monies were expended in a manner inconsistent with A.R.S. § 41-2401(D).

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 rules in Article 3 were newly made in a rulemaking that went into effect on September 10, 2011. This is the first review of the Article 3 rules. In a 5YRR approved by the Council on August 2, 2011, the Commission indicated it had no plan to amend or repeal any of the rules in Article 5.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

    The only persons regulated by the Full-service Forensic Crime Laboratory Account rules are Arizona's seven full-service forensic crime laboratories. To obtain Account monies, they must submit a grant application. If grant funds are awarded, they must submit quarterly reports regarding use of the funds. The Commission believes these requirements, which are necessary to ensure that Account monies are used in the manner intended by the legislature, impose minimal burden and costs on the full-service forensic crime laboratories. A laboratory that believes the burden and cost exceed the benefits does not have to apply for funding.

    The only persons regulated by the Criminal Justice Enhancement Fund rules are the four entities to which the Commission distributes monies. These are the Arizona Departments of Public Safety and Law, the Supreme Court, and the fifteen county sheriffs. Those that obtain Fund monies are required to develop guidelines regarding handling, allocating, and use of the monies and to maintain records regarding expenditure and impact of the monies. The Commission believes these requirements, which are necessary to ensure Fund monies are used in the manner intended by the legislature, impose minimal burden and costs.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

No federal law is applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

    The rules in Article 3 were made after July 29, 2010. None of the rules requires issuance of a regulatory permit, license, or other 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 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 Commission does not intend to amend or repeal any of the existing rules or make a new rule. The incorrect web site address in R10-4-502(A) will be corrected when it is necessary to amend the rule for a substantive reason.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

1. Identification of the rulemaking:
   a. The conduct and its frequency of occurrence that the rule is designed to change:
      A.R.S. § 41-2405(A)(8) was recently amended to require the Commission to make rules to allocate monies in the Criminal Justice Enhancement Fund. This rulemaking is designed to ensure that the Commission fulfills this statutory responsibility.
   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:
      Without this rulemaking, the Commission will act in a manner inconsistent with statute and will continue to act in an inconsistent manner until this rulemaking is approved and becomes effective.
   c. The estimated change in frequency of the targeted conduct expected from the rule change:
      When the rulemaking is approved and becomes effective, the Commission will have fulfilled its statutory responsibility.
2. A brief summary of the information included in the economic, small business, and consumer impact statement:
   Although the Criminal Justice Enhancement Fund has substantial economic impact on the recipients of Fund monies, the information included in the economic, small business, and consumer impact statement shows that the rulemaking has minimal economic impact. The only economic impact resulting from the rulemaking is associated with the requirements that eligible recipients develop guidelines for handling, allocating, and using Fund monies and maintain records.
3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

   Name: John A. Blackburn, Jr.
   Address: Arizona Criminal Justice Commission
   1110 W. Washington, Ste. 230
   Phoenix, AZ 85007

[1] If adequate data are not reasonably available, the agency shall:
Explain the limitations of the data and the methods used in an attempt to obtain the data, and

Telephone: (602) 364-1171
Fax: (602) 364-1175
E-mail: jrblackburn@azcjc.gov

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

   All costs will be borne by and all benefits will accrue to the Arizona Departments of Public Safety and Law, the Supreme Court, and the fifteen county sheriffs' offices.

5. Cost-benefit analysis:

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

      The Arizona Departments of Public Safety and Law and, although not a state agency, the Supreme Court, will have the minimal costs associated with developing guidelines for expending Fund monies and maintaining records.

      During FY2010, the Arizona Department of Public Safety received $3,331,188 from the Fund and used all of it for the operational costs associated with its criminal justice information system. During the same year, the Arizona Department of Law received $4,278,381 in Fund monies and passed all but the $334,500 swept by the Legislature to the fifteen county attorneys for use in enhancing prosecutorial efforts. The Supreme Court received $2,249,070 and used the monies to enhance case processing.

      No new full-time employees will be required to implement and enforce these rules.

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

      Each county in Arizona directly benefits from this rulemaking. The fifteen county sheriffs will have the minimal costs associated with developing guidelines for expending Fund monies and maintaining records. During FY2010, the county sheriffs received $5,375,136 from the Fund for use in jail enhancement.

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

      No businesses are directly affected by this rulemaking.

6. Impact on private and public employment:

   It is expected this rulemaking will have no impact on private or public employment.

Characterize the probable impacts in qualitative terms.

7. Impact on small businesses[2]:
    a. Identification of the small business subject to the rulemaking:
    No businesses of any size are subject to this rulemaking.
    b. Administrative and other costs required for compliance with the rulemaking:
    Entities eligible to receive monies from the Fund are required under this rulemaking to develop guidelines regarding handling, allocating, and use of the monies and to maintain records regarding expenditure and impact of the monies. These requirements have minimal economic impact on recipients and are designed to promote the effective and efficient use of Fund monies.
    c. Description of methods that may be used to reduce the impact on small businesses:
    Because no small businesses are subject to this rulemaking, there are no methods to reduce the impact of the rulemaking on small businesses.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
    No private persons or consumers are directly affected by the rulemaking.
9. Probable effects on state revenues:
    It is expected that the rulemaking will have no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:
    Because the requirements imposed by this rulemaking on Fund recipients are so minimal and are designed to ensure that Fund monies are expended in an effective and efficient manner and because the benefits for recipients are so great, no less intrusive or less costly method was considered.

[2] Small business means a concern, including its affiliates, that is:
Independently owned and operated,
Not dominant in its field,
Employs fewer than 100 full-time employees, and
Had gross annual receipts of less than $4 million in its last fiscal year.

Arizona Criminal Justice Commission

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

(Authority: A.R.S. §§ 41-1308 and 41-1309)

ARTICLE 3. CRIMINAL JUSTICE ENHANCEMENT FUND

Article 3, consisting of R10-4-301 through R10-4-305, made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

Article 3, consisting of R10-4-301 through R10-4-305, adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).

Article 3, consisting of R10-4-301 through R10-4-305, repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4).

Article 3, consisting of Sections R10-4-301 through R10-4-305, adopted effective September 11, 1986.

Section
R10-4-301. Definitions
R10-4-302. Contact Information Required
R10-4-303. Fund Guidelines Required
R10-4-304. Records Required
R10-4-305. Complaints

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

Article 5, consisting of Sections R10-4-501 through R10-4-504, made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2).

Section
R10-4-501. Definitions
R10-4-502. Grant Solicitation Process
R10-4-503. Grant Application Evaluation; Decision of the Commission
R10-4-504. Reports

Arizona Criminal Justice Commission

ARTICLE 3. CRIMINAL JUSTICE ENHANCEMENT FUND

R10-4-301. Definitions

In this Article:

1. "Commission" means the Arizona Criminal Justice Commission.
2. "Contact" means the individual representative of a recipient or the Arizona Sheriffs' Association, on behalf of the various county sheriffs' offices, who communicates with the Commission regarding the Fund.
3. "Enhance" or "enhancing," as used in A.R.S. § 41-2401(D), means to supplement rather than replace monies from other sources.
4. "Fund" means the Criminal Justice Enhancement Fund established by A.R.S. § 41-2401(A).
5. "Head" means:
   a. The Director of the Arizona Department of Public Safety,
   b. The Arizona Attorney General,
   c. The Director of the Administrative Office of the Courts, and
   d. The sheriff of each Arizona county.
6. "Recipient" means the Arizona Department of Public Safety, Arizona Department of Law, the Supreme Court, and each Arizona county sheriff's office.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-301 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-302. Contact Information Required

A. Within 60 days after this Article takes effect, each Head and the President of the Arizona Sheriffs' Association shall submit to the Commission the name, address, telephone and fax numbers, and e-mail of the contact.

B. If any of the information submitted under subsection (A) changes, the Head or the President of the Arizona Sheriffs' Association shall provide immediate notice of the change to the Commission.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-302 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-303. Fund Guidelines Required

A. Within 60 days after this Article takes effect, the contact within the Arizona Department of Public Safety, Arizona Department of Law, and the Administrative Office of the Courts shall submit to the Commission the recipient's guidelines regarding the following:
   1. The procedure for handling Fund monies until they are allocated for expenditure,
   2. The procedure used to allocate Fund monies,
   3. The procedure used to ensure that Fund monies are expended as specified in A.R.S. § 41-2401(D), and
   4. The procedure used to assess the impact of the Fund monies on enhancing criminal justice in the manner specified in A.R.S. § 41-2401(D).

B. Within 60 days after this Article takes effect, the contact for each county Sheriff's Office or the Arizona Sheriffs' Association shall submit to the Commission guidelines that meet the standard described in subsections (A)(3) and (4);

C. Within 60 days after the guidelines submitted under subsections (A) and (B) are received, the Commission shall review the guidelines and assist the contact to make any changes necessary to protect Fund monies and ensure that Fund monies are expended as specified in A.R.S. § 41-2401.

D. A recipient or the Arizona Sheriffs' Association shall review and, if necessary, update the guidelines. By October 1 of each year, the contact for each recipient or the Arizona Sheriffs' Association shall provide to the Commission the guidelines as revised or inform the Commission that no revision is necessary. Within 60 days after revised guidelines submitted under this subsection are received, the Commission shall review the revised guidelines and assist the contact to make any changes necessary to protect Fund monies and ensure that Fund monies are expended as specified in A.R.S. § 41-2401.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-303 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-304. Records Required

A. A Head shall ensure that the following records are maintained for the recipient:
   1. The amount of Fund monies available to the recipient,
   2. To whom Fund monies were disbursed and the amount of Fund monies disbursed,

3. A detailed description of the manner in which the Fund monies are expended, and
4. An assessment of the impact of the Fund monies on enhancing criminal justice.

B. A Head shall ensure that the records required under subsection (A) are:
1. Maintained for three years; and
2. Made available, upon request, for review by the Commission and the Arizona Auditor General.

C. All reports required of a recipient by statute to be submitted to the Commission are subject to review and verification by the Commission.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-304 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-305. Complaints

A. An individual who believes that Fund monies are being expended in a manner that is inconsistent with A.R.S. § 41-2401(D) may:
1. Submit a written complaint to the Commission; and
2. If the complaint relates to an expenditure by a court, shall submit the complaint to the Director of the Administrative Office of the Courts.

B. An individual who submits a complaint shall ensure that the complaint includes sufficient information to enable the Commission to investigate the expenditure alleged to be inconsistent with A.R.S. § 41-2401(D).

C. Except as specified in subsection (E), if the Commission determines that an expenditure about which a complaint is submitted appears to be inconsistent with A.R.S. § 41-2401(D), the Commission shall ask the Head to explain the expenditure.

D. If the Commission determines that the expenditure is inconsistent with A.R.S. § 41-2401(D), the Commission shall take action allowed by law to remedy the expenditure.

E. The Director of the Administrative Office of the Courts shall:
1. Investigate an expenditure about which a complaint is submitted under subsection (A)(2),
2. Determine whether the expenditure is inconsistent with A.R.S. § 41-2401(D), and
3. Notify the Commission of the determination and any action taken to remedy the expenditure.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-305 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

R10-4-501. Definitions

In this Article:
1. "Account" means the Full-service Forensic Crime Laboratories Account established by A.R.S. § 41-2421(J)(5).
2. "Commission" means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.
3. "Full-service forensic crime laboratory" means a facility that:
   a. Is operated by a criminal justice agency that is a political subdivision of the state;
   b. Employs at least one full-time forensic scientist who holds a minimum of a bachelor's degree in a physical or natural science;
   c. Is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for possession of all scheduled, controlled substances;
   d. Is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board; and
   e. Provides, at a minimum, services in the areas of controlled substances, forensic biology, DNA, blood and breath alcohol, firearms, and toolmarks.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-502. Grant Solicitation Process

A. The Commission shall annually publish and post on the Commission's internet site, which is www.azacjc.gov, a grant solicitation for distribution of Account monies. When the grant solicitation is posted, the Commission shall send an electronic notice of the posting to all Arizona criminal justice agencies that operate a full-service forensic crime laboratory.

B. The Commission shall ensure that the grant solicitation contains:
1. The Commission's goals for the grant program for the allocation year,
2. Applicant eligibility criteria,
3. The format in which a grant application is to be submitted,
4. The date by which a grant application is to be submitted,

5. Grant application evaluation criteria,
6. Project expenses for which Account monies may be used,
7. The period in which all Account monies must be expended,
8. Account money reversion criteria and process, and
9. The award denial appeal process.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-503. Grant Application Evaluation; Decision of the Commission

A. The Commission shall evaluate each grant application and make a decision to award or deny a grant within 120 days of the date by which grant applications are due.

B. If the Commission determines additional information is needed to facilitate its evaluation of an application, the Commission shall request from the applicant:
1. Additional information, or
2. Application modification.

C. An applicant from whom additional information or application modification is requested shall submit the information or modification to the Commission within 10 business days from the date of the request.

D. After completing its evaluation of an application, the Commission shall vote to award, in whole or in part, or deny a grant based on:
1. The grant criteria published in the grant solicitation;
2. The amount of funds available for allocation; and
3. Compliance with the application format.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-504. Reports

Within 15 days after the end of each calendar quarter, a grantee shall submit a written report, on a form prescribed by the Commission, containing:
1. A financial report that includes itemized budget information, and
2. An activity report that documents activities supported by the grant funds and includes:
   a. A narrative of activities undertaken during the reporting period;
   b. An evaluation of progress toward achieving the goals and objectives in the grant application;
   c. An evaluation of adherence to the time-frames in the grant application; and
   d. A description of equipment purchased with grant funds during the reporting period, how the equipment is related to achieving the goals and objectives of the project, and the current status of the equipment, such as whether it is operational, waiting to be installed, or undergoing testing; and
3. A copy of any deliverable provided by a consultant paid with grant funds.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

41-2401. Criminal justice enhancement fund

A. The criminal justice enhancement fund is established consisting of monies collected pursuant to section 12-116.01 and monies available from any other source. The state treasurer shall administer the fund.

B. On or before November 1 of each year, each department, agency or office that receives monies pursuant to this section shall provide to the Arizona criminal justice commission a report for the preceding fiscal year. The report shall be in a form prescribed by the Arizona criminal justice commission. The report shall set forth the sources of all monies and all expenditures. The report shall not include any identifying information about specific investigations.

C. On or before December 1 of each year, the Arizona criminal justice commission shall compile all reports into a single comprehensive report and shall submit a copy of the comprehensive report to the governor, the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee.

D. On the first day of each month, the state treasurer shall distribute or deposit:

1. 6.46 per cent in the Arizona automated fingerprint identification system fund established by section 41-2414.

2. 1.61 per cent to the department of juvenile corrections for the treatment and rehabilitation of youth who have committed drug-related offenses.

3. 16.64 per cent in the peace officers' training fund established by section 41-1825.

4. 3.03 per cent in the prosecuting attorneys' advisory council training fund established by section 41-1830.03.

5. 9.35 per cent to the supreme court for the purpose of reducing juvenile crime.

6. 8.56 per cent to the department of public safety. Fifteen per cent of the monies shall be allocated for deposit in the Arizona deoxyribonucleic acid identification system fund established by section 41-2419. Eighty-five per cent of the monies shall be allocated to state and local law enforcement authorities for the following purposes:

(a) To enhance projects that are designed to prevent residential and commercial burglaries, to control street crime, including the activities of criminal street gangs, and to locate missing children.

(b) To provide support to the Arizona automated fingerprint identification system.

(c) Operational costs of the criminal justice information system.

7. 9.35 per cent to the department of law for allocation to county attorneys for the purpose of enhancing prosecutorial efforts.

8. 6.02 per cent to the supreme court for the purpose of enhancing the ability of the courts to process criminal and delinquency cases, orders of protection, injunctions against harassment and any proceeding relating to domestic violence matters, for auditing and investigating persons or entities licensed or certified by the supreme court and for processing judicial discipline cases. Notwithstanding section 12-143, subsection A, the salary of superior court judges pro tempore who are appointed for the purposes provided in this paragraph shall, and the salary of other superior court judges pro tempore who are appointed pursuant to section 12-141 for the purposes provided in this paragraph may, be paid in full by the monies received pursuant to this paragraph.

9. 11.70 per cent to the county sheriffs for the purpose of enhancing county jail facilities and operations, including county jails under the jurisdiction of county jail districts.
10. 1.57 per cent to the Arizona criminal justice commission.
11. 9.00 per cent in the crime laboratory operations fund established by section 41-1772.
12. 2.30 per cent in the crime laboratory assessment fund established by section 41-2415.
13. 7.68 per cent in the victims' rights fund established by section 41-191.08.
14. 4.60 per cent in the victim compensation and assistance fund established by section 41-2407.
15. 2.13 per cent to the supreme court for the purpose of providing drug treatment services to adult probationers through the community punishment program established in title 12, chapter 2, article 11.
E. Monies distributed pursuant to subsection D, paragraphs 3, 4, 7, 9, 11, 12, 13 and 14 of this section constitute a continuing appropriation. Monies distributed pursuant to subsection D, paragraphs 1, 2, 5, 8, 10 and 15 of this section are subject to legislative appropriation.
F. The portion of the eighty-five per cent of the monies for direct operating expenses of the department of public safety in subsection D, paragraph 6 of this section is subject to legislative appropriation. The remainder of the monies in subsection D, paragraph 6 of this section including the portion of the eighty-five per cent for local law enforcement is continuously appropriated.
G. The allocation of monies pursuant to subsection D, paragraphs 6, 7, 8 and 9 of this section shall be made in accordance with rules adopted by the Arizona criminal justice commission pursuant to section 41-2405.

41-2405. Arizona criminal justice commission; powers and duties; staff
A. The Arizona criminal justice commission shall:
1. Monitor the progress and implementation of new and continuing criminal justice legislation.
2. Facilitate research among criminal justice agencies and maintain criminal justice system information.
3. Facilitate coordinated statewide efforts to improve criminal justice information and data sharing.
4. Prepare for the governor a biennial criminal justice system review report. The report shall contain:
(a) An analysis of all criminal justice programs created by the legislature in the preceding two years.
(b) An analysis of the effectiveness of the criminal code, with a discussion of any problems and recommendations for revisions if deemed necessary.
(c) A study of the level of activity in the several areas of the criminal justice system, with recommendations for redistribution of criminal justice revenues if deemed necessary.
(d) An overall review of the entire criminal justice system including crime prevention, criminal apprehension, prosecution, court administration and incarceration at the state and local levels as well as funding needs for the system.

(e) Recommendations for constitutional, statutory and administrative revisions that are necessary to develop and maintain a cohesive and effective criminal justice system.
5. Provide supplemental reports on criminal justice issues of special timeliness.
6. In coordination with other governmental agencies, gather information on programs that are designed to effectuate community crime prevention and education using citizen participation and on programs for alcohol and drug abuse prevention, education and treatment and disseminate that information to the public, political subdivisions, law enforcement agencies and the legislature.
7. Make recommendations to the legislature and the governor regarding the purposes and formula for allocation of fund monies as provided in section 41-2401, subsection D and section 41-2402 through the biennial agency budget request.
8. Adopt rules for the purpose of allocating fund monies as provided in sections 41-2401, 41-2402 and 41-2407 that are consistent with the purposes set forth in those sections and that promote effective and efficient use of the monies.
9. Make reports to the governor and the legislature as they require.
10. Oversee the research, analysis, studies, reports and publication of crime and criminal justice statistics prepared by the Arizona statistical analysis center, which is an operating section of the Arizona criminal justice commission.
11. Prepare an annual report on law enforcement activities in this state funded by the drug enforcement account or the criminal justice enhancement fund and relating to illicit drugs and drug related gang activity. The report shall be submitted by October 31 of each year to the governor, the president of the senate and the speaker of the house of representatives. The report shall include:
(a) The name and a description of each law enforcement program dealing with illegal drug activity or street gang activity, or both.
(b) The objective and goals of each program.
(c) The source and amount of monies received by each program.
(d) The name of the agency or entity that administers each program.
(e) The effectiveness of each program.
12. Compile and disseminate information on best practices for cold case investigations, including effective victim communication procedures. For the purposes of this paragraph, "cold case" means a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.
B. The Arizona criminal justice commission may, as necessary to perform its functions:
1. Request any state or local criminal justice agency to submit any necessary information.
2. Form subcommittees, make studies, conduct inquiries and hold hearings.
3. Subject to chapter 4, article 4 of this title, employ consultants for special projects and such staff as deemed necessary or advisable to carry out this section.
4. Delegate its duties to carry out this section, including:
(a) The authority to enter into contracts and agreements on behalf of the commission.
(b) Subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, the authority to appoint, hire, terminate and discipline all personnel of the commission including consultants.

5. Establish joint research and information facilities with governmental and private agencies.
6. Accept and expend public and private grants of monies, gifts and contributions and expend, distribute or allocate monies appropriated to it for the purpose of enhancing efforts to investigate or prosecute and adjudicate any crime and to implement this chapter.

41-2421. Enhanced collections; allocation of monies; criminal justice entities
A. Notwithstanding any other law and except as provided in subsection J of this section, five per cent of any monies collected by the supreme court and the court of appeals for the payment of filing fees, including clerk fees, diversion fees, fines, penalties, surcharges, sanctions and forfeitures, shall be deposited, pursuant to sections 35-146 and 35-147, and allocated pursuant to the formula in subsection B of this section. This subsection does not apply to monies collected by the courts pursuant to section 16-954, subsection A, or for child support, restitution or exonerated bonds.
B. The monies deposited pursuant to subsection A of this section shall be allocated according to the following formula:
1. 21.61 per cent to the state aid to county attorneys fund established by section 11-539.
2. 20.53 per cent to the state aid to indigent defense fund established by section 11-588.
3. 57.37 per cent to the state aid to the courts fund established by section 12-102.02.
4. 0.49 per cent to the department of law for the processing of criminal cases.
C. Notwithstanding any other law and except as provided in subsection J of this section, five per cent of any monies collected by the superior court, including the clerk of the court and the justice courts in each county for the payment of filing fees, including clerk fees, diversion fees, adult and juvenile probation fees, juvenile monetary assessments, fines, penalties, surcharges, sanctions and forfeitures, shall be transmitted to the county treasurer for allocation pursuant to subsections E, F, G and H of this section. This subsection does not apply to monies collected by the courts pursuant to section 16-954, subsection A or for child support, restitution or exonerated bonds.
D. The supreme court shall adopt guidelines regarding the collection of revenues pursuant to subsections A and C of this section.
E. The county treasurer shall allocate the monies deposited pursuant to subsection C of this section according to the following formula:
1. 21.61 per cent for the purposes specified in section 11-539.
2. 20.53 per cent for the purposes specified in section 11-588.
3. 57.37 per cent to the local courts assistance fund established by section 12-102.03.
4. 0.49 per cent to the state treasurer for transmittal to the department of law for the processing of criminal cases.
F. The board of supervisors in each county shall separately account for all monies received pursuant to subsections C and E of this section and expenditures of these

monies may be made only after the requirements of subsections G and H of this section have been met.
G. By December 1 of each year each county board of supervisors shall certify if the total revenues received by the justice courts and the superior court, including the clerk of the superior court, exceed the amount received in fiscal year 1997-1998. If the board so certifies, then the board shall distribute the lesser of either:
1. The total amount deposited pursuant to subsection C of this section.
2. The amount collected and deposited pursuant to subsection C of this section that exceeds the base year collections of fiscal year 1997-1998. These monies shall be distributed according to the formula specified in subsection E of this section. Any monies remaining after this allocation shall be transmitted as otherwise provided by law.
H. If a county board of supervisors determines that the total revenues transmitted by the superior court, including the clerk of the superior court and the justice courts in the county, do not equal the base year collections transmitted in fiscal year 1997-1998 the monies specified in subsection C of this section shall be transmitted by the county treasurer as otherwise provided by law.
I. For the purposes of this section, base year collections shall be those collections specified in subsection C of this section.
J. Monies collected pursuant to section 12-116.01, subsection B shall be allocated as follows:
1. 15.44 per cent to the state aid to county attorneys fund established by section 11-539.
2. 14.66 per cent to the state aid to indigent defense fund established by section 11-588.
3. 40.97 per cent to the state aid to the courts fund established by section 12-102.02.
4. 0.35 per cent to the department of law for the processing of criminal cases.
5. 14.29 per cent to the Arizona criminal justice commission for distribution to state, county and municipal law enforcement full service forensic crime laboratories pursuant to rules adopted by the Arizona criminal justice commission.
6. 14.29 per cent to the supreme court for allocation to the municipal courts pursuant to subsection K of this section.
K. The supreme court shall administer and allocate the monies received pursuant to subsection J, paragraph 6 of this section to the municipal courts based on the total amount of surcharges transmitted pursuant to section 12-116.01 by that jurisdiction's city treasurer to the state treasurer for the prior fiscal year divided by the total amount of surcharges transmitted to the state treasurer pursuant to section 12-116.01 by all city treasurers statewide for the prior fiscal year. The municipal court shall use the monies received to improve, maintain and enhance the ability to collect and manage monies assessed or received by the courts, to improve court automation and to improve case processing or the administration of justice. The municipal court shall submit a plan to the supreme court and the supreme court shall approve the plan before the municipal court begins to spend these allocated monies.

BOARD OF DISPENSING OPTICIANS (F-16-1203)
Title 4, Chapter 20, Article 1, General

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-6**

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

FROM: Shama Thathi, Staff Attorney

DATE : November 18, 2016

SUBJECT: **ARIZONA STATE BOARD OF DISPENSING OPTICIANS (F-16-1203)**
Title 4, Chapter 20, Article 1**,** General

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona State Board of Dispensing Opticians ("Board") licenses and regulates individuals who dispense eyeglass lenses, contact lenses, and frames based on a written prescription from a physician or optometrist and licenses optical establishments.

This five-year-review report covers 25 rules and one table in A.A.C. Title 4, Chapter 20, Article 1. The Board is reviewing all of its rules, including rules on licensure by examination, fees, and scope of practice. The rules, as written, become effective at various times between 2005 and 2013.

Proposed Action

The Board does not plan to amend any of the rules. On May 11, 2016, however, the Board sought an exemption from the moratorium to amend R4-20-120 to increase continuing education requirements for dispensing opticians from 12 hours to 18 hours. The Governor's Office denied the Board's request on September 1, 2016. The Governor's Office believed that the proposed rule did not satisfy A.R.S. § 41-1038 because the amendment increased regulatory restraints and burdens on the freedom to engage in an otherwise lawful occupation.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Board indicates that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Board indicates that the rules are effective in achieving their objectives.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

Yes. The Board indicates that it has not received any written criticisms of the rules during the last five years.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Board cites applicable statutory authority for the rules. According to A.R.S. § 32-1673(A), the Board is authorized to "[a]dopt rules to administer and enforce [A.R.S. Title 32, Chapter 15.1, Dispensing Opticians]." The Board also cites specific statutory authority throughout the report.

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Board indicates that the rules are consistent with other rules and statutes.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Board indicates that the rules are enforced as written.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The Board indicates that the rules are clear, concise, and understandable.

8. <u>Has the agency analyzed whether:</u>

a. <u>The rules are more stringent than corresponding federal law?</u>

No. The Board indicates that no federal law directly corresponds to the rules.

b. <u>There is statutory authority to exceed the requirements of federal law?</u>

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Yes. The Board's rules require issuance of a regulatory permit, license or agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Yes. The Board indicates that the licenses and certifications are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. In the five-year-review report approved by the Council in January 2012, the Board proposed amendments to R4-20-102, R4-20-109, R4-20-119 and R4-20-120. The Board made changes to R4-20-102, R4-20-109 and R4-20-119 in the rulemaking approved by the Council in March 2013. However, no amendments have been made to R4-20-120.

Conclusion

As mentioned above, the Board does not plan to amend any of the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

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

MEETING DATE: December 8, 2016 **AGENDA ITEM: F-6**

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

FROM: GRRC Economic Team

DATE : November 18, 2016

SUBJECT: **ARIZONA STATE BOARD OF DISPENSING OPTICIANS (F-16-1203)**
Title 4, Chapter 20, Article 1**,** General

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemaking was available for the Article 1 rules contained in the five-year-review report.

The rules establish procedures for issuance and renewal of dispensing optician licenses; fees related to licensure; and continuing education requirements to maintain licensed status. Revenue from examination fees in FY 16 totaled $5,580. In FY 16, 46 opticians were licensed by examination. There are currently 1,245 licensed dispensing opticians in Arizona.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Board has determined that the rules impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety. No additional costs were incurred as a result of these rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states.

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

Dale Nyblade
Chairman

Sheri Mayes
Vice-Chairman

ARIZONA STATE BOARD OF DISPENSING OPTICIANS
1400 W. Washington, Room 230, Phoenix, Arizona 85007
Telephone (602) 542-8158 FAX (602) 542-3093

Lori D. Scott
Executive Director
director@asbdo.state.az.us

November 14, 2016

Nicole Ong
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-Year Rule Review Report, Title 4, Chapter 20, Article 1

Dear Ms. Ong:

Enclosed is the Arizona State Board of Dispensing Opticians Five-Year Rule Review Report.

The Agency is in compliance with A.R.S.§41-1091.

The Agency has reviewed the rules and elected to increase the requirement in R4-20-120, continuing education requirements, to be more in line with national standards. The legislature approved changes to §A.R.S. 32-1687 to allow for increase in 2015. Christina Corieri, however, has denied our request to change the rule. Therefore no changes have been made to any rules and none are anticipated.

If you have any questions, please call me at 542-8158.

Sincerely,

Lori D. Scott

Lori D. Scott
Executive Director

ARIZONA STATE BOARD OF DISPENSING OPTICIANS

Five-Year Rule Review Report

A.A.C. Title 4, Chapter 20, Article 1

October 14, 2016

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

The following information is identical for all of the rules and is not restated in the analysis of each rule.

1. Effectiveness of the Rules in Achieving Their Objectives

   All of the rules are effective in achieving their objectives.

2. Written Criticisms

   The Board has received no written criticisms of the rules during the last five years.

3. Authorization of the Rule by Existing Statute

   All of the rules are generally authorized by A.R.S. §32-1673(A), which provides that the Board shall adopt rules to administer and enforce Title 32, Chapter 15.1.

4. Consistency with other rules made by the agency, current agency enforcement policy and current agency views regarding the wisdom of the rule.

   The Board believes that each of the rules needs to be maintained so the Board can effectively perform its mandate. The following rules are consistent with state and federal statutes and rules:

   R4-20-101. Definitions
   R4-20-102. Application for a Dispensing Optician's License by Examination
   R4-20-103. Approval to take dispensing optician examination
   R4-20-104. Dispensing Optician Examinations
   R4-20-105. Practical Examination Procedures
   R4-20-106. Scoring of Examination; Failure to Pass
   R4-20-107. Application for a Dispensing Optician's License by Comity
   R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
   R4-20-110. Application for an Optical Establishment License
   R4-20-111. Time Frames for License Approvals
   R4-20-112. Fees
   R4-20-113. Display of Licenses, Nontransferability
   R4-20-114. Notice of Change of Status
   R4-20-115. Renewal of Optical Establishment License; Late Renewal; Re-application
   R4-20-116. Rehearing or Review of Decision
   R4-20-117. Scope of Practice
   R4-20-118. Unprofessional Conduct
   R4-20-119. Substandard Care

R4-20-120. Continuing Education; Hours Required; Reporting
R4-20-121. Continuing Education; Approval of Courses
R4-20-122. Agency Record; Directory of Substantive Policy Statements
R4-20-123. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
R4-20-124. Public Comments
R4-20-125. Oral Proceedings
R4-20-126. Written Criticism
Table 1 Time-frames (in days)

5. Enforcement of the Rules

The Board consistently enforces all rules.

6. Clarity, Conciseness, and Understandability of the Rules

The following rules are clear, concise, and understandable:

R4-20-101. Definitions
R4-20-102. Application for a Dispensing Optician's License by Examination
R4-20-103. Approval to take dispensing optician examination
R4-20-104. Dispensing Optician Examinations
R4-20-105. Practical Examination Procedures
R4-20-106. Scoring of Examination; Failure to Pass
R4-20-107. Application for a Dispensing Optician's License by Comity
R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
R4-20-110. Application for an Optical Establishment License
R4-20-111. Time Frames for License Approvals
R4-20-112. Fees
R4-20-113. Display of Licenses, Nontransferability
R4-20-114. Notice of Change of Status
R4-20-115. Renewal of Optical Establishment License; Late Renewal; Re-application
R4-20-116. Rehearing or Review of Decision
R4-20-117. Scope of Practice
R4-20-118. Unprofessional Conduct
R4-20-119. Substandard Care
R4-20-120. Continuing Education; Hours Required; Reporting
R4-20-121. Continuing Education; Approval of Courses
R4-20-122. Agency Record; Directory of Substantive Policy Statements
R4-20-123. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
R4-20-124. Public Comments

R4-20-125.	Oral Proceedings
R4-20-126.	Written Criticism
Table 1	Time-frames (in days)

7. Economic, Small Business, and Consumer Impact

The economic impact of the following rules has not differed from original economic impact statements at adoption of rules. All rules made have had minimal to moderate economic impact on the Board, other state agencies, private entities, small businesses, and consumers. Minimal means less than $500, moderate means $500, to $1500 and substantial means more than $1500. Current licensees total 1245.

R4-20-101.	Definitions
R4-20-102.	Application for a Dispensing Optician's License by Examination
R4-20-103.	Approval to take dispensing optician examination
R4-20-104.	Dispensing Optician Examinations
R4-20-105.	Practical Examination Procedures
R4-20-106.	Scoring of Examination; Failure to Pass
R4-20-107.	Application for a Dispensing Optician's License by Comity
R4-20-109.	Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
R4-20-110.	Application for an Optical Establishment License
R4-20-111.	Time Frames for License Approvals
R4-20-112.	Fees
R4-20-113.	Display of Licenses, Nontransferability
R4-20-114.	Notice of Change of Status
R4-20-115.	Renewal of Optical Establishment License; Late Renewal; Re-application
R4-20-116.	Rehearing or Review of Decision
R4-20-117.	Scope of Practice
R4-20-118.	Unprofessional Conduct
R4-20-119.	Substandard Care
R4-20-120.	Continuing Education; Hours Required; Reporting
R4-20-121.	Continuing Education; Approval of Courses
R4-20-122.	Agency Record; Directory of Substantive Policy Statements
R4-20-123.	Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
R4-20-124.	Public Comments
R4-20-125.	Oral Proceedings
R4-20-126.	Written Criticism
Table 1	Time-frames (in days)

8. Status of the completion of action indicated in the previous five-year review report.

Amendments were proposed and completed to R4-20-102, R4-20-109, and R4-20-119. Changes to R4-20-120, required a change in Statute before changes could be made to the rule. Statute changes were made in 2015, however changes to the rule were denied.

9. Analysis of stringency compared to federal laws.

No rules in this chapter are more stringent than federal laws.

10. For rules adopted after July 29, 2010 that required the issuance of regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037.

The amendment made to R4-20-109, is in compliance with A.R.S. §41-1037. Taking out the requirement for ABO and NCLE results actually decreases the cost burden on the licensee.

11. Proposed Course of Action

None - A request was made to change rules to increase the number of continuing education credits required. The legislature passed SB1010 in 2015, to increase the cap on the number of continuing education credits required within a three year period. Request was made to the Governor's office on May 11, 2016, to increase the requirement in rule; however the Governor's office has denied exemption to moratorium on September 1, 2016. The Board does not anticipate the Governor's office allowing any changes to be made

No course of action is proposed for:

R4-20-101.	Definitions
R4-20-102.	Application for a Dispensing Optician's License by Examination
R4-20-103.	Approval to take dispensing optician examination
R4-20-104.	Dispensing Optician Examinations
R4-20-105.	Practical Examination Procedures
R4-20-106.	Scoring of Examination; Failure to Pass
R4-20-107.	Application for a Dispensing Optician's License by Comity
R4-20-109.	Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
R4-20-110.	Application for an Optical Establishment License
R4-20-111.	Time Frames for License Approvals
R4-20-112.	Fees
R4-20-113.	Display of Licenses, Nontransferability
R4-20-114.	Notice of Change of Status
R4-20-115.	Renewal of Optical Establishment License; Late Renewal; Re-application
R4-20-116.	Rehearing or Review of Decision

R4-20-117. Scope of Practice
R4-20-118. Unprofessional Conduct
R4-20-119. Substandard Care
R4-20-120. Continuing Education; Hours Required; Reporting
R4-20-121. Continuing Education; Approval of Courses
R4-20-122. Agency Record; Directory of Substantive Policy Statements
R4-20-123. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
R4-20-124. Public Comments
R4-20-125. Oral Proceedings
R4-20-126. Written Criticism

ANALYSIS OF INDIVIDUAL RULES

R4-20-101. Definitions

1. Objective

The objective of the rule is to interpret and explain words used in opticianry law.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673(A).

R4-20-102. Application for a Dispensing Optician's License by Examination

1. Objective

The objective is to specify materials necessary to process an application for examination.

3. Authorization

This rule is specifically authorized by A.R.S.§§31-1681 through 1684.

R4-20-103. Approval to take dispensing optician examination

1. Objective

The objective is to specify time requirements for submission of the application for examination and the process for approval of the application.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1682.

R4-20-104. Dispensing Optician Practical Examinations

1. Objective

The objective of this rule is to explain when examinations are given, examination contents, and other conditions for taking the State Board Practical Examination.

3. Authorization

This rule is specifically authorized by A.R.S.§§32-1682 and 1683.

R4-20-105. Practical Examination Procedures

1. Objective

The objective of this rule is to specify the Board's method of administering the State Board Practical Examination.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1682.

R4-20-106. Scoring of Examination; Failure to Pass

1. Objective

The objective of this rule is to define the scores required to pass the examinations and procedures followed after failure of the State Board Practical examination.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1682.

R4-20-107. Application for a Dispensing Optician's License by Comity

1. Objective

The objective of this rule is to explain the process by which an optician licensed in another state with similar requirements to Arizona may become licensed as an optician in Arizona.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1683(5)(a).

R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement

1. Objective

The objective of this rule is to specify time and procedural requirements for renewal and reinstatement of an optician's license.

3. Authorization

This rule is specifically authorized by A.R.S. §§32-1682 and 1684.

R4-20-110. Application for an Optical Establishment License

1. Objective

The objective of this rule is to specify requirements and procedures for issuance of an original optical establishment license.

3. Authorization

This rule is specifically authorized by A. R.S.§32-1684.01

R4-20-111. Time Frames for License Approvals

1. Objective

The objective of this rule is to specify time-frames within which the Board will make a decision to grant or deny a license application.

3. Authorization

This rule is specifically authorized by A.R.S.§§32-1681 and 41-1073.

R4-20-112. Fees

1. Objective

The objective of this rule is to set fees for license application, license issuance, renewal, establishment license fees and fees for copies of public records.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1685.

R4-20-113. Display of licenses, nontransferability

1. Objective

The objective of this rule is to ensure the conspicuous, public display of current optician and optical establishment licenses.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673.

R4-20-114. Notice of change of status

1. Objective

The objective of this rule is to keep the Board informed of current home and employment address and telephone numbers of opticians and current ownership of optical establishments.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673.

R4-20-115. Renewal of Optical Establishment License

1. Objective

The objective of this rule is to specify time and procedural requirements for renewal of an optical establishment license.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1684.01.

R4-20-116. Rehearing or Review of Decision

1. Objective

The objective of this rule is to provide for a rehearing or review process of a Board decision.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1691.01.

R4-20-117. Scope of practice

1. Objective

The objective of this rule is to specify what a dispensing optician may do within statutory guidelines.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673.

R4-20-118. Unprofessional Conduct

1. Objective

The objective of the rule is to set forth specific acts that would constitute unprofessional conduct.

3. Authorization

This rule is specifically authorized by A.R.S.§§32-1673 and 1696.

R4-20-119. Substandard Care

1. Objective

The objective of this rule is to set forth specific acts that would constitute substandard care.

3. Authorization

This rule is specifically authorized by A.R.S.§§32-1673 and 1696.

R4-20-120. Continuing Education; Hours Required; Reporting

1. Objective

The objective of this rule is to provide requirements for continuing education.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1687.

R4-20-121. Continuing Education; Approval of Courses

1. Objective

The objective of the rule is to specify courses approved for continuing education and guidelines for courses submitted for approval.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1687.

R4-20-122. Agency Record; Directory of Substantive Policy Statements

1. Objective

The objective of the rule is to make clear where and when the agency record and directory of substantive policy statements are available.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673 & §41-1091.

R4-20-123. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact

1. Objective

The objective of the rule is to provide direction for persons wishing to petition for rulemaking.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673 & §41-1033.

R4-20-124. Public Comments

1. Objective

The objective of the rule is to provide a time frame for public comments on rulemaking.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673& §41-1023.

R4-20-125. Oral Proceedings

1. Objective

The objective of the rule is to provide procedures for requesting oral proceedings

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673& §41-1023.

R4-20-126. Written Criticism

1. Objective

The objective of the rule is to provide procedures for handling written criticism of existing rules.

3. Authorization

This rule is specifically authorized by A.R.S.§32-1673& §41-1023.

Table 1 Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time- frame
Approval to Take a Dispensing Optician Examination (R4-20-102)	A.R.S. § 32-1682	90	30	60
License by Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	60	30	30
License by Comity (R4-20-107)	A.R.S. §32-1683	90	30	60
Optical Establishment License R4-20-110	A.R.S. § 32-1684.01	60	30	30
Optician's License Renewal (R4-20-109)	A.R.S. § 32-1682	60	30	30
Establishment License Renewal (R4-20-115)	A.R.S. § 32-1684.01	60	30	30

Board of Dispensing Opticians

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

(Authority: A.R.S. § 32-1671 et seq.)

ARTICLE 1. GENERAL

Section

R4-20-101. Definitions
R4-20-102. Application for a Dispensing Optician's License by Examination
R4-20-103. Approval to Take Dispensing Optician Examination
R4-20-104. Dispensing Optician Practical Examination
R4-20-105. Practical Examination Procedures
R4-20-106. Scoring of Examination; Failure to Pass
R4-20-107. Application for a Dispensing Optician's License by Comity
R4-20-108. Repealed
R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
R4-20-110. Application for an Optical Establishment License; Qualifications
R4-20-111. Time-frames for License Approvals
R4-20-112. Fees
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R4-20-116. Rehearing or Review of Decision
R4-20-117. Scope of Practice
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R4-20-120. Continuing Education; Hours Required; Reporting
R4-20-121. Continuing Education; Approval of Courses
R4-20-122. Agency Record; Directory of Substantive Policy Statements
R4-20-123. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection Based Upon Economic, Small Business, or Consumer Impact
R4-20-124. Public Comments
R4-20-125. Oral Proceedings
R4-20-126. Written Criticism
Table 1. Time-frames (in Days)

ARTICLE 1. GENERAL

R4-20-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "ABO" means the American Board of Opticianry.
2. "Applicant" means an individual requesting an initial or renewal license from the Board.
3. "Application packet" means the forms and additional information the Board requires to be submitted by an applicant or on the applicant's behalf.
4. "Comity" means the procedure for granting an Arizona license to an applicant who is already licensed as a dispensing optician in another state of the United States.
5. "Days" means calendar days.
6. "Laboratory experience" means work directly involved in the process of producing optical devices and does not include work that is strictly clerical.
7. "License" means a written authorization issued by the Board to practice as a dispensing optician or operate an optical establishment in Arizona.
8. "NCLE" means the National Contact Lens Examiners.
9. "Nationally recognized body on opticianry accreditation" means the Commission on Opticianry Accreditation.
10. "Optical devices" means eyeglasses, contact lenses, prosthetic eyes, low-vision aids, other eyewear, and eyewear appurtenances or parts.
11. "Optometrist" means a person currently licensed in any state of the United States in the practice of the profession of optometry as defined in A.R.S. § 32-1701.
12. "Physician" means a person currently licensed in any state of the United States to practice allopathic or osteopathic medicine.
13. "Work week" means the period of time beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

Historical Note

Former Rule II. Amended effective December 14, 1979 (Supp. 79-6). Amended Subsections (A) and (D) effective April 2, 1981 (Supp. 81-2). Former Section R4-20-102 repealed, new Section R4-20-102 adopted effective October 24, 1983 (Supp. 83-5).

Board of Dispensing Opticians

Amended Subsection (B) effective August 29, 1985 (Supp. 85-4). Former Section R4-20-101 repealed, Section R4-20-102 amended and renumbered as Section R4-20-101 effective September 18, 1987 (Supp. 87-3). Amended by final rulemaking at 5 A.A.R. 418, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1978, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-102. Application for a Dispensing Optician's License by Examination

At least 45 days before an examination date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
   a. The applicant's name, Social Security number, address, and telephone number;
   b. The name and address of the applicant's employer at the time of application, if applicable;
   c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for three of the six years immediately preceding the application date, and the beginning and ending dates of each apprenticeship;
   d. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for one of the six years immediately preceding the application date and the beginning and ending dates of service. The applicant shall submit a photocopy of the applicant's diploma from the optical dispensing school;
   e. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of employment;
   f. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
   g. A statement of whether the applicant has ever had an application for a professional license denied or had a license suspended or revoked in any state; and
   h. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the applicant's:
   a. High school diploma or general educational diploma issued in any state; or
   b. Transcripts from a high school or college; or,
   c. Evidence of a college degree or admission to any college in any state;
3. Verification of passing an ABO and NCLE Board examination in opticianry as evidenced by an original notice of examination results or a copy of the original certificate of passage issued by the organization that prepared the examination;
4. A letter attesting to good moral character from each of three individuals who are not family members, who have known the applicant for two years immediately before the date of the application, and support the applicant's licensure;
5. A letter from each physician, optometrist, or dispensing optician named in subsection (1)(c), (d), or (e) that contains:
   a. The individual's printed name, address, and telephone number; and
   b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the physician, optometrist, or dispensing optician for the time required in subsection (1)(c), (d), or (e);
6. A photograph of the applicant no smaller than 1 1/2 x 2 inches and taken not more than six months before the date of application; and
7. The fee required in R4-20-112.

Historical Note

Former Rule III. Amended effective August 9, 1977 (Supp. 77-4). Amended effective August 7, 1978 (Supp. 78-4). Amended effective December 14, 1979 (Supp. 79-6). Former Section R4-20-103 repealed, new Section R4-20-103 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-103 amended and renumbered as Section R4-20-102 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-102 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1).

R4-20-103. Approval to Take Dispensing Optician Examination

A. An applicant shall file an application to take the dispensing optician license examination with the Board 45 days before the date of the examination.

B. The Board may reduce or waive the 45-day requirement for any portion of the application if its nonavailability is outside the applicant's control.

C. The Board shall notify an applicant whose application is approved before the date of the examination as to the time and place of the examination.

Historical Note

Adopted effective August 9, 1977 (Supp. 77-4). Amended effective December 14, 1979 (Supp. 79-6). Amended Subsection (E) effective April 2, 1981 (Supp. 81-2). Former Section R4-20-104 repealed, new Section R4-20-104 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-104 amended and renumbered as Section R4-20-103 effective September 18, 1987 (Supp. 87-3). Amended September 13, 1989 (Supp. 89-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15,

R4-20-104. Dispensing Optician Practical Examination

A. At least twice each year, the Board shall administer a dispensing optician practical examination. The Board shall not space the examinations more than eight months apart.

B. The practical examination shall include measurement of optical devices, interpupillary distance, segment heights, corneal curvature, and the identification of lens styles and tints. An applicant shall use only Board-supplied measuring equipment and optical devices in the practical examination.

Historical Note

Adopted effective August 9, 1977 (Supp. 77-4). Former Section R4-20-105 repealed, new Section R4-20-105 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-105 amended and renumbered as Section R4-20-104 effective September 18, 1987 (Supp. 87-3). Amended September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 6 A.A.R. 1978, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-105. Practical Examination Procedures

A. For the practical examination, an applicant shall not bring books or notes into the examination room, communicate by any means with other applicants while the examination is in progress, unless expressly authorized by the presiding examiner, or leave the examination room without first securing the presiding examiner's permission. If an applicant violates this subsection, the presiding examiner shall confiscate the examination answer sheet and the Board shall not allow the applicant to complete the examination.

B. For the practical examination, only applicants, Board members, employees of the Board and persons having the express permission of the Board are permitted in the examination room while the examination is in progress.

C. Examination papers are the property of the Board. The Board shall not return examination papers to the applicant.

Historical Note

Adopted effective August 9, 1977 (Supp. 77-4). Former Section R4-20-106 repealed, new Section R4-20-106 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-106 amended and renumbered as Section R4-20-105 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-106. Scoring of Examination; Failure to Pass

A. To pass, an applicant shall achieve a grade of 75% or more on the practical examination. For the written examination, the applicant shall achieve a grade of 70% or more on the ABO examination and shall achieve a grade of 72% or more on the NCLE examination.

B. An applicant who fails to pass the practical examination shall re-apply as an original applicant as described in R4-20-102.

Historical Note

Adopted effective March 20, 1978 (Supp. 78-2). Amended effective August 7, 1978 (Supp. 78-4). Former Section R4-20-107 repealed, new Section R4-20-107 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-107 amended and renumbered as Section R4-20-106 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-107. Application for a Dispensing Optician's License by Comity

An applicant for a dispensing optician's license by comity shall submit an application packet to the Board that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
   a. The applicant's name, Social Security number, address, and telephone number;
   b. The applicant's dispensing optician license number and the state and date of licensure;
   c. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
   d. A statement of whether the applicant has ever been denied a license or had a license suspended or revoked in any state; and
   e. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the unexpired license and a written statement, signed by an officer of the Board that issued the license, that states the license is in good standing, and that the license is valid to dispense both eyeglasses and contact lenses;
3. A photograph of the applicant no smaller than 1 1/2 x 2 inches and taken not more than six months before the date of application; and
4. The fee required in R4-20-112.

Historical Note

Adopted effective August 7, 1978 (Supp. 78-4). Former Section R4-20-108 repealed, new Section R4-20-108 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-108 amended and renumbered as Section R4-20-107 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-107 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-108. Repealed

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-109 amended and renumbered as Section R4-20-108 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-108 repealed by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1).

R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement

A. No later than December 31 of each year, an applicant for renewal of a dispensing optician's license shall submit to the Board the fee required by R4-20-112, proof of continuing education credits required by R4-20-120, and an application form, provided by the Board, signed and dated by the applicant, and notarized that contains:
1. The applicant's name, Social Security number, address, and telephone number;
2. The name, address, telephone number, and Arizona license number of the optical establishment at which the applicant is currently practicing as a dispensing optician; and
3. A statement that the information contained on the renewal application is correct.

B. A licensee who submits a renewal application and renewal fee postmarked after December 31 but before January 31 of the following year shall pay the late fee in R4-20-112.

C. A licensee who fails to submit a renewal application postmarked before January 31 following a license expiration of December 31, and who wishes to reinstate the license, shall:
1. Submit a reinstatement application within one year of license expiration;
2. Pay the renewal fee and the late fee in R4-20-112;
3. Achieve a passing grade on the practical examination, unless the applicant has successfully completed the practical examination in the five-year period immediately preceding the license expiration.

Historical Note

Adopted effective April 2, 1981 (Supp. 81-2). Former Section R4-20-110 repealed, new Section R4-20-110 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-110 amended and renumbered as Section R4-20-109 effective September 18, 1987 (Supp. 87-3). Section R4-20-109 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1).

R4-20-110. Application for an Optical Establishment License; Qualifications

A. Any person, corporation, company, partnership, firm, association or society operating an optical establishment, except those exempt under A.R.S. § 32-1691, shall obtain an optical establishment license.

B. An applicant for an optical establishment license shall submit an application packet to the Board that contains:
1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
   a. The applicant's name, establishment name, establishment address, and telephone number. An application form shall be signed by the following:
      i. If a sole proprietorship, the individual owning the optical establishment;
      ii. If a corporation, each individual owning 20% or more of the voting stock in the corporation;
      iii. If a partnership, the managing partner and a general partner;
      iv. If a limited liability company, the designated manager, or if no manager is designated, any two members of the limited liability company;
   b. The hours the establishment will be open to the public for business;
   c. If applicable, the name, business address, and telephone number of each licensed optical establishment currently being operated by the applicant in Arizona;
   d. If a corporation, the name of the statutory agent, the corporation's officers, and the state of incorporation; and
   e. The name, business address, telephone number, and license number of each licensed dispensing optician who is scheduled to work at the establishment on a full-time basis, consisting of 32 hours or more per week;
2. If a corporation, the articles of incorporation; and
3. The fee required in R4-20-112.

C. To be licensed, an optical establishment shall employ at least one dispensing optician licensed by the Board, for at least 32 hours or more per week.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-111 amended and renumbered as Section R4-20-110 effective September 18, 1987 (Supp. 87-3). Repealed effective September 13, 1989 (Supp. 89-3). New Section R4-20-110 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 3668, effective November 8, 2008 (Supp. 08-3).

R4-20-111. Time-frames for License Approvals

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
1. The administrative completeness review time-frame begins:
   a. For approval to take a dispensing optician examination or for an optical establishment license, when the Board receives an application packet.
   b. For approval or denial of a license by examination when the applicant takes the dispensing optician examination.
   c. For a license by comity, when the Board receives an application packet.
2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
2. The Board shall send a written notice approving the applicant to take an examination or granting a license to an applicant who meets the qualifications in A.R.S. §§ 32-1681 through 32-1684 and 32-1687.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. §§ 32-1681 through 32-1684 and 32-1687.

D. The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(1); or
2. Take the dispensing optician examination.

E. An applicant who does not want an application withdrawn may request a denial in writing within 360 days from the application submission date.

F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the next business day shall be considered the time-frame's last day.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-112 amended and renumbered as Section R4-20-111 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-111 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-112. Fees

A. Dispensing optician fees, which are non-refundable unless A.R.S. § 41-1077 applies, are as follows:
1. License application fee: $100
2. License issuance fee: $100
3. Renewal of dispensing optician license: $135
4. License renewal late fee: $100

B. Optical establishment license fees are as follows:
1. License application fee: $100
2. License issuance fee: $100
3. Renewal of optical establishment license: $135
4. License renewal late fee: $100

C. Fees for copies of public records are:
1. Duplicate optician license: $25
2. Duplicate establishment license: $25
3. Dispensing Optician Statutes and rules: $10
4. Directories:
   a. Commercial use: $2.50 per page
   b. Non-commercial use: $1.00 per page
5. Labels
:
   a. Commercial use: $ .30 per name
   b. Non-commercial use: $ .10 per name
6. All other records: $ .50 per page

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-113 amended and renumbered as Section R4-20-112 effective September 18, 1987 (Supp. 87-3). Amended effective April 22, 1988 (Supp. 88-2). Amended effective May 26, 1989 (Supp.

89-2). Amended by final rulemaking at 6 A.A.R. 1978, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 3163 effective August 3, 2005; amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-113. Display of Licenses; Nontransferability

A. A licensee shall display all licenses in a conspicuous place. If a license is renewed, the licensee shall display the evidence of renewal in public view.

B. Optical establishment and dispensing optician licenses are not transferable.

C. A licensee shall return an optical establishment license to the Board upon transfer of ownership or going out of business.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-114 amended and renumbered as Section R4-20-113 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-114. Notice of Change of Status

A. An optical establishment licensee and dispensing optician licensee shall notify the Board of any change in the information provided to the Board concerning license application or its renewal, including any change in name, address, work location, establishment ownership or the name, address or home telephone number of each dispensing optician working at the establishment.

B. This notice shall be in writing and made within 30 days of change of status.

C. For purposes of this Section, a change of establishment ownership means:

1. The transfer of a controlling interest in the optical establishment business from one person to another;
2. The addition or termination of a general partner; or
3. The transfer or agreement to transfer a block of 20% or more of the outstanding voting stock of a corporation or association or the transfer or agreement to transfer any amount of voting stock that would give the transferee control of a majority of outstanding voting stock. For purposes of this subsection, "voting stock" means any interest or system whereby the operation of a corporation is controlled by its owners or trustees.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-115 amended and renumbered as Section R4-20-114 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-115. Renewal of Optical Establishment License; Late Renewal; Re-application

No later than June 30 of each year, an applicant for renewal of an optical establishment license shall submit to the Board the fee required by R4-20-112 and an application form, provided by the Board that contains:

1. The name, address, and telephone number of the optical establishment;
2. The name and license number of each dispensing optician who is scheduled to work 32 hours or more each week at the optical establishment; and
3. The applicant's signature and title.

B. A licensee who submits a renewal application and renewal fee postmarked after June 30 but before July 31 of the renewal year shall pay the late fee in R4-20-112.

C. A licensee who fails to submit a renewal application postmarked before July 31 following a license expiration of June 30, and who wishes to re-apply for an establishment license, shall submit an original application, and pay the application fee and license fee in R4-20-112.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-116 repealed and reserved as Section R4-20-115 effective September 18, 1987 (Supp. 87-3). Section R4-20-115 amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-116. Rehearing or Review of Decision

A. Except as provided in subsection (G), a party in a contested case before the Board who is aggrieved by a decision rendered in the case 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 the rehearing or review. For purposes of this Subsection a decision is deemed to be served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business.

B. A party may amend a motion for rehearing or review at any time before it is ruled upon by the Board. Any other party may file a response within 15 days after service of the motion or amended motion. The Board may require the filing of written brief upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Board, the Board's informal interviewing officer or the prevailing party, or any order or abuse of discretion that deprived the moving party of a fair hearing or interview;
2. Misconduct of the Board or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;

5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
7. The decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.

E. Not later than 10 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which the Board might have granted a rehearing or review on motion of a party. After giving the parties or the parties' 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 upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party may within 10 days after service, serve opposing affidavits. The Board may extend the period for an additional 20 days for good cause shown or by written stipulation of the parties. The Board may permit reply affidavits.

G. If in a decision the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, a party shall make application for judicial review of the decision within the time limits permitted for applications for judicial review of the Board's final decisions.

H. For purposes of this Section the terms "contested case" and "party" have the same meaning as in A.R.S. § 41-1001 and "appealable agency action" has the same meaning as in A.R.S. § 41-1092.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-117 amended and renumbered as R4-20-116 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-117. Scope of Practice

A. The scope of practice of a dispensing optician means the activities described in A.R.S. § 32-1671(3).

B. The dispensing optician shall fill a refill of a contact lens prescription prior to its expiration date with no more than the sufficient quantity of replacement contact lenses needed through the expiration date.

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1216, effective May 5, 2007 (Supp. 07-1).

R4-20-118. Unprofessional Conduct

In addition to actions specified in A.R.S. § 32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a copy or record of the customer's prescription and failing to prepare and maintain a record of optical devices dispensed for at least three years. The record of optical devices dispensed shall include the brand, style, and size of the frame, if any, and the style, material, source, and all other information necessary to accurately reproduce each lens. The record shall be separate from optometrists' or physicians' records;
3. Failing or refusing to make a copy of a prescription or record described in subsection (2) promptly available to the customer who is the subject of the prescription or record, the customer's designated representative, the customer's prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer;
4. Failing or refusing to take corrective action or investigate a customer complaint concerning the manufacture or fit of eyeglasses, contact lenses, or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint;
5. Failure of any person, corporation, company, partnership, firm, association or society to maintain an active optical establishment license as required by R4-20-110; and
6. Failure to comply with a Board order.

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 3668, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1).

R4-20-119. Substandard Care

A. It is substandard care for a dispensing optician:

1. To dispense improperly manufactured eyeglasses or contact lenses. If a complaint indicates that eyeglasses or contact lenses dispensed by a dispensing optician or other employee of an optical establishment may have been improperly manufactured, the Board shall be guided in its determination of the facts by referring to the standards incorporated by reference in subsection (B) with regard to the individual parameters listed in the standards and considering patient wear, care, and usage;
2. When interpreting written prescriptions:

a. To fail to follow standards incorporated by reference in subsection (B) in determining lens powers due to differences in vertex distances, base curvatures, special lens requirements, and facial fitting problems; or
b. To fail to comply with special instructions of the vision practitioner or optometrist shown on the prescription without the full knowledge and consent of the customer, the physician, or optometrist; or
c. To fill prescriptions beyond the expiration date indicated on the prescription;

3. To fail to follow manufacturer's guidelines regarding usual and customary lens thickness of eyewear;
4. To intentionally or negligently injure a customer during the course of optical dispensing; or
5. To fail to give the customer appropriate instructions on the care, handling, and wearing of an optical device.

B. The following standards published by the American National Standards Institute, Inc., (ANSI), 1819 L Street, NW, Suite 600, Washington, DC 20036, are incorporated by reference, and no further editions or amendments and are on file with the Board:

1. ANSI Z80.1 1999, "Prescription Ophthalmic Lenses-Recommendations."
2. ANSI Z80-20-1998, "Contact Lenses-Standard Terminology, Tolerances, Measurements And Physiochemical Properties."
3. ANSI Z80.5-2004, "Requirements for Ophthalmic Frames."
4. ANSI Z87.1-2003, "Occupational and Educational Personal Eye and Face Protection Devices."
5. ANSI Z80.9-1998 "Optical Devices for Low Vision."

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1).

R4-20-120. Continuing Education; Hours Required; Reporting

A. Within every three-year period from the date of obtaining a license, a person licensed as a dispensing optician shall complete no fewer than 12 hours of continuing education that is approved by the Board for credit.

B. Each licensee shall submit documentation to the Board verifying that the licensee has completed 12 hours or more of continuing education, within each three-year period. The licensee shall provide documentation that identifies the courses and the number of credit hours completed and include the following:

1. If the course is from a school approved by the Commission on Opticianry Accreditation or college-accredited course, proof of course completion and the number of credits earned.
2. If the course is part of an event, a certificate of completion issued by the sponsor which identifies each part completed.
3. If the course is a home-study course, a certificate of completion issued by the sponsor and the number of credits earned.
4. For any other course, a certificate of completion issued by the sponsor or presenter and the number of credits earned.
5. If the licensee cannot obtain the above documentation, any other documents, affidavits, or testimony which provides assurance that the licensee has completed the requirements.

C. Of the 12 hours of continuing education, each licensee shall obtain at least:

1. Four hours in eyeglass fitting and dispensing;
2. Three hours in contact lens fitting and dispensing;
3. One hour in state or national opticianry standards.

D. Hours will be measured as follows: one credit hour will be assigned for each 50 minutes of a single session.

E. The Board shall discipline any licensee who submits false information for continuing education documentation.

F. A licensee shall not apply any hours accrued during one reporting period to any subsequent reporting period.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-121. Continuing Education; Approval of Courses

ABO and NCLE courses are approved by the Board for continuing education credit. Other individuals or organizations seeking approval of a continuing education course for credit shall apply to the Board 45 days before the date the course is offered. The application shall contain the following information on the course:

1. Title and description of course content;
2. Time, date, and place;
3. Number of credit hours;
4. Name of the sponsor and presenter; and
5. Brief curriculum vitae of the presenter.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-122. Agency Record; Directory of Substantive Policy Statements

The official rulemaking record for each rulemaking and a directory of substantive policy statements is located in the office of the Board and may be reviewed Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3).

R4-20-123. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection Based Upon Economic, Small Business, or Consumer Impact

A person shall file a petition to adopt, amend, or repeal a rule or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033 or to object to a rule according to A.R.S. § 41-1056.01 as prescribed in this Section. Each petition shall contain:

1. The name and current address of the petitioner;
2. For the adoption of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the applicable A.A.C. citation and Section heading. The request shall include the specific language of the current rule, any language to be deleted shall be stricken through but legible, and any new language shall be underlined;
4. For the repeal of a current rule, the applicable A.A.C citation and Section heading;
5. The reasons the rule should be adopted, amended, or repealed, and if for an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information, including:
   a. Any statistical data or other justification, with clear reference to an attached exhibit;
   b. An identification of what persons or segment of the public would be affected and how they would be affected; and
   c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or as written comments offered by the public;
6. For a review of an existing Board practice or substantive policy statement alleged to constitute a rule, the reasons the existing Board practice or substantive policy statement constitutes a rule and the proposed action requested of the Board;
7. For an objection to a rule based upon the economic, small business or consumer impact, evidence that:
   a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule; or
   b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and the actual impact imposes a significant burden on persons subject to the rule; and
8. The signature of the person submitting the petition.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3).

R4-20-124. Public Comments

A. On or before the close of record, a person may comment upon a rule proposed by the Board by submitting written comments to the Board.

B. The Board considers a written comment submitted on the date it is received by the Board, except if a comment is mailed the date of receipt is the postmark date.

C. The Board shall consider all written comments submitted during the public comment period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3).

R4-20-125. Oral Proceedings

A. A person requesting an oral proceeding as prescribed in A.R.S. § 41-1023, shall:
   1. File a request with the Board;
   2. Include the name and current address of the person making the request; and
   3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the proposed rule was published.

B. The Board shall record an oral proceeding either electronically or stenographically, and make any cassette tapes, transcripts, and written comments submitted during the proceeding part of the official record;

C. The presiding officer shall use the following guidelines to conduct an oral proceeding:
   1. Registration of attendees. Registration of attendees is voluntary.
   2. Registration of persons intending to speak. Registration information shall include the person's name, representative capacity, if applicable, a notation of the person's position with regard to the proposed rule and the approximate length of time the person wishes to speak.
   3. Opening of the record. The presiding officer shall open the proceeding by identifying the rules to be considered, the location, date, time, and purpose of the proceeding, and present the agenda;
   4. A statement by Board representative. A Board representative shall explain the background and general content of the proposed rules;
   5. A public oral comment period. The presiding officer may limit comments to a reasonable time, as determined by the presiding officer and to prevent undue repetition; and
   6. Closing remarks. The presiding officer shall announce the location where written public comments are to be sent.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3).

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R4-20-126. Written Criticism

A. Any person may file a written criticism of an existing rule with the Board.

B. The criticism shall clearly identify the rule and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise improper.

C. The Board shall acknowledge receipt of a criticism within 15 days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3).

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Timeframe	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take a Dispensing Optician Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	90	30	60
License by Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	60	30	30
License by Comity (R4-20-107)	A.R.S. § 32-1683	90	30	60
Optical Establishment License (R4-20-110)	A.R.S. § 32-1684.01	60	30	30
Optician's License Renewal (R4-20-109)	A.R.S. § 32-1682	60	30	30
Optical Establishment License Renewal (R4-20-115)	A.R.S. § 32-1684.01	60	30	30

Historical Note

Table adopted by final rulemaking at 5 A.A.R. 418, effective January 15, 1999 (Supp. 99-1). Table amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1).

32-1673. Powers and duties of the board

A. The board shall adopt rules to administer and enforce this chapter. Rules adopted pursuant to this section shall include rules to specify the lawful scope of the practice of dispensing opticians and necessary evidence that may support a charge of substandard care rendered by a dispensing optician or an optical establishment.

B. The board may:

1. Hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter.

2. Hire employees subject to title 41, chapter 4, article 4 and contract with other state agencies as necessary to carry out this chapter.

3. In connection with board hearings and investigations, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other necessary evidence.

32-1681. Licensure; issuance

A. A person shall not practice as a dispensing optician in this state without a valid license issued pursuant to this chapter.

B. The board shall issue a license to any person who complies with the provisions of this chapter and board rules. All licenses expire at the end of each calendar year but do not expire while an application for renewal is pending before the board.

32-1682. Applications for a dispensing optician license; original and renewal; examination

A. An applicant for licensure shall submit a verified application to the board on a form prescribed by the board. The application shall contain information the board determines is necessary to assist the board in determining the applicant's ability to meet the requirements of this chapter and board rules.

B. A person who wishes to renew a license shall submit a verified renewal application to the board each year on a form prescribed by the board. The renewal application shall contain information the board determines is necessary to assist the board in determining that the applicant is not in default of or in violation of this chapter or board rules and that the licensee continues to meet the requirements of this chapter.

C. The board may require from all applicants any additional information that in its judgment is necessary to assist the board in determining whether the applicant is entitled to initial or continued licensure.

D. To assist it in determining if an applicant has acquired the minimum basic skills required for optical dispensing, the board shall require a written and practical examination of all applicants for an initial license. This requirement does not apply to applicants who qualify pursuant to section 32-1683, paragraph 5, subdivision (a). The board may prescribe other reasonable rules relating to the examination of applicants as it determines necessary for the performance of its duties. The board may accept the results of a written or practical examination prepared by a nationally recognized body as determined by the board in lieu of those portions of an examination prepared by the board if they are at least substantially equivalent to those prepared by the board. The board may keep all procedures relating to the administration of the examination and the answer keys confidential.

32-1683. Qualifications of applicants

An applicant for a license issued under this chapter shall:

1. Be of good moral character.

2. Not have been convicted of a crime involving moral turpitude.

3. Not be a former licensee under this chapter whose license was suspended or revoked and not subsequently reinstated.

4. Be a high school graduate or the equivalent as prescribed by rules of the board.

5. Establish that the applicant has the required technical skill and training necessary for licensing by any one of the following means:

(a) Submit evidence of having a valid and subsisting license in good standing from another state that licenses dispensing opticians or ophthalmic dispensers and whose requirements are substantially equivalent to the requirements of this chapter.

(b) Submit evidence of having served an apprenticeship in optical dispensing for three of the six years immediately preceding the date of application under the direct supervision of a dispensing optician, optometrist or an allopathic or osteopathic physician who holds an active license in good standing issued by any state. The apprenticeship must include all principal phases of optical dispensing in order to result in the applicant acquiring the minimum basic skills required for optical dispensing.

The board may accept a maximum of one thousand hours of alternative optical laboratory experience toward satisfying the apprenticeship requirements if that experience meets the standards established by the board.

(c) Submit evidence of graduation from a school of optical dispensing that presently meets the standards required for approval by a nationally recognized body on opticianry accreditation as determined by the board. The applicant must also have served an apprenticeship in optical dispensing as prescribed in subdivision (b) for one of the six years immediately preceding the date of application.

(d) Submit evidence of having worked as a dispensing optician or having served as an apprentice to a dispensing optician, a physician or an optometrist in a nonlicensing state for three of the six years immediately preceding the date of application. This work or apprenticeship must include all principal phases of optical dispensing in order to result in the applicant acquiring the minimum basic skills required for optical dispensing.

32-1684. License issuance, renewal and reinstatement

A. Within a reasonable time after the receipt of an original application or renewal application, together with the fee required by section 32-1685, the board shall investigate the qualifications of the applicant. The board shall approve the application if the applicant meets the qualifications of this chapter and board rules and shall allow the applicant for initial licensure to sit for the practical examination. The board shall issue a license if the applicant successfully completes this examination. If the board disapproves an original or renewal application it shall notify the applicant pursuant to section 32-1694, subsection A.

B. Except as provided in section 32-4301, on or before December 31 of each year a licensee shall submit a renewal application on a form prescribed by the board. The licensee shall submit the renewal fee prescribed by section 32-1685 with the application.

C. A licensee who submits a renewal application and renewal fee after December 31 but before the following January 31 shall pay a late fee prescribed by section 32-1685 in addition to the renewal fee. The board may allow a licensee additional time to submit a renewal application if the licensee demonstrates to the board's satisfaction good cause to do so.

D. Except as provided in section 32-4301, a license expires if it is not renewed before January 31 following the December 31 expiration date. A person who does not submit a renewal application, a renewal fee and a late fee before that date may submit an

application for reinstatement on a form prescribed by the board within one year after the license expiration date. The applicant for reinstatement shall submit the renewal fee and a late fee prescribed by section 32-1685 with the application. The applicant shall take the state board practical examination. The applicant shall also take the national examinations if the applicant did not successfully complete those examinations before the applicant obtained the original license.

E. A person who does not submit a reinstatement application and applicable fees within one year after the license expiration date shall apply for licensure as an original applicant.

32-1684.01. Optical establishment license; qualifications

A. Any person, corporation, company, partnership, firm, association or society that wishes to operate an optical establishment shall submit a verified application to the board on a form prescribed by the board. The application shall include the application fee and the following information:

1. The location of the proposed optical establishment.

2. The proposed business hours of the optical establishment.

3. The names and license numbers of the licensed dispensing opticians who work at the optical establishment.

B. An applicant for a license under this section shall provide evidence to the board's satisfaction that at least one licensed dispensing optician works at the optical establishment on a full-time basis.

C. Within thirty days after the receipt of an original application or renewal application and the application fee, the board shall investigate the qualifications of the applicant. If the applicant meets the qualifications of this chapter and board rules, the board shall approve the application and issue a license. If the application is disapproved, the board shall notify the applicant as provided in section 32-1694, subsection A.

D. To renew a license a licensee shall submit a renewal application to the board on or before June 30 of each year on a form prescribed by the board. The application shall include the applicable renewal fee and information the board deems necessary for it to determine that the licensee continues to meet the requirements of this chapter and board rules.

E. A licensee that submits a renewal application and applicable fee after June 30 but before July 31 shall pay a late fee pursuant to section 32-1685 in addition to the renewal fee.

F. A license expires if a licensee does not submit a renewal application and renewal fee on or before July 31 pursuant to subsection E of this section. After that date the applicant shall apply for licensure as an original applicant.

32-1685. Fees

A. The board shall establish nonrefundable fees that do not exceed the following:

1. Filing an application for a dispensing optician license, two hundred dollars.

2. Issuing an original dispensing optician license, two hundred dollars.

3. Renewing a dispensing optician license, two hundred dollars.

4. Late renewal of a dispensing optician license, two hundred dollars.

5. Name change and issuance of a duplicate dispensing optician license, one hundred dollars.

6. Reinstatement of a dispensing optician license, two hundred dollars.

7. Filing an application for an optical establishment license, two hundred dollars.

8. Issuing an original optical establishment license, two hundred dollars.

9. Renewing an optical establishment license, two hundred dollars.

10. Late renewal of an optical establishment license, two hundred dollars.

11. Name or location change and issuance of a duplicate optical establishment license, one hundred dollars.

B. The board may charge additional fees for services that the board deems are necessary to carry out this chapter and board rules. These fees shall not exceed the costs of rendering the services.

32-1691.01. Investigation and adjudication of complaints

A. The board on its motion may investigate any evidence that appears to show the existence of any of the grounds for disciplinary action pursuant to section 32-1696.

B. The board shall investigate the complaint of any person that appears to show the existence of any of the grounds for disciplinary action pursuant to section 32-1696. The board shall not disclose the name of the person who submitted the verified complaint unless that person's testimony is essential to the disciplinary proceedings conducted pursuant to this section.

C. After a motion approved by the board or on receipt of a verified complaint, as provided in subsections A and B of this section, the chairman of the board or the chairman's designee shall either initiate an investigation or refer the complaint or motion to investigate to an investigative committee appointed by the board. The committee shall consist of both licensed dispensing opticians and lay persons who need not be members of the board.

D. If an investigation is initiated the chairman or the chairman's designee shall appoint a member of the board to act as the investigative officer. Within ninety days after appointment, the officer shall conclude the investigation and make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action the board should take.

E. If the matter is referred to an investigative committee, the committee shall investigate the charges and within ninety days after referral shall make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action it should take.

F. The board shall make copies of the investigative officer's or investigative committee's report available to the complainant and to the licensed party.

G. Within sixty days after receipt of the written report of the investigative officer or the investigative committee, the board shall issue preliminary findings based on the written report. If the board finds that the evidence would, if proved true, warrant suspension or revocation of a license issued under this chapter, formal proceedings for the revocation or suspension of the license shall be immediately initiated as provided in title 41, chapter 6, article 10. If the board finds that the evidence does not warrant suspension or revocation of a license, the board shall either dismiss the complaint or impose other lesser disciplinary action pursuant to section 32-1693.

H. The board shall provide a copy of the preliminary order to the complainant and to the licensed party. Within fifteen days after receiving the copy either party may file a motion for a rehearing or review pursuant to title 41, chapter 6, article 10.

I. Any person who in good faith makes a report as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

J. The board may proceed against all licenses held by a person or optical establishment in common, even if held for different physical locations, if in the opinion of the board the seriousness of the complaint or other evidence received by the board so warrants.

32-1696. Unlawful acts; grounds for disciplinary action; classification

A. It is unlawful to:

1. Obtain or attempt to obtain a license by fraud or misrepresentation or by knowingly taking advantage of a mistake of another person or agency.

2. Hire, procure or induce a person to act as a licensed dispensing optician if the person is not licensed to practice as a dispensing optician.

3. Give, pay or receive, or offer to give, pay or receive, directly or indirectly, any gift, premium, discount, rebate or remuneration to or from any physician or optometrist in return for the referral of patients or customers.

4. Engage in false or misleading representations by knowingly and with the intent to sell to the public real or personal property or services, or to induce the public to acquire an interest in real or personal property or services, make and publish an advertisement, either printed or by public proclamation, or otherwise, containing any false, fraudulent, deceptive or misleading representations in respect to such property or services or the manner of sale or distribution.

5. Provide any examination or treatment of the eye or advertise eye examinations without the disclaimer "by independent doctor of optometry", "by independent doctor of ophthalmology" or "by independent physician licensed pursuant to title 32, chapter 13 or 17, Arizona Revised Statutes".

6. Use any means to measure the refractive value of the human eye, except nonrefractive, nondiagnostic devices, such as a keratometer, ophthalmometer or other instrumentation that is required to fit a contact lens to an intended wearer.

7. Make use of any advertising statement of a character tending to indicate to the public superiority of any particular system or type of eyesight examination or treatment over that provided by other licensed ocular practitioners.

8. Fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct that would tend to do harm to the visual health of the public.

B. A person who violates this chapter or a board rule is subject to disciplinary action as prescribed in this article.

C. A person or licensee who violates subsection A, paragraph 1, 4, 5 or 8 is guilty of a class 1 misdemeanor. A person or licensee who violates subsection A, paragraph 2, 3, 6 or 7 is guilty of a class 2 misdemeanor.

32-1687. Continuing education

A. All dispensing opticians licensed under this chapter shall satisfy a continuing education requirement in accordance with board rules.

B. The board shall prescribe by rule the form and content of continuing education for dispensing opticians licensed under this chapter that is designed to educate the licensee in current developments, skills and procedures. Opticians may satisfy this continuing education requirement by home study courses or attending seminars and are not required to join a professional association of dispensing opticians in this state in order to fulfill the requirement. The rules shall establish the number of hours of continuing education required within a three-year period in an amount not to exceed twenty-one hours.

41-1023. Public participation; written statements; oral proceedings

A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.

B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.

C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.

D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.

E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.

F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1033. Petition for a rule or review of a practice or policy

A. Any person, in a manner and form prescribed by the agency, may petition an agency requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rule making proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A of this section. The appeal shall be limited to whether an existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

C. If the council receives information indicating that an existing agency practice or substantive policy statement may constitute a rule and at least four council members request the chairperson that the matter be heard in a public meeting:

1. Within ninety days of receipt of the fourth council member request, the council shall determine if the agency practice or substantive policy statement constitutes a rule.

2. Within ten days of receipt of the fourth council member request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Within thirty days of receiving notice from the council, the agency shall submit a statement that addresses whether the existing agency practice or substantive policy statement constitutes a rule.

D. For the purposes of subsection C of this section, the council meeting shall not be held until the expiration of the agency response period prescribed in subsection C, paragraph 3 of this subsection.

E. An agency practice or substantive policy statement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or statement constitutes a rule, the practice or statement shall be considered void.

F. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.