

BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY (R-17-0301)
Title 4, Chapter 22, Article 1, General Provisions; Article 2, Licensing

Amend: R4-22-104; Table 1; R4-22-207



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

MEETING DATE: March 7, 2017

AGENDA ITEM: D-1

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

FROM: Daniel P. Schwiebert, Legal Intern

DATE: February 21, 2017

**SUBJECT: BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND
SURGERY (R-17-0301)**

Title 4, Chapter 22, Article 1, General Provisions; Article 2, Licensing

Amend: R4-22-104; Table 1; R4-22-207

Introduction

This Notice of Final Rulemaking from the Arizona Board of Osteopathic Examiners in Medicine and Surgery (the "Board") amends two rules and one table in A.A.C. Title 4, Chapter 22, related to licensing timeframes and requirements. R4-22-104 and its accompanying Table 1 provide processing period time frames for the application and renewal of a licensee. R4-22-207 provides continuing education standards required of licensees for license renewal. This rulemaking amends the rules and table as described below.

Osteopathic medicine is a system of medical treatment that emphasizes the inter-relationship of the body's muscles, bones, and joints with other body systems. The legislature has delegated the Board a power and duty to "protect the public from unlawful, incompetent, unqualified, impaired, and unprofessional practitioners of osteopathic medicine." The Board may adopt rules necessary or proper for the administration of that duty and develop standards to govern the profession. A.R.S. § 32-1803.

Proposed Action

The Board indicates that this rulemaking is necessary due to 2015 statutory changes and a June 2016 report by the Arizona Auditor General.¹ The following is a non-exhaustive summary of the Board's actions:

¹ Auditor General, *Performance Audit and Sunset Review: Arizona Board of Osteopathic Examiners in Medicine and Surgery*, Report No. 16-14, pages 18 & 21, (Jun. 2016), available at https://www.azauditor.gov/sites/default/files/16-104_Report.pdf.

- R4-22-104: Removes all hyphens (“-”) from the term “time-frame.”
- R4-22-104(E): Adds that the Board shall process applications to renew retired statuses within seven days.
- Table 1: Adds the time periods for processing applications to retire a license.
- R4-22-207(A) & (B): Amends the stated hour requirements to match the change in A.R.S. § 32-1825(B).
- R4-22-207(B) & (C)(1): Makes “residency, internship, and fellowship” less wordy by substituting them for “postgraduate training.”

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from the moratorium on August 3, 2016.

Substantive or Procedural Concerns

Regarding R4-22-207(A), Staff is concerned that the lack of a minimum annual requirement will allow licensees to practice potentially outdated osteopathic medicine for periods of up to a year or longer.

It is unclear whether bringing R4-22-207(A) consistent with A.R.S. § 32-1825(B) is effective with the overall objective without also accompanying the change with an express minimum annual continuing education requirement.

It is unclear from the public record whether the Board has considered this concern. Staff would like to see the Board’s analysis in determining whether adding such a minimum is necessary or proper to protect to the public from any unintended consequences of A.R.S. § 32-1825(B).

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

Yes. The rules are legal, consistent with legislative intent, and are within the agency’s statutory authority. The Board cites to A.R.S. § 32-1803(C)(1) as general authority for the rules, which states the Board “may make and adopt rules necessary or proper for the administration of this chapter.”

R4-22-207(B) & (C)(3) are also legal and consistent with legislative intent because the term “postgraduate training program” is defined by A.R.S. § 32-1800(5) and includes “residencies, internships, and fellowships” in its definition.

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, with the exception of R4-22-207(B), which uses an invented term, “renewal period.” Staff believes the term lacks

antecedent basis and is ambiguous. Staff believes rule would be clearer if it used consistent language with R4-22-207(A), which is unequivocal in its meaning.

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

Yes. The Board indicates that it received no public comments regarding the rulemaking, and that no one attended the oral proceeding on October 27, 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 minor word changes were made between the proposed and final rules and that none of the changes were substantive.

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 subject matter of these 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.

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: March 7, 2017

AGENDA ITEM: D-1

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

FROM: GRRC Economic Team

DATE: February 21, 2017

**SUBJECT: BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND
SURGERY (R-17-0301)**

Title 4, Chapter 22, Article 1, General Provisions; Article 2, Licensing

Amend: R4-22-104; Table 1; R4-22-207

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 its rules for two primary reasons. First, Laws 2015, Chapter 135 amended the continuing education (CE) requirement to be 40 hours every two years rather than 20 hours during each year. Second, it was requested by the Arizona Auditor General in June of 2016, that the Board add a time frame for acting on applications from licensees seeking to place their license on retired status.

Overall, the Board reports that it believes that the rulemaking will have a minimal impact. The statute requires the change in timeframe for licensees to complete continuing education. Further, the Board states that adding a time frame for Board action on an application to retire a license and to renew a retired license will provide certainty to the applicant. The Board states that the rulemaking simply aligns the content in the rules with the legal statute.

1. **Costs and Benefits for:**

a. The implementing agency:

The Board is the only state agency directly affected by the rulemaking. The Board states that they incurred the cost of completing this rulemaking and will ensure the costs associated

with implementing this rule. The Board clarifies that the costs were minimal. The Board states that they will require no new FTE employees to implement or enforce the rules.

b. Political subdivisions:

The Board states that the rulemaking does not affect any political subdivisions.

c. Businesses:

The Board reports that there will be minimal costs and benefits to licensed osteopathic physicians affected by the rulemaking. The rule changes will make Board rules consistent with statute allowing 40 hours of CE during a biennial license renewal period. Due to statute, the Board has been allowing CE to be completed in the biannual timeframe; the written rules do not reflect this however. The Board believes the rule changes will benefit licensees by ensuring the rules are consistent with state statute. There are currently 3,107 licenses osteopathic physicians, 17 licensees on retired status, and seven licensees who requested retired status.

d. Small businesses:

The Board specifies licensed osteopathic physicians as small businesses. Licensed osteopathic physicians will be positively impacted by the clarification of rules to match statute and extension of time frame for obtaining continuing education.

e. Consumers directly affected by the rulemaking:

The Board states that private persons and consumers are not directly affected by the rulemaking.

2. Do the probable benefits outweigh the probable costs?

The Board states that the rulemaking only has positive economic benefits for the licensees because it aligns the rule with the longer statutory time frame for obtaining continuing education. The Board also states that they incurred the cost of completing the rulemaking and will incur the costs of implementation which they anticipate to be minimal.

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

The Board states that because the economic impact of the rulemaking is so minimal, it is not possible to reduce the impact on small businesses.

4. The probable effect on state revenues:

The Board states that there will be no impact on state revenue.

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

The Board states that there is nothing costly or intrusive about the rulemaking because it aligns the Board's rules with statute. No alternatives were considered.

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 competitiveness 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 Board states that they did not refer to any study in its evaluation of or justification for the 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.



**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

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Christopher Spiekerman, D.O.

Governor
Douglas Ducey

January 23, 2017



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 22. Board of Osteopathic Examiners in Medicine and Surgery**

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 December 30, 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 does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is 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,

Jenna Jones
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R4-22-104 | Amend |
| Table 1 | Amend |
| R4-22-207 | 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. § 32-1803(C)(1)
Implementing statute: A.R.S. §§ 32-1825, 32-1832, 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. 3251, November 18, 2016
Notice of Proposed Rulemaking: 22 A.A.R. 3229, November 18, 2016
- 5. The agency's contact person who can answer questions about the rulemaking:**
- Name: Jenna Jones, Executive Director
Address: Board of Examiners in Osteopathic Medicine and Surgery
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258

Telephone: (480) 657-7703

Fax: (480) 657-7715

E-mail: Jenna.Jones@azdo.gov

Web site: www.azdo.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 Board is amending its rules in response to two factors. The first is Laws 2015, Chapter 135, which amended A.R.S. § 32-1825(B) to require 40 hours of continuing education during each biennial renewal period rather than 20 hours during each year. The Board is amending R4-22-207 to state the continuing education hours required during a biennial renewal period rather than during each year. This is consistent with statute and reduces the regulatory burden on licensees by providing flexibility in obtaining continuing education.

The second is a report by the Arizona Auditor General dated June 2016 which indicated the Board should add a time frame for acting on an application to retired a license. The Board makes both of these changes in this rulemaking.

An exemption from EO2016-03 was provided by Christina Corieri, Policy Advisor for Health and Human Services in the Governor's Office, by e-mail on August 3, 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 the rule.

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

Not applicable

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

The Board determined the rulemaking will have minimal impact. It is statute rather than this rulemaking that enables a licensee to obtain required continuing education during a biennial renewal period rather than annually. Adding a time frame for Board action on an application to retired a license and to renew a retired license will provide certainty to the applicant.

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

Minor word changes were made between the proposed and final rulemakings. None of the changes was substantive.

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 public comments regarding the rulemaking. No one attended the oral proceeding on December 27, 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 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:

Federal law applies to the provision of health care but no federal law addresses the subject matter of this rulemaking. No rule in the rulemaking is more stringent than federal law.

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

No 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 the 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 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-22-104. Licensing ~~Time frames~~ Time Frames

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

ARTICLE 2. LICENSING

Section

R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

ARTICLE 1. GENERAL PROVISIONS

R4-22-104. Licensing ~~Time-frames~~ Time Frames

- A. The overall ~~time-frame~~ time frame described in A.R.S. § 41-1072(2) for each type of license issued by the Board is listed in Table 1. An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall ~~time-frames~~ time frames by no more than 25 percent of the overall time-frame listed in Table 1.
- B. The administrative completeness review ~~time-frame~~ time frame described in A.R.S. § 41-1072(1) for each type of license issued by the Board is listed in Table 1. The administrative completeness review ~~time-frame~~ time frame for a particular license begins on the date the Board receives an application package for that license.
1. If the application package is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall ~~time-frames~~ time frames are suspended from the postmark date on the notice until the date the Board receives the missing document or incomplete information.
 2. If the application package is complete, the Board shall send to the applicant a written notice of administrative completeness.
 3. If the Board grants or denies a license during the administrative completeness review ~~time-frame~~ time frame, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review ~~time-frame~~ time frame described in A.R.S. § 41-1072(3) for each type of license issued by the Board is listed in Table 1. The substantive review ~~time-frame~~ time frame begins on the postmark date of the Board's notice of administrative completeness.
1. During the substantive review ~~time-frame~~ time frame, the Board may make one comprehensive written request for additional information or documentation. The substantive review and overall ~~time-frames~~ time frames are suspended from the postmark date on the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation. The Board and applicant may agree in writing to allow the Board to submit supplemental requests for additional information.
 2. The Board shall send a written notice of approval to an applicant who meets the requirements of A.R.S. Title 32, Chapter 17 and this Chapter.
 3. The Board shall send a written notice of denial to an applicant who fails to meet the requirements of A.R.S. Title 32, Chapter 17 or this Chapter.

- D.** The Board shall administratively close an applicant’s file if the applicant fails to submit the information or documentation required under subsection (B)(1) or (C)(1) within 360 days from the date on which the application package was originally submitted. If an individual whose file is administratively closed wishes to be licensed, the individual shall file another application package and pay the application fee.
- E.** The Board shall grant or deny the following licenses within seven days after receipt of an application:
1. Ninety-day extension of locum tenens registration;
 2. Waiver of continuing education requirements for a particular period;
 3. Extension of time to complete continuing education requirements;
 4. Five-day educational training permit; ~~and~~
 5. Extension of one-year renewable training permit- and
 6. Renewal of retired status.
- F.** In computing any ~~time frame~~ time frame prescribed in this Section, the day of the act or event that begins the ~~time frame~~ time frame is not included. The computation includes intermediate Saturdays, Sundays, and official state holidays. If the last day of a ~~time frame~~ time frame falls on a Saturday, Sunday, or official state holiday, the next business day is the ~~time frame’s~~ time frame’s last day.

Type of License	Statutory Authority	Overall Time- frame <u>Time Frame</u>	Administrative Time- frame <u>Time Frame</u> Completeness	Substantive Time- frame <u>Time Frame</u> Review
License	A.R.S. § 32-1822	120	30	90
License Renewal	A.R.S. § 32-1825	120	30	90
90-day Locum Tenens Registration	A.R.S. § 32-1823	60	30	30
One-year Renewable Training Permit	A.R.S. § 32-1829(A)	60	30	30
Short-term Training Permit	A.R.S. § 32-1829(C)	60	30	30
One-year Training Permit at Approved School or Hospital	A.R.S. § 32-1830	60	30	30

Two-year Teaching License	A.R.S. § 32-1831	60	30	30
Registration to Dispense Drugs and Devices	A.R.S. § 32-1871	90	30	60
Renewal of Registration to Dispense Drugs and Devices	A.R.S. §§ 32-1826(A)(11) and 32-1871	60	30	30
Approval of Educational Program for Medical Assistants	A.R.S. § 32-1800(17)	60	30	30
<u>Retired Status</u>	<u>A.R.S. § 32-1832</u>	<u>90</u>	<u>30</u>	<u>60</u>

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

ARTICLE 2. LICENSING

R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

- A. Under A.R.S. § 32-1825(B), a licensee is required to obtain ~~20~~ 40 hours of Board-approved CME in ~~each~~ of the two years before license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:
1. At least ~~12~~ 24 hours are obtained ~~annually~~ by completing CME classified by the AOA as Category 1A; and
 2. No more than ~~eight~~ 16 hours are obtained ~~annually~~ by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider.
- B. A licensee may fulfill ~~20~~ 40 hours of the CME requirement for a ~~particular year~~ biennial license renewal period by participating in an approved ~~residency, internship, fellowship, postgraduate training program~~ or preceptorship during that ~~year~~ biennial license renewal period.
- C. The Board shall accept the following documentation as evidence of compliance with the CME requirement:
1. For a CME under subsection (A)(1):
 - a. The AOA printout of the licensee’s CME, or
 - b. A copy of the certificate of attendance from the provider of the CME showing:
 - i. Licensee’s name,

- ii. Title of the CME,
 - iii. Name of the provider of the CME,
 - iv. Category of the CME,
 - v. Number of hours in the CME, and
 - vi. Date of attendance;
2. For a CME under subsection (A)(2):
 - a. A copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); or
 - b. A specialty board's printout showing a licensee's completion of CME.
 3. For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved ~~internship, residency, fellowship,~~ postgraduate training program or preceptorship.
- D.** Waiver of CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. The period for which the waiver is requested,
 2. CME completed during the current license period and the documentation required under subsection (C), and
 3. Reason that a waiver is needed and the applicable documentation:
 - a. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
 - b. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
 - c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
 - d. For circumstances beyond the licensee's control:
 - i. A letter from the licensee stating the nature of the circumstances, and
 - ii. Documentation that provides evidence of the circumstances.
- E.** The Board shall grant a request for waiver of CME requirements that:
1. Is based on a reason listed in subsection (D)(3),
 2. Is supported by the ~~required~~ documentation required under subsection (D)(3),
 3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
 4. Will promote the safe and professional practice of osteopathy in this state.

- F.** Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
 2. CME completed during the current license period and the documentation required under subsection (C),
 3. Proof ~~of registration~~ the licensee is registered for additional CME ~~that is~~ sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
 4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
- G.** The Board shall grant a request for an extension that:
1. Specifies an ending date no later than May 1 following the license renewal date,
 2. Includes the ~~required~~ documentation and attestation required under subsection (F),
 3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and
 4. Will promote the safe and professional practice of osteopathy in this state.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

1. Identification of the rulemaking:

The Board is amending its rules in response to two factors. The first is Laws 2015, Chapter 135, which amended A.R.S. § 32-1825(B) to require 40 hours of continuing education during each biennial renewal period rather than 20 hours during each year. The second is a report by the Arizona Auditor General dated June 2016 which indicated the Board should add a time frame for acting on an application to retired a license. The Board makes both of these changes in this rulemaking.

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

Until the rulemaking is completed, the Board's rules regarding continuing education and time frames will be inconsistent with statute.

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 for the Board to have rules that are inconsistent with statute. Inconsistent rules confuse those required to comply with them.

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 be consistent with statute and a source of possible confusion will be eliminated.

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

The Board determined the rulemaking will have minimal impact. It is statute rather than this rulemaking that enables a licensee to obtain required continuing education during a biennial renewal period rather than annually. Adding a time frame for Board action on an application to retired a license and to renew a retired license will provide certainty to the applicant.

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: Jenna Jones, Executive Director

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.

Address: Board of Examiners in Osteopathic Medicine and Surgery
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258

Telephone: (480) 657-7703

Fax: (480) 657-7715

E-mail: Jenna.Jones@azdo.gov

Web site: www.azdo.gov

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

A licensee required to complete continuing education during a biennial renewal period, a licensee seeking to place the license on retired status, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

5. Cost-benefit analysis:

There are currently 3,107 licensed osteopathic physicians. The Board has been accepting 40 hours of CE obtained during a biennial license renewal period, which is consistent with statute, rather than insisting a licensee obtain 20 hours of CE during each year of the biennial license renewal period. As a result, the rulemaking aligns the Board's rule with statute but does not change the manner in which a licensee may obtain the required CE so the rulemaking will have minimal economic impact. It will benefit licensees who might be confused by the inconsistency between the rule and statute.

There are currently 17 licensees on retired status. During the last fiscal year, seven licensees requested retired status. The Board complies with its time frames and will do so for the time frames added in this rulemaking for requesting and renewing retired status. The rulemaking will benefit the Board by ensuring its rules are consistent with statute.

The Board collected \$857,195 in licensing fees last year. Its work is supported by 6.75 FTE employees.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing the rules. These costs were minimal.

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
 The Board is the only state agency directly affected by the rulemaking. Its minimal costs and benefits are discussed above. The Board will require no new FTE employees to implement or enforce the 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:
 Licensed osteopathic physicians are businesses directly affected by the rulemaking. Their minimal costs and benefits are discussed above.
6. Impact on private and public employment:
 The rulemaking will have no impact on private or public employment.
7. Impact on small businesses²:
 - a. Identification of the small business subject to the rulemaking:
 Licensed osteopathic physicians are small business directly affected by the rulemaking. Their minimal costs and benefits are discussed above.
 - b. Administrative and other costs required for compliance with the rulemaking:
 A licensee is required to obtain CE and provide evidence of completing the required CE. However, those requirements currently exist. They are not added in this rulemaking.
 - c. Description of methods that may be used to reduce the impact on small businesses:
 Because the economic impact of rulemaking is so minimal, it is not possible to reduce the impact on small businesses. Indeed, the rulemaking has only positive economic benefits for licensees because it aligns the rule with the longer statutory time frame for obtaining CE.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
 Private persons and consumers are not 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).

There is nothing intrusive or costly about this rulemaking. It simply aligns the Board's rules with statute. No alternative methods were considered.

TITLE 4. PROFESSIONS AND OCCUPATIONS**CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

Authority: A.R.S. § 32-1801 et seq.

ARTICLE 1. GENERAL PROVISIONS

New Article 1 consisting of Sections R4-22-101, R4-22-103, and R4-22-104 adopted and former rules R4-22-05 and R4-22-06 amended and renumbered as Sections R4-22-105 and R4-22-106 effective June 29, 1987.

Former Article 1 consisting of Sections R4-22-01, R4-22-02, R4-22-04 thru R4-22-07, R4-22-09, R4-22-10, and R4-22-12 repealed and Sections R4-22-08 and R4-22-11 amended and renumbered as R4-22-05 and R4-22-06 effective June 29, 1987.

Section	
R4-22-101.	Definitions
R4-22-102.	Fees and Charges
R4-22-103.	Submitting Documents to the Board
R4-22-104.	Licensing Time-frames
Table 1.	Time-frames (in days)
R4-22-105.	Equivalents to an Approved Internship or Residency
R4-22-106.	Specialist Designation
R4-22-107.	Petition for Rulemaking or Review
R4-22-108.	Rehearing or Review of Decision
R4-22-109.	Renumbered
R4-22-110.	Renumbered
R4-22-111.	Renumbered
R4-22-112.	Renumbered
R4-22-113.	Repealed
R4-22-114.	Repealed
R4-22-115.	Renumbered

ARTICLE 2. LICENSING

R4-22-201.	Application Required
R4-22-202.	Determining Qualification for Licensure
R4-22-203.	Examination; Practice Equivalency to an Examination
R4-22-204.	License Issuance; Effective Date of License
R4-22-205.	License Renewal
R4-22-206.	Procedure for Application to Reenter Practice
R4-22-207.	Continuing Medical Education; Waiver; Extension of Time to Complete
R4-22-208.	Reserved
R4-22-209.	Reserved
R4-22-210.	Reserved
R4-22-211.	Reserved
R4-22-212.	Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians

ARTICLE 3. DISPENSING DRUGS

Section	
R4-22-301.	Registration to Dispense Required
R4-22-302.	Packaging and Inventory
R4-22-303.	Prescribing and Dispensing Requirements
R4-22-304.	Recordkeeping and Reporting Shortages
R4-22-305.	Inspections; Denial and Revocation

ARTICLE 4. MEDICAL ASSISTANTS

Section	
R4-22-401.	Approval of Educational Programs for Medical Assistants
R4-22-402.	Medical Assistants – Authorized Procedures
R4-22-403.	Medical Assistant Training Requirement

ARTICLE 5. OFFICE-BASED SURGERY

Section	
R4-22-501.	Definitions
R4-22-502.	Health Care Institution License
R4-22-503.	Administrative Provisions
R4-22-504.	Procedure and Patient Selection
R4-22-505.	Sedation Monitoring Standards
R4-22-506.	Perioperative Period; Patient Discharge
R4-22-507.	Emergency Drugs; Equipment and Space Used for Office-based Surgery
R4-22-508.	Emergency and Transfer Provisions

ARTICLE 1. GENERAL PROVISIONS**R4-22-101. Definitions**

In addition to the definitions in A.R.S. § 32-1800, in this Chapter:

“ABHES” means Accrediting Bureau of Health Education Schools.

“ABMS” means American Board of Medical Specialties.

“ACCME” means the Accreditation Council for Continuing Medical Education.

“ACGME” means the Accreditation Council on Graduate Medical Education.

“AOA” means the American Osteopathic Association.

“AOIA” means the American Osteopathic Information Association.

“Approved internship,” “approved preceptorship,” and “approved residency” mean training accredited by the AOA or ACGME.

“CAAHEP” means Commission on Accreditation of Allied Health Education Programs.

“CME” means continuing medical education.

“COMLEX” means Comprehensive Osteopathic Medical Licensing Examination.

“Continuing medical education” means a course, program, or other training that the Board approves for license renewal.

“Controlled substance” means a drug, substance, or immediate precursor, identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.

“FCVS” means Federal Credentials Verification Service.

“Licensee” means an individual who holds a current license issued under A.R.S. Title 32, Chapter 17.

“MAP” means Monitored Aftercare Program.

“NBME” means the National Board of Medical Examiners.

“NBOME” means the National Board of Osteopathic Medical Examiners.

“Post-graduate training program” means an approved internship or residency.

“USMLE” means United States Medical Licensing Examination.

Historical Note

Former Rule 1. Former Section R4-22-01 repealed, new Section R4-22-101 adopted effective June 29, 1987 (Supp. 87-2). Former Section R4-22-101 renumbered to

R4-22-109, new Section R4-22-101 adopted effective May 3, 1993 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-102. Fees and Charges

- A.** Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board's licensing activities:
1. Application to practice osteopathic medicine, \$400;
 2. Issuance of initial license, \$180 (prorated);
 3. Biennial renewal of license, \$636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
 4. Locum tenens registration, \$300;
 5. Annual registration of an approved internship, residency, or clinical fellowship program or short-term residency program, \$50;
 6. Teaching license, \$318;
 7. Five-day educational teaching permit, \$106; and
 8. Annual registration to dispense drugs and devices, \$240 (initial registration fee is prorated).
- B.** Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:
1. Verification of a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, \$10;
 2. Issuance of a duplicate license, \$10;
 3. List of physicians licensed by the Board, \$25.00 if for non-commercial use or \$100 if for commercial use;
 4. Copying records, documents, letters, minutes, applications, and files, 25¢ per page.;
 5. Copy of an audio tape, \$35.00; and
 6. Digital medium not requiring programming, \$100.
- C.** Except as provided under A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

Historical Note

Adopted effective January 24, 1984 (Supp. 84-1). Section R4-22-02 repealed effective June 29, 1987 (Supp. 87-2). New Section R4-22-102 adopted effective August 7, 1992 (Supp. 92-3). Section R4-22-102 renumbered to R4-22-106; new Section R4-22-102 renumbered from R4-22-108 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-103. Submitting Documents to the Board

An individual who wants the Board to consider a document at a meeting or hearing shall submit the document to the Board at least 15 days before the meeting or hearing or at another time as directed by the Board.

Historical Note

Former Section R4-22-04 repealed, new Section R4-22-103 adopted effective June 29, 1987 (Supp. 87-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-103 renumbered to R4-22-105; new Section R4-22-103 made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-104. Licensing Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of license issued by the Board is listed in Table 1.

An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25 percent of the overall time-frame listed in Table 1.

- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license issued by the Board is listed in Table 1. The administrative completeness review time-frame for a particular license begins on the date the Board receives an application package for that license.
1. If the application package is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time-frames are suspended from the postmark date on the notice until the date the Board receives the missing document or incomplete information.
 2. If the application package is complete, the Board shall send to the applicant a written notice of administrative completeness.
 3. If the Board grants or denies a license during the administrative completeness review time-frame, 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) for each type of license issued by the Board is listed in Table 1. The substantive review time-frame begins on the postmark date of the Board's 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 substantive review and overall time-frames are suspended from the postmark date on the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation. The Board and applicant may agree in writing to allow the Board to submit supplemental requests for additional information.
 2. The Board shall send a written notice of approval to an applicant who meets the requirements of A.R.S. Title 32, Chapter 17 and this Chapter.
 3. The Board shall send a written notice of denial to an applicant who fails to meet the requirements of A.R.S. Title 32, Chapter 17 or this Chapter.
- D.** The Board shall administratively close an applicant's file if the applicant fails to submit the information or documentation required under subsection (B)(1) or (C)(1) within 360 days from the date on which the application package was originally submitted. If an individual whose file is administratively closed wishes to be licensed, the individual shall file another application package and pay the application fee.
- E.** The Board shall grant or deny the following licenses within seven days after receipt of an application:
1. Ninety-day extension of locum tenens registration;
 2. Waiver of continuing education requirements for a particular period;
 3. Extension of time to complete continuing education requirements;
 4. Five-day educational training permit; and
 5. Extension of one-year renewable training permit.
- F.** In computing any time-frame prescribed in this Section, the day of the act or event that begins the time-frame is not included. The computation includes intermediate Saturdays, Sundays, and official state holidays. If the last day of a time-frame falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

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Historical Note

Former Rule 4. Amended effective May 2, 1978 (Supp. 78-3). Former Section R4-22-05 repealed, new Section R4-22-104 adopted effective June 29, 1987 (Supp. 87-2).

Section R4-22-104 renumbered to R4-22-203; new Section R4-22-104 renumbered from R4-22-212 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

Table 1. Time-frames (in days)

Type of License	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
License	A.R.S. § 32-1822	120	30	90
License Renewal	A.R.S. § 32-1825	120	30	90
90-day Locum Tenens Registration	A.R.S. § 32-1823	60	30	30
One-year Renewable Training Permit	A.R.S. § 32-1829(A)	60	30	30
Short-term Training Permit	A.R.S. § 32-1829(C)	60	30	30
One-year Training Permit at Approved School or Hospital	A.R.S. § 32-1830	60	30	30
Two-year Teaching License	A.R.S. § 32-1831	60	30	30
Registration to Dispense Drugs and Devices	A.R.S. § 32-1871	90	30	60
Renewal of Registration to Dispense Drugs and Devices	A.R.S. §§ 32-1826(A)(11) and 32-1871	60	30	30
Approval of Educational Program for Medical Assistants	A.R.S. § 32-1800(17)	60	30	30

Historical Note

New Table 1, under Section R4-22-104, renumbered from R4-22-212 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-105. Equivalents to an Approved Internship or Residency

For purposes of A.R.S. § 32-1822, the equivalent of an approved internship or approved residency is any of the following:

1. One or more years of a fellowship training program approved by the AOA or the ACGME; or
2. A current certification by the AOA in an osteopathic medical specialty.

Historical Note

Former Rule 8. Amended by adding subsection (D) effective January 24, 1984 (Supp. 84-1). Former Section R4-22-08 amended and renumbered as Section R4-22-105 effective June 29, 1987 (Supp. 87-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). New Section R4-22-105 renumbered from R4-22-103 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-106. Specialist Designation

- A.** The Board approves specialty boards recognized by the:
1. American Osteopathic Association Bureau of Osteopathic Specialists and listed in the *Handbook of the Bureau of Osteopathic Specialists (BOS)*, revised March 2013, available from the AOA at 142 E. Ontario Street, Chicago, IL 60611, 800-621-1773, or www.osteopathic.org; and
 2. American Board of Medical Specialties (ABMS) and listed in the *ABMS Guide to Medical Specialties*, 2013, available from the ABMS at 222 N. LaSalle Street, Suite 1500, Chicago, IL 60601, 312-436-2600, or www.abms.org.

- B.** The Board incorporates the materials listed in subsection (A) by reference. The materials include no future editions or amendments. The Board shall make the materials available at the Board office and on its web site.

Historical Note

Adopted effective May 8, 1978 (Supp. 78-3). Former Section R4-22-11 amended and renumbered as Section R4-22-106 effective June 29, 1987 (Supp. 87-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-106 renumbered to R4-22-108; new Section R4-22-106 renumbered from R4-22-102 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-107. Petition for Rulemaking or Review

- A.** A person may petition the Board under A.R.S. § 41-1033 for either a:
1. Rulemaking action relating to a Board rule, including making a new rule or amending or repealing an existing rule; or
 2. Review of an existing Board practice or substantive policy statement alleged to constitute a rule.
- B.** A person shall submit to the Board a written petition including the following information:
1. Name, address, e-mail address, and telephone and fax numbers of the person submitting the petition;
 2. Name of any person represented by the person submitting the petition;
 3. If requesting a rulemaking action:
 - a. Statement of the rulemaking action sought, including the A.A.C. citation of all existing rules, and the

- specific language of a new rule or rule amendment; and
- b. Reasons for the rulemaking action, including an explanation of why the existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
- 4. If requesting a review of an existing practice or a substantive policy statement:
 - a. Subject matter of the existing practice or substantive policy statement, and
 - b. Reasons why the existing practice or substantive policy statement constitutes a rule; and
- 5. Dated signature of the person submitting the petition.
- C. A person may submit supporting information with a petition.
- D. A person may submit a petition and any supporting information by e-mail, hand delivery, or the U.S. Postal Service.
- E. The Board shall send the person submitting a petition a written response within 60 days of the date the Board receives the petition.

Historical Note

Adopted effective August 7, 1992 (Supp. 92-3). Section R4-22-107 repealed; new Section R4-22-107 renumbered from R4-22-115 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-108. Rehearing or Review of Decision

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 - 1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5. Excessive penalty;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 - 7. The Board's decision is a result of passion or prejudice; or
 - 8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- G. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party.

The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.
- I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.
- J. A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Adopted effective August 7, 1992 (Supp. 92-3). Amended by final rulemaking at 18 A.A.R. 2488, effective November 10, 2012 (Supp. 12-3). Section R4-22-108 renumbered to R4-22-102; new Section R4-22-108 renumbered from R4-22-106 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-109. Renumbered

Historical Note

Former Rule 1. Former Section R4-22-01 repealed, new Section R4-22-101 adopted effective June 29, 1987 (Supp. 87-2). Renumbered from R4-22-101 effective May 3, 1993 (Supp. 93-2). Former R4-22-109 renumbered to R4-22-207 by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3).

R4-22-110. Renumbered

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-110 renumbered to R4-22-401 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-111. Renumbered

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-111 renumbered to R4-22-402 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-112. Renumbered

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-112 renumbered to R4-22-403 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-113. Repealed

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2).

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R4-22-114. Repealed**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2).

R4-22-115. Renumbered**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section R4-22-115 renumbered to R4-22-107 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

ARTICLE 2. LICENSING**R4-22-201. Application Required**

An individual or entity that seeks a license or other approval from the Board shall complete and submit an application form prescribed by the Board. The Board has prescribed the following application forms, which are available from the Board office or web site:

1. License,
2. License renewal,
3. Locum tenens registration,
4. Initial registration to dispense,
5. Registration to dispense renewal,
6. Renewable one-year post-graduate training permit,
7. Renewal of post-graduate training permit,
8. Short-term training permit,
9. Two-year teaching license, and
10. Approval of an educational program for medical assistants.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-202. Determining Qualification for Licensure

- A.** To obtain a license, an applicant shall submit:
1. The application form specified in R4-22-201;
 2. The proof required under A.R.S. § 32-1822(A);
 3. A list of all Board-certified specializations, the certifying entity, and a copy of each certification or letter verifying specialization;
 4. A malpractice claim or suit questionnaire for each instance of medical malpractice in which there was an award, settlement, or payment;
 5. A passport-size picture taken within the last 60 days; and
 6. The application fee required under R4-22-102(A).
- B.** In addition to the materials required under subsection (A), an applicant shall have the following information submitted directly to the Board by the specified entity:
1. Professional Education Verification form or an official transcript submitted by the osteopathic college from which the applicant graduated;
 2. Verification of Postgraduate Training form submitted by each postgraduate facility or program at which the applicant trained;
 3. Practice Experience Verification form for at least seven of the last 10 years submitted by each health care facility or employer at which the applicant obtained experience;
 4. Verification of passing the medical licensure examination if the examination was passed within the last seven years submitted by the examining entity; and
 5. Verification of licensure form submitted by every state in which the applicant is or has been licensed as an osteopathic physician.

- C.** If an applicant has established a credentials portfolio with the FCVS or AOIA, the applicant may request that the FCVS forward to the Board some or all of the materials required under subsection (B).
- D.** The Board shall conduct a substantive review of the information submitted under subsections (A) and (B) and determine whether the applicant is qualified for licensure by virtue of:
 1. Possessing the knowledge and skills necessary to practice medicine safely and skillfully;
 2. Demonstrating a history of professional conduct; and
 3. Possessing the physical, mental, and emotional fitness to practice medicine.
- E.** If the substantive review referenced in subsection (D) does not yield sufficient information for the Board to determine whether an applicant is qualified for licensure, the Board shall request that the applicant appear before the Board for an interview.
 1. The Board shall conduct an application interview in the same manner as an informal hearing conducted under A.R.S. § 32-1855 and shall accord the applicant the same rights as a respondent.
 2. In conjunction with an application interview, the Executive Director or Board may require that the applicant, at the applicant's expense:
 - a. Provide additional documentation,
 - b. Submit to a physical or psychological examination,
 - c. Submit to a practice assessment evaluation,
 - d. Pass an approved special purposes competency examination listed in R4-22-203(A)(3), or
 - e. Fulfill any combination of the requirements listed in subsections (E)(2)(a) through (d).
- F.** If the substantive review referenced in subsection (D) reveals that an applicant has been subject to disciplinary action or criminal conviction, the Board shall consider the following factors to determine whether the applicant has been rehabilitated from the conduct underlying the disciplinary action or criminal conviction:
 1. Nature of the disciplinary or criminal action including charges and final disposition;
 2. Whether all terms of court-ordered sentencing or Board-issued order were satisfied;
 3. Whether the disciplinary action or criminal conviction was set aside, dismissed with prejudice, or reduced;
 4. Whether a diversion program was entered and completed;
 5. Whether the circumstances, relationships, or personal attributes that caused or contributed to the underlying conduct changed;
 6. Personal and professional references attesting to rehabilitation; and
 7. Other information the Board determines demonstrates whether the applicant has been rehabilitated.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-203. Examination; Practice Equivalency to an Examination

- A.** Approved examinations. For the purposes of licensing, the Board approves the following examinations:
1. All levels and parts of the COMLEX required by the NBOME with a passing score determined by the NBOME;
 2. All levels and parts of the USMLE required by the NBME with a passing score determined by the NBME; and
 3. A special purposes competency examination given by the

NBOME or NBME to an applicant at the request of the Board, with a passing score established by the NBOME or NBME.

- B.** Practice equivalency to an examination. If an applicant has not passed an approved examination within the seven years before the date of application, the Board shall find that the applicant has practice experience equivalent to an approved examination if the applicant submits documentation of all of the following:
1. On the date of application and continuously until the date the applicant is issued or denied a license, the applicant holds:
 - a. An active license to practice osteopathic medicine issued by another state, or
 - b. An active permit or temporary license to practice in an approved residency or fellowship;
 2. For at least seven of the 10 years immediately before the date of application, the applicant:
 - a. Was in clinical practice providing direct patient care, or
 - b. Was in the second or later year of an approved residency or fellowship; and
 - c. Has completed a certification examination provided by a specialty board under R4-22-106; and
 3. Within two years immediately before the date of application, the applicant completed at least 40 hours of approved CME, defined and documented as specified in R4-22-207.

Historical Note

New Section renumbered from R4-22-104 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-204. License Issuance; Effective Date of License

- A.** Within 90 days after an applicant for licensure receives notice from the Board that the applicant is approved, but no later than 360 days after the date on which the application was originally submitted, the approved applicant shall submit to the Board the license issuance fee required by A.R.S. § 32-1826(A) and the following information in writing:
1. Practice address and telephone number,
 2. Residential address, and
 3. A statement of whether the practice address or residential address should be used by the Board as the address of record.
- B.** The Board shall issue a license to an approved applicant that is effective on the date the information required under subsection (A) is received.
- C.** The Board shall administratively close an approved applicant's file if the approved applicant fails to submit the information required within the time specified under subsection (A). If an applicant whose file is administratively closed wishes to be considered further for licensure, the applicant shall reapply by complying with R4-22-202.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-205. License Renewal

To renew a license, the licensee shall submit to the Board the renewal application required under R4-22-201. Failure to receive notice of the need to renew does not excuse failure to renew timely.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-206. Procedure for Application to Reenter Practice

- A.** The procedures in this Section apply only to an osteopathic physician who:
1. Was licensed and practiced as an osteopathic physician in Arizona or another jurisdiction, and
 2. Currently is not licensed and practicing as an osteopathic physician in Arizona or another jurisdiction.
- B.** All applicants to reenter practice shall:
1. Submit the application required under R4-22-201, including all documents specified in the application; and
 2. Pay the fee specified in R4-22-102(A).
- C.** In addition to complying with subsection (B), an applicant who has been out of practice for less than two years and has no disciplinary history shall submit documentation of completing at least 40 hours of Category 1-A or Category 1 CME in the applicant's intended field of practice within the two years before the date the application to reenter practice is approved.
- D.** In addition to complying with subsection (B), an applicant who has been out of practice for two or more years and has no disciplinary history shall attend a Board meeting and:
1. Discuss with the Board evidence that the applicant remains competent to practice medicine; and
 2. Develop a reentry plan designed to ensure that the applicant is competent to practice medicine. The re-entry plan may include any or all of the following, at the discretion of the Board:
 - a. Taking a competency or specialty examination;
 - b. Taking continuing education;
 - c. Completing a practice assessment program;
 - d. Practicing under supervision or with restrictions; and
 - e. Submitting to a physical or psychological examination.
- E.** In addition to complying with subsection (B), an applicant who has been out of practice and has a history of disciplinary action shall attend a Board meeting and:
1. Establish to the Board's satisfaction that the applicant is rehabilitated from the underlying unprofessional conduct. In determining whether the applicant is rehabilitated, the Board shall consider the factors listed in R4-22-202(F); and
 2. If the Board determines that the applicant is rehabilitated, take the actions listed in subsection (D) to ensure that the applicant is competent to practice medicine.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

- A.** Under A.R.S. § 32-1825(B), a licensee is required to obtain 20 hours of Board-approved CME in each of the two years before license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:
1. At least 12 hours are obtained annually by completing CME classified by the AOA as Category 1A; and
 2. No more than eight hours are obtained annually by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider.
- B.** A licensee may fulfill 20 hours of the CME requirement for a particular year by participating in an approved residency, internship, fellowship, or preceptorship during that year.
- C.** The Board shall accept the following documentation as evidence of compliance with the CME requirement:
1. For a CME under subsection (A)(1):

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- a. The AOA printout of the licensee's CME, or
 - b. A copy of the certificate of attendance from the provider of the CME showing:
 - i. Licensee's name,
 - ii. Title of the CME,
 - iii. Name of the provider of the CME,
 - iv. Category of the CME,
 - v. Number of hours in the CME, and
 - vi. Date of attendance;
 2. For a CME under subsection (A)(2):
 - a. A copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); or
 - b. A specialty board's printout showing a licensee's completion of CME.
 3. For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved internship, residency, fellowship, or preceptorship.
- D.** Waiver of CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. The period for which the waiver is requested,
 2. CME completed during the current license period and the documentation required under subsection (C), and
 3. Reason that a waiver is needed and the applicable documentation:
 - a. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
 - b. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
 - c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
 - d. For circumstances beyond the licensee's control:
 - i. A letter from the licensee stating the nature of the circumstances, and
 - ii. Documentation that provides evidence of the circumstances.
- E.** The Board shall grant a request for waiver of CME requirements that:
1. Is based on a reason listed in subsection (D)(3),
 2. Is supported by the required documentation,
 3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
 4. Will promote the safe and professional practice of osteopathy in this state.
- F.** Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
 2. CME completed during the current license period and the documentation required under subsection (C),
 3. Proof of registration for additional CME that is sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
 4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
- G.** The Board shall grant a request for an extension that:
1. Specifies an ending date no later than May 1,
 2. Includes the required documentation and attestation,
 3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and
 4. Will promote the safe and professional practice of osteopathy in this state.

Historical Note

Section R4-22-207 renumbered from R4-22-109 and amended by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-208. Reserved**R4-22-209. Reserved****R4-22-210. Reserved****R4-22-211. Reserved****R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians**

- A.** To protect the public health and safety, a licensee is required by A.R.S. § 32-1822 to be physically, mentally, and emotionally able to practice medicine.
- B.** If the Board determines that a licensee may be impaired by substance abuse and there is evidence of an imminent danger to the public health and safety, the Board's Executive Director, with the concurrence of investigative staff, the medical consultant, or a Board member, may enter into:
1. A consent agreement with the licensee to restrict the licensee's practice if there is evidence that a restriction of the licensee's practice is needed to mitigate the danger to the public health and safety;
 2. A stipulated agreement with the licensee requiring the licensee to complete a Board-approved evaluation and treatment program for abuse or misuse of chemical substances if there is evidence the program would be successful in enabling the licensee to return to practice safely; and
 3. A stipulated agreement with the licensee to enter a Monitored Aftercare Program (MAP) if there is evidence the licensee intends to comply with a program for rehabilitation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1388, effective June 4, 2006 (Supp. 06-2). Section R4-22-212 renumbered to Section R4-22-104; new Section R4-22-212 made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

Table 1. Renumbered**Historical Note**

Table 1 made by final rulemaking at 12 A.A.R. 1388, effective June 4, 2006 (Supp. 06-2). Table 1 renumbered to R4-22-104, Table 1 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

ARTICLE 3. DISPENSING DRUGS**R4-22-301. Registration to Dispense Required**

- A.** An osteopathic physician shall register with the Board annually if the osteopathic physician:
1. Maintains a supply of controlled substances, as defined in A.R.S. § 32-1901(13), prescription-only drugs, as defined in A.R.S. § 32-1901(76), or prescription-only devices, as defined in A.R.S. § 32-1901(75), excluding manufacturers' samples;

2. Prescribes the items listed in subsection (A)(1) to a patient of the osteopathic physician for use outside the office of the osteopathic physician; and
 3. Obtains payment for the items listed in subsection (A)(1) at a practice location in Arizona.
- B.** To register with the Board to dispense, an osteopathic physician shall:
1. Submit the form referenced in R4-22-201,
 2. Submit a copy of the osteopathic physician's current Drug Enforcement Administration certificate of registration for each location from which the osteopathic physician will dispense a controlled substance, and
 3. Pay the fee authorized by A.R.S. § 32-1826(A)(11).
- C.** An osteopathic physician who is registered with the Board to dispense shall renew the registration by December 31 of each year by complying with subsection (B). If an osteopathic physician submits a timely and complete application to renew a registration to dispense, the osteopathic physician may continue to dispense until the Board approves or denies the renewal application.
- D.** If an osteopathic physician fails to submit a timely and complete application to renew a registration to dispense, the osteopathic physician shall immediately cease dispensing.
1. If the osteopathic physician wishes to resume dispensing, the osteopathic physician shall register with the Board by complying with subsection (B) and shall not dispense until the osteopathic physician receives notice from the Board that the registration is approved.
 2. If the osteopathic physician does not wish to resume dispensing, the osteopathic physician shall, as required by A.R.S. § 32-1871(F), submit to the Board an inventory disposal form, which is available from the Board office or on its web site.
- a. Designation of the persons who have access to the locked cabinet or room, and
 - b. Procedures for recording requests for access to the locked cabinet or room;
3. Make the written procedure required under subsection (C)(2) available on demand by the Board or its authorized representative for inspection or copying;
 4. Store prescription-only drugs so they are not accessible to patients; and
 5. Store controlled substances and prescription-only drugs not requiring refrigeration in an area where the temperature does not exceed 85° F.
- D.** An osteopathic physician shall maintain a dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed. The osteopathic physician shall ensure that the dispensing log includes the following information on a separate inventory sheet for each controlled substance or prescription-only drug:
1. Date the drug is dispensed;
 2. Patient's name;
 3. Name of controlled substance or prescription-only drug, strength, dosage, form, and name of manufacturer;
 4. Number of dosage units dispensed;
 5. Running total of each controlled substance or prescription-only drug dispensed; and
 6. Written signature of the osteopathic physician next to each entry.
- E.** An osteopathic physician may use a computer to maintain the dispensing log required under subsection (D) if the log is quickly accessible through either on-screen viewing or printing a copy.
- F.** This Section does not apply to a prepackaged manufacturer sample of a controlled substance or prescription-only drug unless otherwise provided by federal law.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-302. Packaging and Inventory

- A.** An osteopathic physician shall dispense a controlled substance or prescription-only drug in a prepackaged or light-resistant container with a consumer safety cap that complies with standards specified in the official compendium, as defined at A.R.S. § 32-1901(55), and state and federal law, unless a patient or the patient's representative requests a non-safety cap.
- B.** An osteopathic physician shall ensure that a dispensed controlled substance or prescription-only drug is labeled with the following information:
1. The name, address, and telephone number of the dispensing osteopathic physician;
 2. The date the controlled substance or prescription-only drug is dispensed;
 3. The patient's name;
 4. The name of the controlled substance or prescription-only drug, strength, dosage, form, name of manufacturer, quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance or prescription-only drug; and
 5. A beyond-use date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.
- C.** An osteopathic physician shall:
1. Secure all controlled substances in a locked cabinet or room;
 2. Control access to the locked cabinet or room by a written procedure that includes, at a minimum:

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-303. Prescribing and Dispensing Requirements

- A.** An osteopathic physician who dispenses a controlled substance, prescription-only drug, or prescription-only device shall record the following information on the patient's medical record:
1. Name, strength, dosage, and form of the controlled substance, prescription-only drug, or prescription-only device dispensed;
 2. Quantity or volume dispensed;
 3. Date of dispensing;
 4. Medical reasons for dispensing; and
 5. Number of refills authorized.
- B.** Before dispensing a controlled substance, prescription-only drug, or prescription-only device, an osteopathic physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
1. The container label and contents comply with the prescription; and
 2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.
- C.** An osteopathic physician shall purchase all controlled substance, prescription-only drugs, or prescription-only devices dispensed from a manufacturer or distributor approved by the United States Food and Drug Administration or a pharmacy holding a current permit from the Arizona Board of Pharmacy.

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- D. The individual who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-304. Recordkeeping and Reporting Shortages

- A. An osteopathic physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription order, as defined in A.R.S. § 32-1901(77), for the controlled substance or prescription-only drug dispensed is dated, consecutively numbered in the order in which originally dispensed, and filed separately from patient medical records. The osteopathic physician shall ensure that original prescription orders are maintained in three separate files, as follows:
1. Schedule II controlled substances, which are listed at A.R.S. § 36-2513;
 2. Schedule III, IV, and V controlled substances, which are defined or listed at A.R.S. §§ 36-2514 through 36-2516, and
 3. Prescription-only drugs.
- B. An osteopathic physician shall ensure that purchase orders and invoices for all dispensed controlled substances and prescription-only drugs are maintained for three years from the date on the purchase order or invoice in three separate files as follows:
1. Schedule II controlled substances;
 2. Schedule III, IV, and V controlled substances and nalbuphine; and
 3. All other prescription-only drugs.
- C. An osteopathic physician who discovers a theft or loss of a controlled substance or dangerous drug, as defined in A.R.S. Title 36, Chapter 27, Article 2, from the physician's office shall:
1. Immediately notify the local law enforcement agency,
 2. Provide the local law enforcement agency with a written report, and
 3. Send a copy of the report to the U.S. Drug Enforcement Administration and the Board within seven days of the discovery of the theft or loss.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-305. Inspections; Denial and Revocation

- A. An osteopathic physician shall allow the Board or its representative access to the physician's office and the records required under this Article for inspection of compliance with A.R.S. § 32-1871 and this Article.
- B. Failure to comply with A.R.S. § 32-1871 and this Article is unprofessional conduct and grounds for revocation of the physician's registration to dispense or denial of renewal of registration to dispense.
- C. The Board shall revoke an osteopathic physician's registration to dispense upon the occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
 2. Failing to timely renew the physician's license; or
 3. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.
- D. If the Board denies a registration to dispense to an osteopathic physician, the physician may appeal the decision by filing a written request with the Board no later than 30 days after service of the notice of denial.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

ARTICLE 4. MEDICAL ASSISTANTS**R4-22-401. Approval of Educational Programs for Medical Assistants**

- A. For purposes of this Section, a Board-approved medical assistant training program is a program:
1. Accredited by the CAAHEP;
 2. Accredited by the ABHES;
 3. Accredited by any accrediting agency recognized by the United States Department of Education; or
 4. Designed and offered by a licensed osteopathic physician, that meets or exceeds the standards of one of the accrediting programs listed in subsections (A)(1) through (A)(3), and the licensed osteopathic physician verifies that those who complete the program have the entry level competencies referenced in R4-22-402.
- B. A person seeking approval of a training program for medical assistants shall submit to the Board the application required under R4-22-201 and verification that the program meets the requirements in subsection (A).

Historical Note

Section R4-22-401 renumbered from R4-22-110 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-402. Medical Assistants – Authorized Procedures

- A. A medical assistant may, under the direct supervision of a licensed osteopathic physician, perform the medical procedures listed in the Commission on Accreditation of Allied Health Education Programs' *Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting*, revised 2008. This material is incorporated by reference, does not include any later revisions, amendments or editions, is on file with the Board, and may be obtained from the Commission on Accreditation of Allied Health Education Programs, 1361 Park Street, Clearwater, FL 33756, 727-210-2350, or www.caahep.org.
- B. Additionally, a medical assistant working under the direct supervision of a licensed osteopathic physician may:
1. Perform physical medicine modalities, including administering whirlpool treatments, diathermy treatments, electronic galvanic stimulation treatments, ultrasound therapy, massage therapy, and traction treatments;
 2. Apply Transcutaneous Nerve Stimulation units and hot and cold packs;
 3. Administer small volume nebulizers;
 4. Draw blood;
 5. Prepare proper dosages of medication and administer the medication as directed by the physician;
 6. Assist in minor surgical procedures;
 7. Perform urine analyses, strep screens, and urine pregnancy tests;
 8. Perform EKGs; and
 9. Take vital signs.

Historical Note

Section R4-22-402 renumbered from R4-22-111 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-403. Medical Assistant Training Requirement

- A. The licensed osteopathic physician who will provide direct supervision to a medical assistant shall ensure that the medical

assistant satisfies one of the following training requirements before the medical assistant is employed:

1. Completes an approved medical assistant training program,
2. Completes an unapproved medical assistant training program and passes a medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists, or
3. Completes a medical services training program of the Armed Forces of the United States.

- B.** This Section does not apply to a person who completed a medical assistant training program before August 7, 2004, and was employed continuously as a medical assistant since completing the program.

Historical Note

Section R4-22-403 renumbered from R4-22-112 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

ARTICLE 5. OFFICE-BASED SURGERY

R4-22-501. Definitions

In this Article,

“ACLS” means advanced cardiac life support performed according to certification standards of the American Heart Association.

“Auscultation” means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.

“BLS” means basic life support performed according to certification standards of the American Heart Association.

“Capnography” means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine adequacy of the patient’s ventilatory function.

“Deep sedation” means a drug-induced depression of consciousness during which a patient:

- Cannot be easily aroused, but
- Responds purposefully following repeated or painful stimulation, and
- May partially lose the ability to maintain ventilatory function.

“Discharge” means a written or electronic documented termination of office-based surgery provided to a patient.

“Emergency” means an immediate threat to the life or health of a patient.

“General anesthesia” means a drug-induced loss of consciousness during which a patient:

- Can not be aroused even with painful stimulus; and
- May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.

“Health care professional” means a registered nurse or a registered nurse practitioner, as defined in A.R.S. § 32-1601, physician assistant, as defined in A.R.S. § 32-2501, and any individual authorized to perform surgery under A.R.S. Title 32 who participates in office-based surgery.

“Informed consent” means advising a patient of the:
 Purpose for and alternatives to office-based surgery,
 Risks associated with office-based surgery, and
 Possible benefits and complications from office-based surgery.

“Malignant hyperthermia” means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.

“Minimal sedation” means a drug-induced state during which:

- A patient responds to verbal commands,
- Cognitive function and coordination may be impaired, and
- A patient’s ventilatory and cardiovascular functions are unaffected.

“Moderate sedation” means a drug-induced depression of consciousness during which:

- A patient responds to verbal commands or light tactile stimulations, and
- No interventions are required to maintain ventilatory or cardiovascular function.

“Monitor” means to assess the condition of a patient.

“Office-based surgery” means a medical procedure performed by an osteopathic physician in the physician’s office or other practice location that is not part of a licensed hospital or licensed ambulatory surgical center while using sedation.

“PALS” means pediatric advanced life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.

“Rescue” means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.

“Staff member” means an individual who:

- Is not a health care professional, and
- Assists with office-based surgery under the supervision of the osteopathic physician performing the office-based surgery.

“Transfer” means a physical relocation of a patient from the office or other practice location of an osteopathic physician to a licensed health care institution.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-502. Health Care Institution License

An osteopathic physician who performs office-based surgery shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-503. Administrative Provisions

A. An osteopathic physician who performs office-based surgery shall:

1. Establish, document, and implement written policies and procedures that cover:
 - a. Patients’ rights,
 - b. Informed consent,
 - c. Care of patients in an emergency, and
 - d. Transfer of patients to a local accredited or licensed acute-care hospital;
2. Ensure that a staff member who assists with or a health care professional who participates in office-based surgery:

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- a. Has sufficient education, training, and experience to perform assigned duties;
 - b. If applicable, has a current license or certification required to perform assigned duties; and
 - c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office or other practice location where office-based surgery is performed has all equipment necessary for:
 - a. The physician to perform the office-based surgery safely,
 - b. The physician or health care professional to administer the sedation safely,
 - c. The physician or health care professional to monitor the use of sedation, and
 - d. The physician and health care professional administering the sedation to rescue a patient after the sedation is administered if the patient enters into a deeper state of sedation than was intended by the physician;
 4. Ensure that a copy of the patients' rights policy is provided to each patient before performing office-based surgery;
 5. Obtain informed consent from the patient before performing office-based surgery that:
 - a. Authorizes the office-based surgery, and
 - b. Authorizes the office-based surgery to be performed at the specific practice location; and
 6. Review all policies and procedures at least every 12 months and update as needed.
- B.** An osteopathic physician who performs office-based surgery shall comply with:
1. The local jurisdiction's fire code;
 2. The local jurisdiction's building codes for construction and occupancy;
 3. The bio-hazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
 4. The controlled substances administration, supply, and storage standards in 4 A.A.C. 23, Article 5.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-504. Procedure and Patient Selection

- A.** An osteopathic physician shall ensure that each office-based surgery performed:
1. Can be performed safely with the equipment, staff members, and health care professionals at the physician's office;
 2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
 3. Is within the education, training, experience, skills, and licensure of the physician; and
 4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.
- B.** An osteopathic physician shall not perform office-based surgery if the patient:
1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
 2. Will require inpatient services at a hospital.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-505. Sedation Monitoring Standards

- A.** An osteopathic physician who performs office-based surgery when minimal sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that a quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used.
- B.** An osteopathic physician who performs office-based surgery when moderate or deep sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that:
1. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
 2. The patient's ventilatory function is monitored by any of the following:
 - a. Direct observation,
 - b. Auscultation, or
 - c. Capnography;
 3. The patient's circulatory function is monitored by:
 - a. Having a continuously displayed electrocardiogram,
 - b. Documenting arterial blood pressure and heart rate at least every five minutes, and
 - c. Evaluating the patient's cardiovascular function by pulse plethysmography;
 4. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
 5. A licensed and qualified health care professional, other than the physician performing the office-based surgery, is:
 - a. Present throughout the office-based surgery, and
 - b. Has the sole responsibility of attending to the patient.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-506. Perioperative Period; Patient Discharge

An osteopathic physician performing office-based surgery shall ensure all of the following:

1. The physician is physically present in the room where office-based surgery is performed while the office-based surgery is performed;
2. After the office-based surgery is performed and until the patient's post-sedation monitoring is discontinued, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency;
3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
4. If using moderate or deep sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
5. A discharge is documented in the patient's medical record including:
 - a. The date and time of the patient's discharge, and
 - b. A description of the patient's medical condition at the time of discharge; and
6. The patient receives discharge instructions and receipt of the discharge instructions is documented in the patient's medical record.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery

- A.** In addition to the requirements in R4-22-503(A)(3) and R4-22-504(A)(1), an osteopathic physician who performs office-based surgery shall ensure that the physician's office has at a minimum:
1. The following:
 - a. A reliable oxygen source with a SaO₂ monitor;
 - b. Suction;
 - c. Resuscitation equipment, including a defibrillator;
 - d. Emergency drugs; and
 - e. A cardiac monitor;
 2. The equipment for patient monitoring according to the standards in R4-22-505;
 3. Space large enough to:
 - a. Allow access to the patient during office-based surgery, recovery, and any emergency;
 - b. Accommodate all equipment necessary to perform the office-based surgery; and
 - c. Accommodate all equipment necessary for sedation monitoring;
 4. A source of auxiliary electrical power available in the event of a power failure;
 5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery is performed on these patients; and
 6. Procedures to minimize the spread of infection.

- B.** An osteopathic physician who performs office-based surgery shall:

1. Ensure that all equipment used for office-based surgery is maintained, tested, and inspected according to manufacturer specifications; and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

R4-22-508. Emergency and Transfer Provisions

- A.** An osteopathic physician who performs office-based surgery shall ensure that a health care professional who participates in or a staff member who assists with office-based surgery receives instruction in the following:
1. Policy and procedure in cases of emergency,
 2. Policy and procedure for office evacuation, and
 3. Safe and timely patient transfer.
- B.** When performing office-based surgery, an osteopathic physician shall not use any drug or agent that may trigger malignant hyperthermia.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

32-1800. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid license to practice medicine and includes the license of a licensee who has been placed on probation or on whose license the board has placed restrictions.
2. "Address of record" means either:
 - (a) The address where a person who is regulated pursuant to this chapter practices medicine or is otherwise employed.
 - (b) The residential address of a person who is regulated pursuant to this chapter if that person has made a written request to the board that the board use that address as the address of record.
3. "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 licensed health care practitioner to assume continuity of the patient's care at any point in the course of treatment.
4. "Administrative warning" means a disciplinary action by the board in the form of a written warning to a physician of a violation of this chapter involving patient care that the board determines falls below the community standard.
5. "Approved postgraduate training program" means that an applicant for licensure successfully completed training when the hospital or other facility in which the training occurred was approved for a postgraduate internship, residency or fellowship by the American osteopathic association or by the accreditation council for graduate medical education.
6. "Approved school of osteopathic medicine" means a school or college offering a course of study that, on successful completion, results in the awarding of the degree of doctor of osteopathy and whose course of study has been approved or accredited by the American osteopathic association.
7. "Board" means the Arizona board of osteopathic examiners in medicine and surgery.
8. "Decree of censure" means a formal written reprimand by the board of a physician for a violation of this chapter that constitutes a disciplinary action against a physician's license.
9. "Direct supervision" means that a physician is within the same room or office suite as the unlicensed person in order to be available for consultation regarding those tasks the unlicensed person performs pursuant to section 32-1859.
10. "Dispense" means the delivery by a physician 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.
11. "Doctor of osteopathy" means a person who holds a license, registration or permit to practice medicine pursuant to this chapter.
12. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician and the natural and adopted children, father, mother, brothers and sisters of the physician's spouse.

13. "Inappropriate fee" means a fee that is not supported by documentation of time, complexity or extreme skill required to perform the service.
14. "Investigative hearing" means a meeting between the board and a physician to discuss issues set forth in the investigative hearing notice and during which the board may hear statements from board staff, the complainant, the physician and witnesses, if any.
15. "Letter of concern" means an advisory letter to notify a physician that while there is insufficient evidence to support disciplinary action against the physician's license there is sufficient evidence for the board to notify the physician of its concern.
16. "Limited license" means a license that restricts the scope and setting of a licensee's practice.
17. "Medical assistant" means an unlicensed person who has completed an educational program approved by the board, who assists in a medical practice under the supervision of a doctor of osteopathic medicine and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or violate any statute.
18. "Medicine" means osteopathic medicine as practiced by a person who receives a degree of doctor of osteopathy.
19. "Physician" means a doctor of osteopathy who holds a license, a permit or a locum tenens registration to practice osteopathic medicine pursuant to this chapter.
20. "Practice of medicine" or "practice of osteopathic medicine" means all of the following:
- (a) To examine, diagnose, treat, prescribe for, palliate, prevent or correct human diseases, injuries, ailments, infirmities and deformities, physical or mental conditions, real or imaginary, by the use of drugs, surgery, manipulation, electricity or any physical, mechanical or other means as provided by this chapter.
 - (b) Suggesting, recommending, prescribing or administering any form of treatment, operation or healing for the intended palliation, relief or cure of any physical or mental disease, ailment, injury, condition or defect.
 - (c) The practice of osteopathic medicine alone or the practice of osteopathic surgery or osteopathic manipulative therapy, or any combination of either practice.
21. "Specialist" means a physician who has successfully completed postdoctoral training in an approved postgraduate training program, an approved preceptorship or an approved residency or who is board certified by a specialty board approved by the board.
22. "Subscription provider of health care" means an entity that, through contractual agreement, is responsible for the payment, in whole or in part, of debts incurred by a person for medical or other health care services.

32-1801. [Arizona board of osteopathic examiners in medicine and surgery](#)

A. There shall be an Arizona board of osteopathic examiners in medicine and surgery which shall consist of seven members appointed by the governor. One member of the board shall be appointed each year for a term of five years, to begin and end on April 15.

B. Two members of the board shall be public members who shall not be in any manner connected with, or have an interest in, any school of medicine or any person practicing any form of healing or treatment of bodily or mental ailments and who has demonstrated an interest in the health problems of the state. The other five members of the board shall have engaged in the practice of medicine as an osteopathic physician in this state for at least five years preceding their appointments, hold active licenses in good standing and, at the time of appointment, be practicing medicine with direct patient contact. In making appointments of each professional member of the board, the governor shall consider a list of qualified persons submitted by the Arizona osteopathic medical association and recommendations by any other person. Members of the board shall continue in office until their successors are appointed and qualified. Each board member, prior to entering upon his duties, shall take an oath prescribed by law and in addition thereto shall make an oath as to his qualifications as prescribed in this section. No board member may serve more than two consecutive five year terms.

C. Board members may be removed by the governor if they fail to attend three or more board meetings within twelve months. This does not include telephonic meetings of the board. The governor may also remove board members for malfeasance, misfeasance or incompetence in their office, unprofessional or dishonorable conduct in their office or unprofessional or dishonorable conduct. The governor shall appoint a qualified replacement to fill a vacant position for the unexpired portion of the term.

32-1802. Meetings; organization; compensation; committees

A. The board shall hold an annual meeting during the month of January each year in the Phoenix metropolitan area and may hold other meetings at times and places determined by a majority of the board on notice to each member and the general public pursuant to title 38, chapter 3, article 3.1. A majority of the members of the board constitutes a quorum, and a majority vote of a quorum present at any meeting governs all board actions.

B. At each annual meeting the board shall select from among its membership a president and vice-president who shall serve until their successors are chosen. If either of these offices becomes vacant before the annual meeting, the board may elect a replacement at any other board meeting.

C. Members of the board are eligible to receive compensation in the amount of two hundred fifty dollars for each day of actual service in the business of the board and reimbursement of all expenses necessarily and properly incurred in attending meetings of the board.

D. Board members, the executive director, permanent or temporary board personnel, board consultants, committee members and professional medical investigators are immune from civil liability for any act they do in good faith to implement this chapter.

E. To carry out the functions of the board, the board president may establish committees and define committee duties. The president shall name at least one board member to each committee the president establishes.

32-1803. Powers and duties

A. The board shall:

1. Protect the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of osteopathic medicine.
2. Issue licenses, conduct hearings, place physicians on probation, revoke or suspend licenses, enter into stipulated orders, issue letters of concern or decrees of censure and administer and enforce this chapter.
3. Maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses to practice according to this chapter. The board shall delete records of complaints only as follows:
 - (a) If the board dismisses a complaint, the board shall delete the public record of the complaint five years after it dismissed the complaint.
 - (b) If the board has issued a letter of concern but has taken no further action on the complaint, the board shall delete the public record of the complaint five years after it issued the letter of concern.
 - (c) If the board has required additional continuing medical education pursuant to section 32-1855 but has not taken further action, the board shall delete the public record of the complaint five years after the person satisfies this requirement.
4. Maintain a public directory of all osteopathic physicians and surgeons who are or were licensed pursuant to this chapter that includes:
 - (a) The name of the physician.
 - (b) The physician's current or last known address of record.
 - (c) The date and number of the license issued to the physician pursuant to this chapter.
 - (d) The date the license is scheduled to expire if not renewed or the date the license expired or was revoked, suspended or canceled.
 - (e) Any disciplinary actions taken against the physician by the board.
 - (f) Letters of concern, remedial continuing medical education ordered and dismissals of complaints against the physician until deleted from the public record pursuant to paragraph 3 of this subsection.
5. Adopt rules regarding the regulation and the qualifications of medical assistants.
6. Discipline and rehabilitate osteopathic physicians.

B. The public records of the board are open to inspection at all times during office hours.

C. The board may:

1. Adopt rules necessary or proper for the administration of this chapter.
2. Appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.
3. Accept and spend federal monies and private grants, gifts, contributions and devises. These monies do not revert to the state general fund at the end of a fiscal year.
4. Develop and publish advisory opinions and standards governing the profession.

D. The board shall adopt and use a seal, the imprint of which, together with the signature of either the president, vice-president or executive director, is evidence of its official acts.

E. In conducting investigations pursuant to this chapter the board may receive and review confidential internal staff reports relating to complaints and malpractice claims.

F. The board may make available to academic and research organizations public records regarding statistical information on doctors of osteopathic medicine and applicants for licensure.

32-1804. Executive director; compensation; duties

A. Subject to title 41, chapter 4, article 4, the board shall appoint an executive director who is not a member of the board. The executive director shall serve at the pleasure of the board and shall receive compensation as determined pursuant to section 38-611 to be paid from the board fund.

B. The executive director or that person's designee shall:

1. Serve as administrative assistant to the board and manage the board's offices.
2. Collect all monies due and payable to the board.
3. Deposit, pursuant to sections 35-146 and 35-147, all monies received by the board in the appropriate fund.
4. Pay all bills for authorized board expenditures.
5. Administer oaths.
6. Act as custodian of the board's seal and books.
7. Employ special consultants or other agents subject to title 41, chapter 4, article 4 to make investigations, gather information, review complaints, review malpractice claims, suits and settlements, prepare reports and perform other duties the executive director determines are necessary to enforce this chapter.
8. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry out the purposes of this chapter. The personnel are eligible to receive compensation pursuant to section 38-611.
9. Issue licenses, limited licenses, registrations, permits, license renewal extensions and waivers to applicants who meet the requirements of this chapter.
10. Enter into contracts pursuant to title 41, chapter 23 for goods and services that are necessary to carry out board policies and directives.
11. Prepare minutes, reports and records of all board transactions and orders.
12. Prepare a biannual budget.
13. As directed by the board, prepare and submit recommendations for changes to this chapter for consideration by the legislature.
14. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be mentally incompetent or physically unable to safely practice medicine.
15. Issue subpoenas to compel the attendance and testimony of a witness and the production of evidence.
16. As directed by the board, provide assistance to the attorney general in preparing and executing disciplinary orders, rehabilitation orders and notices of hearings.
17. Represent the board with the federal government, other states and jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.
18. If delegated by the board, dismiss complaints that, after an investigation, demonstrate insufficient evidence that the physician's conduct violated this chapter.

19. If delegated by the board, enter into a stipulated agreement with a licensee for the treatment, rehabilitation and monitoring of the licensee's abuse or misuse of a chemical substance.
20. Review all complaints filed pursuant to section 32-1855. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit to the board a report of each complaint the executive director dismisses for its review at its next regular board meeting. The report shall include the complaint number, the name of the physician and the investigation timeline for each dismissed complaint.
21. If delegated by the board, refer complaints for an investigative hearing.
22. If delegated by the board, close complaints resolved through mediation.
23. If delegated by the board, issue letters of concern or orders for nondisciplinary education, or both.
24. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.
25. If delegated by the board, grant uncontested requests for cancellation of a license pursuant to section 32-1827.
26. Perform any other duty required by the board.

32-1805. Board fund; disbursements

- A. Before the end of the calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies received by the board from fees and other monies provided for in section 32-1826 in the state general fund and deposit the remaining ninety per cent in the board fund. All monies derived from civil penalties collected pursuant to section 32-1855 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- B. Monies deposited in the board fund shall be subject to section 35-143.01.

32-1806. Jurisdiction arbitration panel

- A. When the board receives a complaint concerning a physician who is also licensed pursuant to chapter 29 of this title, the board shall immediately notify the board of homeopathic and integrated medicine examiners. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction pursuant to section 32-2907, subsections B, C, D and E.
- B. If the licensing boards decide without resorting to arbitration which board or boards shall conduct the investigation, the board or boards conducting the investigation shall transmit all investigation materials, findings and conclusions to the other board with which the physician is licensed. The board or boards shall review this information to determine if disciplinary action shall be taken against the physician.

32-1821. Persons and acts not affected by chapter

This chapter does not prevent:

1. A duly licensed physician and surgeon of any other state, district or territory from meeting a person licensed pursuant to this chapter within this state for consultation or, pursuant to an invitation by a sponsor, visiting this state for the sole purpose of promoting professional education through lectures, clinics or demonstrations as long as the visiting physician does not open an office, designate a place to meet patients or receive calls relating to the practice of medicine outside of the facilities and programs of the sponsor.
2. The practice of any other method, system or science of healing by a person duly licensed pursuant to the laws of this state.
3. The practice by physicians and surgeons discharging their duties while members of the armed forces of the United States or other federal agencies.
4. Any act, task or function performed by a physician assistant or registered nurse practitioner in the proper discharge of that person's duties.
5. A person administering a lawful domestic or family remedy to a member of that person's immediate family.
6. Providing medical assistance in case of an emergency.
7. The emergency harvesting of donor organs.

32-1822. Qualifications of applicant; application; fees

A. On a form and in a manner prescribed by the board, an applicant for licensure shall submit proof that the applicant:

1. Is the person named on the application and on all supporting documents submitted.
2. Is a citizen of the United States or a resident alien.
3. Is a graduate of a school of osteopathic medicine approved by the American osteopathic association.
4. Has successfully completed an approved internship, the first year of an approved multiple-year residency or board-approved equivalency.
5. Has passed the approved examinations for licensure within seven years of application or has the board-approved equivalency of practice experience.
6. Has not engaged in any conduct that, if it occurred in this state, would be considered unprofessional conduct or, if the applicant has engaged in unprofessional conduct, is rehabilitated from the underlying conduct.
7. Is physically, mentally and emotionally able to practice medicine, or, if limited, restricted or impaired in the ability to practice medicine, consents to contingent licensure pursuant to subsection E of this section or to entry into a program prescribed in section 32-1861.
8. Is of good moral character.

B. An applicant must submit with the application the nonrefundable application fee prescribed in section 32-1826 and pay the prescribed license issuance fee to the board at the time the license is issued.

C. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental evaluation or any combination of these, at the applicant's expense, at a reasonable time and place as prescribed by the board if the board determines that this is necessary to provide the board adequate information regarding the applicant's ability to meet the

licensure requirements of this chapter. An interview may include medical knowledge questions and other matters that are relevant to licensure.

D. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

E. The board may issue a license that is contingent on the applicant entering into a stipulated order that may include a period of probation or a restriction on the licensee's practice.

F. The executive director may issue licenses to applicants who meet the requirements of this section.

G. A person whose license has been revoked, denied or surrendered in this or any other state may apply for licensure not sooner than five years after the revocation, denial or surrender.

H. A license issued pursuant to this section is valid for the remainder of the calendar year in which it was issued, at which time it is eligible for renewal.

32-1823. Locum tenens registration; application; term; interview; denial of application; discipline

A. A doctor of osteopathy who is licensed to practice osteopathic medicine and surgery by another state may be registered to provide locum tenens medical services to substitute for or temporarily assist a doctor of osteopathy who holds an active license pursuant to this chapter or a doctor of medicine who holds an active license pursuant to chapter 13 of this title under the following conditions:

1. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1822.

2. The doctor of medicine or doctor of osteopathy for whom the applicant is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.

B. On completion of the registration form prescribed by the board and payment of the required fees, the executive director may register a qualifying doctor of osteopathy by locum tenens registration and authorize the doctor to provide locum tenens services.

C. Locum tenens registration granted pursuant to this section is valid for ninety days and may be extended once for an additional ninety days on written request by the doctor of medicine or doctor of osteopathy who originally initiated the request for this registration, stating the reason extension is necessary, and by submitting the appropriate fees and other documents requested by the executive director.

D. The board or the executive director may require an applicant to submit to a personal interview to provide the board with adequate information regarding the applicant's ability to practice under locum tenens registration. The applicant is responsible for all costs to attend the interview.

E. The board may deny the application for a locum tenens registration for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

F. A locum tenens registrant is subject to the disciplinary provisions pursuant to this chapter.

32-1825. [Renewal of licenses; continuing medical education; failure to renew; penalty; reinstatement; waiver of continuing medical education](#)

A. Except as provided in section 32-4301, each licensee shall renew the license every other year on or before January 1 on an application form approved by the board. At least sixty days before that renewal date, the executive director shall notify each licensee of this requirement. The executive director shall send this notification by mail to the licensee at the licensee's address.

B. With the application prescribed pursuant to subsection A of this section, the licensee shall furnish to the executive director a statement of having attended before the license renewal date educational programs, approved by the board, totaling at least forty clock hours during the two preceding years, and a statement that the licensee reported any conduct that may constitute unprofessional conduct in this state or elsewhere. The application must also include the prescribed renewal fee. The executive director shall then issue a renewal receipt to the licensee. The board may require a licensee to submit documentation of continuing medical education.

C. The board shall not renew the license of a licensee who does not fully document the licensee's compliance with the continuing education requirements of subsection B of this section unless that person receives a waiver of those requirements. The board may waive the continuing education requirements of subsection B of this section for a particular period if it is satisfied that the licensee's noncompliance was due to the licensee's disability, military service or absence from the United States or to other circumstances beyond the control of the licensee. If a licensee fails to attend the required number of clock hours for reasons other than those specified in this subsection, the board may grant an extension until May 1 of that year for the licensee to comply.

D. Unless the board grants an extension pursuant to subsection C of this section, a licensee who fails to renew the license within thirty days after the renewal date shall pay a penalty fee and a reimbursement fee in addition to the prescribed renewal fee. Except as provided in sections 32-3202 and 32-4301, a license expires if a person does not renew the license within four months after the renewal date. A person who practices osteopathic medicine after that time is in violation of this chapter. A person whose license expires may reapply for a license pursuant to this chapter.

32-1826. [Fees; penalty](#)

A. The board shall establish fees of not to exceed the following:

1. For an application to practice osteopathic medicine, four hundred dollars.
2. For issuance of a license, two hundred dollars, prorated by each month remaining in the calendar year of issuance.
3. For biennial renewal of a license, eight hundred dollars.
4. For locum tenens registration or extension, three hundred dollars.
5. For issuance of a duplicate license, one hundred dollars.
6. For an annual training permit for an approved postgraduate training program or short-term residency program, one hundred dollars.
7. For an annual teaching license issued pursuant to section 32-1831, four hundred dollars.

8. For a five-day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, two hundred dollars.
9. For the sale of a computerized format of the board's licensee directory that does not require programming, one hundred dollars.
10. For initial and annual registration to dispense drugs and devices, two hundred fifty dollars, prorated by each month remaining in the calendar year of issuance.
 - B. The board shall charge a one hundred fifty dollar penalty fee for late renewal of a license and a twenty-five dollar reimbursement fee to cover the board's expenses in collecting late renewal fees. The board shall deposit this fee in the board fund.
 - C. The board may charge additional fees for services the board determines are necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the services.

32-1827. Cancellation of a license; requirements

The board shall cancel a license at the licensee's request if the licensee is not the subject of a board investigation or disciplinary proceeding.

32-1828. Education teaching permits

- A. The dean of a school of osteopathic medicine approved by the American osteopathic association or the chairman of a teaching hospital's accredited graduate medical education program may invite a doctor of osteopathy who is not licensed in this state to demonstrate and perform medical procedures and surgical techniques for the sole purpose of promoting professional education for students, interns, residents, fellows and doctors of osteopathy in this state.
- B. The chairman or dean of the inviting institution shall provide to the board evidence that an applicant for an educational permit has malpractice insurance in an amount that meets the requirements of that institution and that the applicant accepts all responsibility and liability for the procedures the applicant performs within the scope of the applicant's permit.
- C. In a letter to the board, the chairman or dean of the inviting institution shall outline the procedures and techniques that the doctor of medicine will perform or demonstrate and the dates that this activity will occur. The letter shall also include a summary of the doctor of osteopathy's education and professional background and shall be accompanied by the fee required pursuant to this chapter.
- D. The inviting institutions shall submit the fees and documents required pursuant to this section no later than two weeks before the scheduled activity.
- E. The board through its staff shall issue an educational teaching permit for not more than five days for each approved activity.

32-1829. Training permits; issuance of permits

- A. The board may grant a one-year renewable training permit to a person who is participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to practice medicine only in the

supervised setting of that program. Before the board issues the permit, the person shall:

1. Submit an application on a form and in a manner prescribed by the board and proof that the applicant:

(a) Is the person named on the application and on all supporting documentation.

(b) Is a citizen of the United States or a resident alien.

(c) Is a graduate of a school approved by the American osteopathic association.

(d) Participated in postgraduate training, if any.

(e) Has passed approved examinations appropriate to the applicant's level of education and training.

(f) Has not engaged in any conduct that, if it occurred in this state, would be considered unprofessional conduct or, if the applicant has engaged in unprofessional conduct, is rehabilitated from the underlying conduct.

(g) Is of good moral character.

(h) Is physically, mentally and emotionally able to practice medicine, or, if limited, restricted or impaired in the ability to practice medicine, consents to a contingent permit or to entry into a program described in section 32-1861.

2. Pay the nonrefundable application fee prescribed by the board.

B. If a permittee who is participating in a teaching hospital's accredited internship, residency or clinical fellowship training program must repeat or make up time in the program due to resident progression or for other reasons, the board may grant that person an extension of the training permit if requested to do so by the program's director of medical education or a person who holds an equivalent position. The extended permit limits the permittee to practicing only in the supervised setting of that program for a period of time sufficient to repeat or make up the training.

C. The board may grant a training permit to a person who is not licensed in this state and who is participating in a short-term training program of four months or less for continuing medical education conducted in an approved school of osteopathic medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship training program in this state. Before the board issues the permit, the person shall:

1. Submit an application on a form and in a manner prescribed by the board and proof that the applicant meets the requirements prescribed in subsection A, paragraph 1 of this section.

2. Pay the nonrefundable application fee prescribed by the board.

D. A permittee is subject to the disciplinary provisions of this chapter.

E. The executive director may issue a permit to an applicant who meets the requirements of this chapter.

F. If a permit is not issued pursuant to subsection E of this section, the board may issue a permit or may:

1. Issue a permit that is contingent on the applicant entering into a stipulated agreement that may include a period of probation or a restriction on the permittee's practice.

2. Deny a permit to an applicant who does not meet the requirements of this chapter.

[32-1830. Training permits; approved schools](#)

The executive director may grant a one-year training permit to a person who:

1. Participates in a program at an approved school of medicine or a hospital that has an approved hospital internship, residency or clinical fellowship training program if the purpose of the program is to exchange technical and educational information.
2. Pays the fee as prescribed by the board.
3. Submits a written statement from the dean of the approved school of osteopathic medicine or from the chairman of a teaching hospital's accredited graduate medical education program that:
 - (a) Includes a request for the permit and describes the purpose of the exchange program.
 - (b) Specifies that the host institution shall provide liability coverage.
 - (c) Provides proof that a doctor of medicine will serve as the preceptor of the host institution and provide appropriate supervision of the participant.
 - (d) States that the host institution has advised the participant that the participant may serve as a member of an organized medical team but shall not practice medicine independently and that this training does not accrue toward postgraduate training requirements for licensure.

32-1831. Teaching licenses; definitions

A. A doctor of osteopathic medicine who is not licensed in this state may be employed as a full-time faculty member by a school of osteopathic medicine in this state approved by the American osteopathic association or a teaching hospital's accredited graduate medical education program in this state to provide professional education through lectures, clinics or demonstrations if the doctor holds a teaching license issued pursuant to this section.

B. An applicant for a teaching license shall:

1. Submit a completed application as prescribed by the board.
2. Pay all fees prescribed by the board. Application fees are nonrefundable.
3. Meet the requirements of section 32-1822.

C. A person who is licensed pursuant to this section shall not open an office or designate a place to meet patients or receive calls relating to the practice of osteopathic medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

D. A person who is licensed pursuant to this section shall comply with the requirements of this chapter, with the exception of those that relate to licensing examinations.

E. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental health evaluation, or any combination of these, at the applicant's expense. The board shall prescribe a reasonable time and place if the board determines that this is necessary to provide the board with adequate information regarding the applicant's ability to meet the licensure requirements of this chapter. The interview may include questions regarding medical knowledge and other matters relevant to licensure.

F. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

G. A person who is licensed pursuant to this section is subject to the disciplinary provisions pursuant to this chapter.

H. A license issued pursuant to this section is valid for two years. A doctor of osteopathic medicine may apply for licensure once every two years, subject to the continuing medical education requirements prescribed in section 32-1825.

I. For the purposes of this section:

1. "Accredited" means that the school or teaching hospital has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American osteopathic association or a similar body that is approved by the board.

2. "Full-time faculty member" means a full-time faculty member as prescribed by the school of osteopathic medicine or the teaching hospital.

32-1832. Retired license; waiver of fees; reinstatement; limited license; volunteer work

A. The board shall waive a physician's biennial renewal fee if the physician has paid all past fees, presents an affidavit to the board stating that the physician has permanently retired from the practice of osteopathic medicine and does not have any pending complaints or open disciplinary matters before the board.

B. A retired physician whose biennial fee has been waived by the board pursuant to this section is not required to comply with any continuing medical education requirements of this chapter.

C. After retired status is granted by the board, a retired physician shall submit a renewal of retired status every two years on a form and in a manner prescribed by the board.

D. Except as provided in subsection F of this section, a retired physician who has had the biennial renewal fee waived by the board pursuant to this section and who engages in the practice of osteopathic medicine is subject to the same penalties that are imposed pursuant to this chapter on a person who practices medicine without a license or without being exempt from licensure.

E. The board may reinstate a retired physician to active status on payment of the biennial renewal fee and presentation of evidence satisfactory to the board that the physician meets the qualifications prescribed pursuant to section 32-1822. The board may deny the request for reinstatement, place the licensee on probation or issue a limited license that requires general or direct supervision by another licensed doctor of osteopathy for not more than one year.

F. A retired physician who has had the biennial renewal fee waived by the board pursuant to this section may perform volunteer work of not more than ten hours each week and may teach or provide instruction at an approved school of osteopathic medicine.

32-1833. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor of osteopathy who is not a licensee to practice in this state for a total of sixty days each calendar year if the doctor meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.
 2. Has never had a license revoked or suspended by a health profession regulatory board of another jurisdiction.
 3. Is not the subject of an unresolved complaint.
 4. Applies for registration on an annual basis as prescribed by the board.
 5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.
- B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.
- C. For the purpose of meeting the requirements of subsection A of this section, an applicant under this section shall provide the board the name of each state in which the person is licensed or has held a license. The board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory boards either electronically or by hard copy.

32-1851. Prohibited acts

The following acts are prohibited:

1. Practicing medicine and surgery as an osteopathic physician and surgeon without holding a license issued by the board under the provisions of this chapter.
2. Misusing the designation "D.O." in a way that leads the public to believe that a person is licensed to practice medicine in this state.
3. Using the designation "doctor of osteopathy", "doctor of osteopathic medicine", "osteopathic physician", "osteopathic surgeon", "osteopathic physician and surgeon" or any combination of these terms unless the designation additionally contains the description of another branch of the healing arts.
4. Using any other words, initials or symbols or a combination of these that leads the public to believe a person is licensed to practice medicine in this state.

32-1852. Rights and duties of osteopathic physicians and surgeons; scope of practice

A person holding a license under this chapter to practice medicine and surgery as an osteopathic physician and surgeon shall be subject to all state and local laws and regulations pertaining to public health. In diagnosing, prognosticating and treating any human illness he shall be subjected to all the same duties and obligations and authorized to exercise all the same rights and privileges possessed by physicians and surgeons of other complete schools of medicine in the practice of their profession.

32-1853. Use of title

A person licensed under this chapter shall use the title "osteopathic physician and surgeon", "osteopathic physician" or "doctor of osteopathy" or affix the initials "D.O." after the licensee's name.

32-1853.01. Use of title by a medical assistant

It is unlawful for a person to use the title "medical assistant" or a related abbreviation unless the person is working as a medical assistant under the supervision of a doctor of osteopathic medicine pursuant to rules adopted by the board.

32-1854. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:

1. Knowingly betraying a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from exchanging information with the licensing and disciplinary boards of other states, territories or districts of the United States or with foreign countries or with osteopathic medical organizations located in this state or in any state, district or territory of this country or in any foreign country.
2. Committing a felony or a misdemeanor involving moral turpitude. In either case conviction by any court of competent jurisdiction is conclusive evidence of the commission of the offense.
3. Practicing medicine while under the influence of alcohol, a dangerous drug as defined in section 13-3401, narcotic or hypnotic drugs or any substance that impairs or may impair the licensee's ability to safely and skillfully practice medicine.
4. Being diagnosed by a physician licensed under this chapter or chapter 13 of this title or a psychologist licensed under chapter 19.1 of this title as excessively or illegally using alcohol or a controlled substance.
5. Prescribing, dispensing or administering controlled substances or prescription-only drugs for other than accepted therapeutic purposes.
6. Engaging in the practice of medicine in a manner that harms or may harm a patient or that the board determines falls below the community standard.
7. Impersonating another physician.
8. Acting or assuming to act as a member of the board if this is not true.
9. Procuring, renewing or attempting to procure or renew a license to practice osteopathic medicine by fraud or misrepresentation.
10. Having professional connection with or lending one's name to an illegal practitioner of osteopathic medicine or any of the other healing arts.
11. Representing that a manifestly incurable disease, injury, ailment or infirmity can be permanently cured or that a curable disease, injury, ailment or infirmity can be cured within a stated time, if this is not true.
12. Failing to reasonably disclose and inform the patient or the patient's representative of the method, device or instrumentality the licensee uses to treat the patient's disease, injury, ailment or infirmity.

13. Refusing to divulge to the board on demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity.
14. Charging a fee for services not rendered or dividing a professional fee for patient referrals. This paragraph does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for clinical trial regulated by the United States food and drug administration.
15. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or when applying for or renewing privileges at a health care institution or a health care program.
16. Advertising in a false, deceptive or misleading manner.
17. Representing or claiming to be an osteopathic medical specialist if the physician has not satisfied the applicable requirements of this chapter or board rules.
18. The denial of or disciplinary action against a license by any other state, territory, district or country, unless it can be shown that this occurred for reasons that did not relate to the person's ability to safely and skillfully practice osteopathic medicine or to any act of unprofessional conduct as provided in this section.
19. Any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession.
20. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter.
21. Failing or refusing to establish and maintain adequate records on a patient as follows:
 - (a) If the patient is an adult, for at least six years after the last date the licensee provided the patient with medical or health care services.
 - (b) If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the licensee provided that patient with medical or health care services, whichever date occurs later.
22. Using controlled substances or prescription-only drugs unless they are provided by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.
23. Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.
24. Nontherapeutic use of injectable amphetamines.
25. Violating a formal order, probation or a stipulation issued by the board under this chapter.
26. Charging or collecting an inappropriate fee. This paragraph does not apply to a fee that is fixed in a written contract between the physician and the patient and entered into before treatment begins.
27. Using experimental forms of therapy without adequate informed patient consent or without conforming to generally accepted criteria and complying with federal and state statutes and regulations governing experimental therapies.
28. Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, physician or homeopathic physician licensed under chapter 7, 8, 13, 14 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent,

the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

29. Failing to allow properly authorized board personnel to have, on presentation of a subpoena, access to any documents, reports or records that are maintained by the physician and that relate to the physician's medical practice or medically related activities pursuant to section 32-1855.01.

30. Signing a blank, undated or predated prescription form.

31. Obtaining a fee by fraud, deceit or misrepresentation.

32. Failing to report to the board an osteopathic physician and surgeon who is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.

33. Referring a patient to a diagnostic or treatment facility or prescribing goods and services without disclosing that the physician has a direct pecuniary interest in the facility, goods or services to which the patient has been referred or prescribed. This paragraph does not apply to a referral by one physician to another physician within a group of physicians practicing together.

34. Lack of or inappropriate direction, collaboration or supervision of a licensed, certified or registered health care provider or office personnel employed by or assigned to the physician in the medical care of patients.

35. Violating a federal law, a state law or a rule applicable to the practice of medicine.

36. Prescribing or dispensing controlled substances or prescription-only medications without establishing and maintaining adequate patient records.

37. Failing to dispense drugs and devices in compliance with article 4 of this chapter.

38. Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

39. Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.

40. 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 and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

41. Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

42. 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 physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this paragraph, "sexual conduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(b) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical conduct of a sexual nature.

43. Fetal experiments conducted in violation of section 36-2302.

44. Conduct that the board determines constitutes gross negligence, repeated negligence or negligence that results in harm or death of a patient.

45. Conduct in the practice of medicine that evidences moral unfitness to practice medicine.

46. Engaging in disruptive or abusive behavior in a professional setting.

47. Failing to disclose to a patient that the licensee has a direct financial interest in a prescribed treatment, good or service if the treatment, good or service is available on a competitive basis. This paragraph does not apply to a referral by one licensee to another licensee within a group of licensees who practice together. A licensee meets the disclosure requirements of this paragraph if all of the following are true:

(a) The licensee makes the disclosure on a form prescribed by the board.

(b) The patient or the patient's guardian or parent acknowledges by signing the form that the licensee has disclosed the licensee's direct financial interest.

48. Prescribing, dispensing or furnishing a prescription medication or a prescription-only device to a person if the licensee has not conducted a physical or mental health status examination of that person or has not previously established a physician-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability if the telemedicine audio and video capability meets the elements required by the centers for medicare and medicaid services, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This paragraph does not apply to:

(a) Emergencies.

(b) A licensee who provides patient care on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(c) 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.

(d) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157.

(e) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(f) Prescriptions for naloxone hydrochloride or any other opiate antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228.

49. If a licensee provides medical care by computer, failing to disclose the licensee's license number and the board's address and telephone number.

32-1855. Disciplinary action; duty to report; hearing; notice; independent medical examinations; surrender of license

A. Except as otherwise provided in this subsection, the board on its own motion may investigate any information that appears to show that an osteopathic physician and surgeon is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. A physician who

conducts an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings and opinions expressed by the physician as a result of the examination. Any osteopathic physician or surgeon or the Arizona osteopathic medical association or any health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician or surgeon, association, health care institution or other person may have that appears to show that an osteopathic physician and surgeon is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board shall notify the doctor about whom information has been received as to the content of the information as soon as reasonable after receiving the information. Any person who reports or provides information to the board in good faith is not subject to civil damages as a result of that action. If requested the board shall not disclose the informant's name unless it is essential to the disciplinary proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any osteopathic physician or surgeon to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency. A person who reports information in good faith pursuant to this subsection is not subject to civil liability. For the purposes of this subsection, "independent medical examination" means a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

B. The board may require a physician under investigation pursuant to subsection A of this section to be interviewed by the board or its representatives. The board or the executive director may require a licensee who is under investigation pursuant to subsection A of this section to undergo at the licensee's expense any combination of medical, physical or mental examinations the board finds necessary to determine the physician's competence.

C. If the board finds, based on the information it received under subsection A or B of this section, that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a license pending proceedings for revocation or other action. If an order of summary suspension is issued, the licensee shall also be served with a written notice of complaint and formal hearing setting forth the charges made against the licensee and is entitled to a formal hearing on the charges pursuant to title 41, chapter 6, article 10. Formal proceedings shall be promptly instituted and determined.

D. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit direct action against the physician's license, it may take any combination of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
 2. Issue a letter of concern.
 3. In addition to the requirements of section 32-1825, require continuing medical education on subjects and within a time period determined by the board.
 4. 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.
- E. If, in the opinion of the board, it appears that information provided pursuant to this section is or may be true, the board may request an investigative hearing with the physician concerned. At an investigative hearing the board may receive and consider sworn statements of persons who may be called as witnesses and other pertinent documents. Legal counsel may be present and participate in the meeting. If the physician refuses the request or if the physician accepts the request and the results of the investigative hearing indicate suspension of more than twelve months or revocation of the license may be in order, a complaint shall be issued and an administrative hearing shall be held pursuant to title 41, chapter 6, article 10. After the investigative hearing and a mental, physical or medical competence examination as the board deems necessary, the board may take any of the following actions:
1. Dismiss if, in the opinion of the board, the information is without merit.
 2. Issue a letter of concern.
 3. In addition to the requirements of section 32-1825, require continuing medical education on subjects and within a time period determined by the board.
 4. Issue a decree of censure, which constitutes an official action against a physician's license.
 5. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician concerned. Any costs incidental to the terms of probation are at the physician's own expense.
 6. Restrict or limit the physician's practice in a manner and for a time determined by the board.
 7. Suspend the physician's license for not more than twelve months.
 8. Impose a civil penalty of not to exceed five hundred dollars for each violation of this chapter.
 9. 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.
 10. Issue an administrative warning.
- F. If, in the opinion of the board, it appears the charge is of such magnitude as to warrant suspension for more than twelve months or revocation of the license, the board shall immediately initiate formal revocation or suspension proceedings pursuant to title 41, chapter 6, article 10. The board shall notify a licensee of a complaint and hearing by certified mail addressed to the licensee's last known address on record in the board's files.
- G. A licensee shall respond in writing to the board within thirty days after the notice of formal or administrative hearing is served. A licensee who fails to answer the charges in a complaint and notice of formal or administrative 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.

H. A physician who, after an investigative or administrative hearing, is found to be guilty of unprofessional conduct or is found to be mentally or physically unable safely to engage in the practice of osteopathic medicine is subject to any combination of censure, probation, suspension of license, revocation of license, an order to return patient fees, imposition of hearing costs, imposition of a civil penalty of not to exceed five hundred dollars for each violation for a period of time, or permanently, and under conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of an investigative or administrative hearing to the licensee if pursuant to that hearing the board determines that the licensee violated this chapter or board rules.

I. If the board acts to modify a physician's prescription writing privileges, it shall immediately notify the state board of pharmacy and the federal drug enforcement administration in the United States department of justice of the modification.

J. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

K. Notice of a complaint and administrative hearing is effective when a true copy of the notice is sent by certified mail to the licensee's last known address of record in the board's files and is complete on the date of its deposit in the mail. The board shall hold an administrative hearing within one hundred twenty days after that date.

L. The board may accept the surrender of an active license from a licensee who admits in writing to having committed an act of unprofessional conduct, to having violated this chapter or board rules or to being unable to safely practice medicine.

32-1855.01. Right to examine and copy evidence; summoning witnesses and documents; taking testimony; right to counsel; court aid; process

A. Pursuant to an investigation conducted under this chapter, the board and its authorized agents and employees may examine any documents, reports, records or other physical evidence of any person being investigated, as well as the reports, records and other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or other public or private agency and health care institution as defined in section 36-401, that relate to medical competence, unprofessional conduct or the licensee's mental or physical ability to safely practice medicine. The investigators may copy evidence on site and at the licensee's expense. Failing to permit access on request is unprofessional conduct.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board, the executive director and the administrative law judges on their own initiative, or on application of any person involved in the investigation, may issue subpoenas to compel the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. Within five days after the service of a subpoena requiring the production of evidence, the recipient of the

subpoena may petition the board to revoke, limit or modify the subpoena. The board shall take the requested action if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence. The superior court may enforce a subpoena issued by the board.

2. Any person appearing before the board has the right to be represented by counsel.

3. The superior court on application by the board has jurisdiction to issue an order to require the subject of the subpoena to appear before the board or its agent and produce evidence relating to the matter under investigation. On application by the subject of the subpoena, the court may revoke, limit or modify the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence whose production is required.

4. The superior court, on application by the board, has jurisdiction to issue an order enforcing a board-ordered examination for mental, physical or medical competence as provided in section 32-1855, subsection B.

32-1855.03. Health care institution duty to report; immunity; patient records; confidentiality

A. A health care institution as defined in section 36-401 or a subscription provider of health care shall report to the board any information it may have that appears to show that a physician may be guilty of unprofessional conduct or may be mentally or physically unable safely to engage in the practice of medicine. A health care institution or subscription provider of health care that provides information to the board in good faith is not subject to an action for civil damages as a result and, if requested, the board shall not disclose its name unless the testimony is essential to the disciplinary proceedings conducted pursuant to section 32-1855. The board shall report a health care institution or subscription provider of health care that fails to report as required by this section to the institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution or subscription provider of health care shall inform the board when the privileges of a physician to practice in the health care institution or subscription provider of health care are denied, revoked, suspended or limited because of actions by the physician that jeopardized patient health and welfare or when the physician resigned during pending proceedings for denial, revocation, suspension or limitation of privileges. A report to the board pursuant to this subsection shall contain a general statement of the reasons the health care institution or subscription provider of health care took an action to deny, revoke, suspend or limit a physician's privileges.

C. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records and proceedings related to the creation of these records are confidential and are subject to the same discovery and use in

legal actions only as are the original records in the possession and control of hospitals, their medical staff and their medical staff review committees. The board shall use these records and testimony only during the course of investigations and proceedings pursuant to this chapter.

D. Patient records, including clinical records, medical reports, laboratory statements and reports, any file or film, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or information received and records kept by the board as a result of the investigation made pursuant to this chapter are confidential.

E. Nothing in this chapter or any other provision of law relating to privileged communications between a physician and patient applies to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep confidential the name of a patient whose records are reviewed during the course of an investigation and proceedings.

32-1856. [Judicial review](#)

Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from any final decision of the board pursuant to title 12, chapter 7, article 6.

32-1857. [Injunction](#)

A. An injunction may be issued to enjoin the practice of osteopathic medicine by either of the following:

1. A person not licensed to practice osteopathic medicine nor exempt from the licensing requirement under this chapter.
2. A physician whose continued practice will or may cause irreparable damage to the public health and safety.

B. In a petition for injunction under subsection A, paragraph 1 it is sufficient to charge that the respondent on a certain day in a named county engaged in the practice of osteopathic medicine without a license and without being exempt from the licensing requirement under this chapter. For the purpose of this subsection damage or injury as a result of such practice is presumed.

C. A petition for injunction shall be filed in the name of this state by the board or at the request of the attorney general in Maricopa county or the county where the respondent resides or may be found.

D. Issuance of an injunction does not relieve the respondent from being subject to any other proceedings under law provided for in this chapter or otherwise. Violation of an injunction shall be punished as for contempt of court.

E. In all other respects injunction proceedings under this section shall be conducted in the same manner as other injunctions.

32-1858. [Violations; classification](#)

A. A person who practices medicine and surgery as an osteopathic physician and surgeon without compliance with this chapter or a person who violates any of the provisions of this chapter is guilty of a class 5 felony.

B. A violation of each section of this chapter constitutes a separate offense and each day of continuing violation constitutes a separate offense.

32-1859. Medical assistants

Nothing in this chapter shall be construed to prevent a medical assistant from assisting a doctor of osteopathic medicine pursuant to rules adopted by the board.

32-1860. Acquired immune deficiency syndrome; disclosure of patient information; immunity; definition

A. Notwithstanding section 32-1854, it is not an act of unprofessional conduct for a physician to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the physician knows that the patient has contracted or 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 making the report to the department of health services, the physician shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a physician who knows or has reason to believe that a significant exposure has occurred between a patient infected with the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the physician shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the physician may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A physician is not civilly or criminally liable for either disclosing or not disclosing information.

D. If a physician decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his 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 fluids, 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 transmission of the human immunodeficiency virus.

32-1861. Substance abuse treatment and rehabilitation program; private contract; funding

A. The board may establish a confidential program for the treatment and rehabilitation of licensees who are impaired by substance abuse. This program may 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 subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each physician's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired physician who the treating organization believes to be incapable of safely practicing medicine.

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the renewal of licenses pursuant to section 32-1826 for the administration of the program established by this section.

32-1871. Dispensing of drugs and devices; conditions

A. An osteopathic physician may dispense drugs and devices kept by the physician if:

1. All drugs are dispensed in packages labeled with the following information:
 - (a) The dispensing physician'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 physician 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 physician 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.
4. The dispensing physician annually registers with the board to dispense drugs and devices.
5. The dispensing physician pays the registration fee prescribed by the board pursuant to section 32-1826. This paragraph does not apply if the physician is dispensing in a nonprofit practice and neither the patient nor a third party pays or reimburses the physician or the nonprofit practice for the drugs or devices dispensed.
6. The dispensing physician labels dispensed drugs and devices and stores them according to rules adopted by the board.

B. Except in an emergency situation, a physician who dispenses drugs 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 physician or by a pharmacy of your choice."

D. A physician shall dispense only to the physician's patient and only for conditions being treated by that physician.

E. The board shall enforce this section and 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. If a physician fails to renew a registration to dispense or ceases to dispense for any reason, within thirty days that physician must notify the board in writing of the remaining inventory of drugs and devices and the manner in which they were disposed.

BOARD FOR CHARTER SCHOOLS (R-17-0302)

Title 7, Chapter 5, Article 1, General Provisions; Article 2, New Charters; Article 3, Charter Oversight; Article 4, Amendment to a Charter; Article 5, Audits and Audit Contracts

Amend: R7-5-101; Article 2; R7-5-201; R7-5-202; R7-5-203; R7-5-204; R7-5-205;
R7-5-206; R7-5-207; R7-5-501; R7-5-502; R7-5-510; R7-5-601

New Article: Article 3; Article 4; Article 5; Article 6

New Section: R7-5-208; R7-5-301; R7-5-302; R7-5-303; R7-5-401; R7-5-402; R7-5-403;
R7-5-404; R7-5-503; R7-5-504; R7-5-505; R7-5-506; R7-5-507; R7-5-508;
R7-5-509; R7-5-602; R7-5-603; R7-5-604; R7-5-605; R7-5-606; R7-5-607

Renumber: Article 3; R7-5-301; R7-5-302; R7-5-303; R7-5-304; R7-5-401; R7-5-501;
R7-5-502; R7-5-510; Article 6; R7-5-601

Repeal: Article 4; Article 5; R7-5-501; R7-5-502; R7-5-503; R7-5-504



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

MEETING DATE: March 7, 2017

AGENDA ITEM: D-2

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

FROM: Shama Thathi, Staff Attorney

DATE: February 21, 2017

SUBJECT: ARIZONA STATE BOARD FOR CHARTER SCHOOLS (R-17-0302)
Title 7, Chapter 5, Article 1, General Provisions; Article 2, New Charters;
Article 3, Charter Oversight; Article 4, Amendment to a Charter; Article 5, Audits
and Audit Contracts

Amend: R7-5-101; Article 2; R7-5-201; R7-5-202; R7-5-203; R7-5-204;
R7-5-205; R7-5-206; R7-5-207; R7-5-501; R7-5-502; R7-5-510;
R7-5-601

New Article: Article 3; Article 4; Article 5; Article 6

New Section: R7-5-208; R7-5-301; R7-5-302; R7-5-303; R7-5-401; R7-5-402;
R7-5-403; R7-5-404; R7-5-503; R7-5-504; R7-5-505; R7-5-506;
R7-5-507; R7-5-508; R7-5-509; R7-5-602; R7-5-603; R7-5-604;
R7-5-605; R7-5-606; R7-5-607

ReNUMBER: Article 3; R7-5-301; R7-5-302; R7-5-303; R7-5-304; R7-5-401;
R7-5-501; R7-5-502; R7-5-510; Article 6; R7-5-601

Repeal: Article 4; Article 5; R7-5-501; R7-5-502; R7-5-503; R7-5-504

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

This rulemaking, from the Arizona State Board of Charter Schools (Board), seeks to amend one article and 12 rules, create four articles and 21 new rules, renumber two articles and nine rules, and repeal two articles and four rules in A.A.C. Title 7, Chapter 5. The Board is engaging in this rulemaking to comply with statutory changes made in 2012 and 2013, to make the changes identified in the five-year-review report approved by the Council in October 2016,

and to place in rule the Board's application of its academic, financial and operational performance framework for charter holders.

In January 2016, stakeholders filed a petition with the Council related to the issues addressed in this rulemaking. The Council chose not to hear the petition. In March 2016, two charter school operators filed a complaint in superior court seeking declaratory judgment that the Board's academic and financial performance frameworks are void and unenforceable because the Board has failed to put the frameworks in rule. The court granted the Board's Motion to Dismiss on October 14, 2016.

Year that Each Rule was Last Amended or Newly Made

- April 5, 2014: R7-5-101; R7-5-201; R7-5-202; R7-5-203; R7-5-204; R7-5-205; R7-5-206; R7-5-207; R7-5-208
- February 7, 2006: R7-5-301; R7-5-302; R7-5-303; R7-5-304; R7-5-501; R7-5-502; R7-5-503; R7-5-504
- March 2, 2004: R7-5-401

Proposed Action

The following is a non-exhaustive summary of the Board's proposed actions:

- Section 101: Definitions are being modified. Specifically, definitions for terms such as "Academic Performance Framework," "Financial Performance Framework," and "Operational Performance Framework" are being added.
- Article 2: Title is being amended to more accurately reflect the content in the article.
- Section 201: The application process for a new charter is being clarified to reflect the Board's practice.
- Section 202: Clarifying changes are being made.
- Section 203: A requirement, for a written notice of administrative completeness from the Board to the applicant, is being added. A provision allowing the Board staff to refund the new charter application processing fee, if an application package is incomplete, is also being added. Additional clarifying changes are being made.
- Section 204: The rule is being amended to allow the Board to consider information obtained from an applicant's background and credit check when making the decision to grant or deny a new charter. Additionally, a provision requiring the Board to provide written notice of its decision is being added. Other clarifying changes are being made throughout the rule.
- Section 205: For the new charters that are granted by the Board, a requirement for submitting a completed Internal Revenue Service Form W-9 is being added.
- Section 206: Clarifying changes are being made.
- Section 207: Clarifying changes are being made.
- Section 208: The new section establishes the process for applying for a replication charter.
- Title 3: Title is being changed from Charter Oversight to Post-Charter Actions.

- Section 301: The new section establishes the application process for charter renewal and early renewal of charter.
- Section 302: The new section relates to charter transfer applications. A charter transfer application can be used to either transfer a charter to the Board or transfer a charter school that has operated under an existing charter for at least three years to its own charter.
- Section 303: The new section establishes the process for a charter holder to submit a charter amendment request to the Board. In particular, the rule provides a list of charter amendments requests that the Board shall accept.
- Section 304: The section is being renumbered.
- Article 4: Title is being changed from Amendment to a Charter to Minimum Performance Expectations.
- Section 401: The rule establishes the minimum academic performance expectations for charter schools.
- Section 402: The rule establishes the minimum financial performance expectations for charter schools.
- Section 403: The rule establishes the minimum operational performance expectations for charter schools.
- Section 404: The new section relates to the development and use of academic, financial, and operational performance frameworks.
- Article 5: Title is being changed from Audits and Audit Contracts to Charter Supervision.
- Section 501: The section is being renumbered from Section 301. The amended rule discusses the Board's supervision of charter schools to ensure that they comply with the law and meet the minimum performance expectations.
- Section 502: The section, relating to site visits to review or evaluate a charter holder's compliance, is being renumbered from Section 303.
- Section 503: The rule requires the Board to conduct an annual academic performance review and make it publicly available on its website.
- Section 504: The section requires the Board to conduct an annual audit and financial performance review.
- Section 505: In addition to conducting a site visit to a charter school during its first year of operation, the section requires the Board to conduct an operational performance review.
- Section 506: In accordance with A.R.S. § 15-183(I)(3), the rule requires the Board to review a charter holder every five years to ensure that the charter holder is in compliance with the law and minimum performance expectations.
- Section 507: The new section establishes a process for filing a complaint with the Board regarding a charter holder.
- Section 508: The new section requires a charter holder to demonstrate sufficient progress towards minimum academic performance expectations if the Board determines the charter holder does not meet the minimum academic performance expectations or a charter holder operated by the charter holder receives a grade "F" by the Arizona Department of Education (Department).

- Section 509: The new section requires a charter holder to prepare a financial performance response if the Board determines that the charter holder does not meet the minimum financial performance expectations.
- Section 510: The section establishes a process for the charter holder to prepare a corrective action plan if the Board identifies any issues.
- Article 6: The article is being renumbered from Article 3, Charter Oversight.
- Section 601: The rule outlines the steps the Board must take when it determines that a charter holder is not in compliance with the law. Specifically, the rule provides a list of factors the Board must consider when determining the appropriate charter oversight action to take.
- Section 602: The new section establishes an oversight process for charter schools assigned a letter grade “F” by the Department.
- Section 603: The new section establishes an oversight process for charter schools assigned a letter grade “D” by the Department.
- Section 604: The new section relates to civil penalty for fingerprinting violation.
- Section 605: The new rule establishes the Board’s process for requesting the Department to withhold the charter holder’s state funds, if the Board determines that a charter holder is not in compliance with the law.
- Section 606: The new section allows the Board to enter into a consent agreement with the charter holder to response any noncompliance issues, if the Board determines that the charter holder is not in compliance with the law.
- Section 607: The new section allows the Board to issue a written notice of intent to revoke the charter, if the Board determines that a charter holder is not in compliance with the law.

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from the Governor’s Office on January 6, 2016.¹

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 both general and specific statutory authority. Under A.R.S. § 15-182(E)(5), the Board shall “[a]dopt rules for its own government.” As for specific authority, the Board cites to A.R.S. §§ 15-182(E)(1), 15-183(I)(1) – (4), and 15-183(R).

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

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

¹ A copy of the letter granting the exception is included as an attachment to the NFR.

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

Yes. The Board indicates that it received written comments from four stakeholders, and 11 stakeholders attended the oral proceeding on November 29, 2016. Council staff believes that the Board has adequately addressed the comments.²

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

No. Only non-substantive changes were made between the proposed and final rules. Staff does not believe that the final rules, when considered as a whole, are a substantial change from the proposed rules.³

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 upon any study for the 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 there are no federal laws that directly correspond to the subject of these 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 charters and post-charter actions issued under Article 2 and Article 3, respectively, 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.

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

² Copies of all public comments are attached to the NFR. In addition, the Board provides a summary of the comments made about the rulemaking, as well as the Board's analysis and response to the comments, on pages 8-20 of the NFR.

³ The Board provides a list of amendments made between the proposed and final rules on pages 4-8 of the NFR.

No. The Board indicates that the rules do not establish a new fee. However, the processing fee, required under A.R.S. § 15-183(X), administered to add or change an Arizona Online Instruction Program of Instruction is being specified in R7-5-303(D) for the first time.

Conclusion

The Board requests the usual 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: March 7, 2017

AGENDA ITEM: D-2

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

FROM: GRRC Economic Team

DATE : February 21, 2017

SUBJECT: **ARIZONA STATE BOARD FOR CHARTER SCHOOLS (R-17-0302)**
Title 7, Chapter 5, Article 1, General Provisions; Article 2, New Charters;
Article 3, Charter Oversight; Article 4, Amendment to a Charter; Article 5, Audits
and Audit Contracts

Amend: R7-5-101; Article 2; R7-5-201; R7-5-202; R7-5-203; R7-5-204;
R7-5-205; R7-5-206; R7-5-207; R7-5-501; R7-5-502; R7-5-510;
R7-5-601

New Article: Article 3; Article 4; Article 5; Article 6

New Section: R7-5-208; R7-5-301; R7-5-302; R7-5-303; R7-5-401; R7-5-402;
R7-5-403; R7-5-404; R7-5-503; R7-5-504; R7-5-505; R7-5-506;
R7-5-507; R7-5-508; R7-5-509; R7-5-602; R7-5-603; R7-5-604;
R7-5-605; R7-5-606; R7-5-607

Renumber: Article 3; R7-5-301; R7-5-302; R7-5-303; R7-5-304; R7-5-401;
R7-5-501; R7-5-502; R7-5-510; Article 6; R7-5-601

Repeal: Article 4; Article 5; R7-5-501; R7-5-502; R7-5-503; R7-5-504

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 State Board for Charter Schools (Board) is proposing to revise most of the rules in Chapter 5. These changes will ensure that the Board's rules comply with statutory changes, ameliorate deficiencies identified in a recent five-year regulatory review report, and codify existing Board performance frameworks in compliance with the Administrative Procedures Act. The rules in Chapter 5 establish the procedures that the Board

utilizes to oversee charter schools in Arizona. Charter schools are public, state-funded schools that operate outside of the framework of traditional public schools.

Key Stakeholders are the Board, charter schools, and charter school students.

The Board exercises oversight over:

- 426 charter holders
- 539 charter schools
- Over 170,000 students enrolled in charter schools

Other notable Board activities in the prior year include:

- 1,230 charter amendments
- 50 charter renewal application packages
- 21 first-year site visits
- 81 five-year-interval reviews
- 71 charter holders were required to submit a financial performance response
- 41 charter holders were required to prepare a corrective action plan (CAP)

The Board received 55 complaints regarding charter holders in FY2016, but these did not allege non-compliance with the charter. No complaints resulted in disciplinary action against any charter holder.

1. **Costs and Benefits for:**

a. The implementing agency:

The Board is the only agency affected by the rulemaking. The bulk of the rule changes codify current Board practices, so the impact will be minimal.

b. Political subdivisions:

The Board notes that political subdivisions are not impacted by the rules.

c. Businesses:

Charter schools are the businesses that will bear the majority of the costs of these rules. These rules codify existing Board practices, so the transition should be minimally disruptive to charter schools.

The Board notes that these businesses are publicly funded. Even though oversight imposes burdens on these businesses, ensuring consistency and quality among charter schools is an important benefit for the public.

d. Small businesses:

Some charter schools are classified as small businesses. In order to maintain consistency and quality among publicly funded charter schools, it is not feasible to exempt any charter schools from Board oversight based on their size.

e. Consumers directly affected by the rulemaking:

Charter school students are consumers of educational services, and they will be directly impacted by this rulemaking. These rules will benefit these students by ensuring that they will receive quality educational services.

The general public will indirectly benefit from the Board exercising oversight over charter schools. Public education investments are investments in economic infrastructure in the form of human capital. As human capital increases, productivity also increases. Increased productivity is a key driver of economic growth. Ensuring quality public education can provide significant benefits to individuals who are not students.

2. Do the probable benefits outweigh the probable costs?

The costs of compliance borne by charter schools is easily outweighed by the benefits that students and the public will receive from ensuring the quality of educational services.

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

The Board indicates that it is not feasible to exempt any charter schools based on size.

4. The probable effect on state revenues:

The Board does not anticipate that the rules will impact state revenues.

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 objective.

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 competitiveness 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 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 for Charter Schools

Physical Address:
1616 West Adams Street, Suite 170
Phoenix, Arizona 85007
Phone: (602) 364-3080
Fax: (602) 364-3089



Mailing Address:
PO Box 18328
Phoenix, Arizona 85009



January 23, 2017

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 7. Education
Chapter 5. State Board for Charter Schools

Dear Ms. Ong:

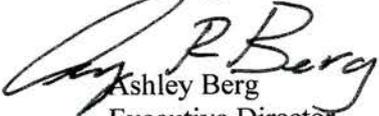
The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on January 9, 2017, 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 October 4, 2016.
- C. New fee: The rulemaking does not establish a new fee. However, the processing fee to add or change an Arizona Online Instruction Program of Instruction, which is required under A.R.S. § 15-183(X), is being specified in rule for the first time (See R7-5-303(D)(2)).
- 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 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 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,



Ashley Berg
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 7. EDUCATION
CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS
PREAMBLE

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
R7-5-101	Amend
Article 2	Amend
R7-5-201	Amend
R7-5-202	Amend
R7-5-203	Amend
R7-5-204	Amend
R7-5-205	Amend
R7-5-206	Amend
R7-5-207	Amend
R7-5-208	New Section
Article 3	Renumber
Article 3	New Article
R7-5-301	Renumber
R7-5-301	New Section
R7-5-302	Renumber
R7-5-302	New Section
R7-5-303	Renumber
R7-5-303	New Section
R7-5-304	Renumber
Article 4	Repeal
Article 4	New Article
R7-5-401	Renumber
R7-5-401	New Section
R7-5-402	New Section
R7-5-403	New Section
R7-5-404	New Section
Article 5	Repeal

Article 5	New Article
R7-5-501	Repeal
R7-5-502	Repeal
R7-5-503	Repeal
R7-5-503	Repeal
R7-5-503	Repeal
R7-5-504	Repeal
R7-5-504	Repeal
R7-5-504	Repeal
R7-5-505	Repeal
R7-5-506	Repeal
R7-5-507	Repeal
R7-5-508	Repeal
R7-5-509	Repeal
R7-5-510	Repeal
R7-5-510	Repeal
Article 6	New Article
Article 6	New Article
R7-5-601	Repeal
R7-5-601	Repeal
R7-5-601	Repeal
R7-5-602	Repeal
R7-5-603	Repeal
R7-5-604	Repeal
R7-5-605	Repeal
R7-5-606	Repeal
R7-5-607	Repeal

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

Authorizing statute: A.R.S. § 15-182(E)(5)

Implementing statute: A.R.S. §§ 15-182(E)(1), 15-183(I)(1) through (4), and 15-183(R)

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. 823, April 15, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 3057, October 28, 2016

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

Name: Ashley Berg

Address: Arizona State Board for Charter Schools

1616 W Adams Street, Suite 170

Phoenix, AZ 85007

or

PO Box 18328

Phoenix, AZ 85009

Telephone: 602-364-3106

Fax: 602-364-3089

E-mail: Ashley.berg@asbcs.az.gov

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

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

The Board is amending its rules to make them consistent with statutory changes made in 2012 and 2013, to make the changes identified in a five-year-review report approved by Council on October 4, 2016, and to place in rule the Board's application of its academic, financial, and operational performance frameworks for charter holders.

On January 21, 2016, Osborn Maledon, PA and Buchalter Nemer, PLC, filed a petition under A.R.S. § 41-1033(C) with the Governor's Regulatory Review Council. The petitioners argued the Board's Academic, Financial, and Operational Performance Frameworks should have been adopted as rules under the Arizona

Administrative Procedures Act (APA). The Council chose not to hear the petition because the Board informed the Council a rulemaking had been started to address the issue raised in the petition.

On March 22, 2016, two charter school operators filed a complaint in superior court seeking a judicial determination and declaratory judgment that the Board's academic and financial performance frameworks were rules under the APA that the Board failed to make in accordance with the APA, which made the frameworks void and unenforceable. The complaint sought to void any and all past or future actions taken by the Board in reliance on the frameworks and to enjoin the Board from using the frameworks as the basis for any actions regarding charter schools the Board sponsors. On October 14, 2016, the court granted the Board's Motion to Dismiss. On December 13, 2016, the two charter school operators appealed the court's dismissal of the complaint to the Court of Appeals.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Dawn Wallace, Education Policy Advisor in the Governor's office, in an e-mail dated January 6, 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 believes the rulemaking has minimal economic impact on current charter holders and applicants for a charter. The rulemaking involves no substantive change to the Board's current rules and policies. Rather, it clarifies existing rules and places policies into rule so the policies are more readily available to applicants and charter holders.

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

In addition to the changes indicated in item 11, the following minor, non-substantive changes were made between the proposed and final rules.

R7-5-101: The definition of "annual application cycle" was amended to clarify it is application packages rather than applications that are submitted to the Board.

R7-5-101: The definition of "application" was amended to clarify there are two kinds of transfers possible.

R7-5-101: The definition of “education service provider” was amended to include a charter holder to clarify that an existing charter holder, as well as an applicant, may use an education service provider.

R7-5-101: The definition of “oversight” was deleted because it was redundant. The activities comprising oversight are clearly identified in Article 6.

R7-5-101: The definition of “supervision” was deleted because it was redundant. The activities comprising supervision are clearly identified in Article 5.

R7-5-101: The definition of “technical review panel” was amended to clarify who the panel is assisting.

R7-5-203(A) and R7-5-601(C)(5): The word “time-frame” was changed to “time frame” to align with the other rules and the preference of the Office of the Secretary of State.

R7-5-203(G): The word “application” was changed to “application package” to clarify that the provision regarding a deficiency notice applies to the application package.

R7-5-205(A)(2), (D)(1), (D)(3) and (D)(4) and R7-5-303(A)(2) (Now R7-5-302(A)(2)): The word “site” was deleted to align with the Board’s use of “charter school” throughout the rules.

R7-5-205(E): The subsection was amended to clarify it is the Department that has statutory authority to initiate state aid funding and the Board’s role is to advise the Department when a charter holder has submitted an Occupancy Compliance Assurance and Understanding form under R7-5-205(A)(2)(c).

R7-5-207(F): The subsection was deleted because it duplicated information provided under R7-5-207(C).

R7-5-208(C): The subsection was amended to clarify that a replication application will be made available to a charter holder only if it is determined the charter holder is eligible to apply for a replication charter.

R7-5-301: This Section was deleted because it included provisions that did not pertain to all post-charter actions and the remaining Sections in Article 3 were renumbered accordingly. The provisions in the deleted Section were incorporated into the renumbered Sections as applicable.

R7-5-302(F) and (I) (Now R7-5-301(I) and (O)): The provision regarding a charter holder’s academic performance or operational performance was modified to align with A.R.S. §15-183(I).

R7-5-302(H) (Now R7-5-301(K)): The subsection was amended to identify the written notice provided by Board staff regarding whether a charter holder is eligible to apply for early renewal.

R7-5-302(I) (Now R7-5-301(O)): Corrected statutory reference to A.R.S. §15-183(I)(2).

R7-5-302 (Now R7-5-301(L) and (M)): These subsections were added because they were inadvertently left out of the notice of proposed rulemaking even though part of existing policy.

R7-5-302 (Now R7-5-301(N)): This subsection was added to specify the time frame for the Board to consider a charter holder's early renewal application package and for Board staff to conduct an academic-systems-review site visit.

R7-5-303(A)(1) (Now R7-5-302(A)(1)): The provision was amended to clarify it is the charter rather than sponsorship of the charter that is being transferred to the Board.

R7-5-303 (Now R7-5-302(D)): This subsection was added to specify the time frame for Board staff to provide written notice to a charter holder of whether the charter holder may apply for transfer.

R7-5-303(C) (Now R7-5-302(E)): This subsection was amended to require submission of a paper transfer application package until electronic submission through ASBCS Online is available and to clarify that only a charter holder determined to be eligible to apply for transfer may do so.

R7-5-303(D)(13): The phrase "charter holder's representative" was changed to "charter representative" to align with the defined term.

R7-5-304 (Now R7-5-303(D)(8)): Added "of" to reflect the name of the amendment request accurately.

R7-5-304 (Now R7-5-303(D)(21)): Added "with the same educational program and financial and operational processes" to reflect accurately the conditions that must exist to use this amendment request.

R7-5-304 (Now R7-5-303(E)): This subsection was added to clarify that the Board shall not accept a paper submission of an amendment request unless agreed to by both Board staff and the charter holder before submission of the amendment request.

R7-5-304 (Now R7-5-303(H)): This subsection was added to clarify that, as applicable, only administratively and substantively complete amendment requests will be considered by the Board.

R7-5-401(A)(2)(c): This subsection was added to specify more completely the times when the Board will assess a charter holder's achievement of minimum academic performance expectations.

R7-5-402(A): A "the" was added before "minimum financial performance expectations" to improve clarity.

R7-5-402(C), (D)(2), (E)(1) and (E)(2): The word(s) "based" or "based on" was added for accuracy and to align with the other provisions of R7-5-402.

R7-5-403(A)(2)(a): Subsection (iv) was added to more completely specify the times when a charter holder's achievement of the Board's minimum operational performance expectations will be assessed.

R7-5-403(A)(2)(a)(iv) (Now R7-5-403(A)(2)(a)(v)): Added "of" to accurately reflect the name of the request.

R7-5-404(B): Changed "modifications" to "considerations" to align with the current academic performance framework.

R7-5-502(H) (Now R7-5-502(G)), R7-5-510(D), and R7-5-601(C)(4): Changed to use the term "issue" consistently throughout the rules and as a result of public comment regarding R7-5-510(B)(2).

R7-5-504(G): Changed "corrective action plan" to "CAP," which is the term defined.

R7-5-505: Subsection (D) was divided into subsections (D), regarding site visits, and (E), regarding compliance checks, because of changes made to R7-5-510(A) as a result of public comment.

R7-5-505(E)(2) (Now R7-5-505(G)(2)): The word "request" was changed to "requests" to align with R7-5-505(E)(1) (Now R7-5-505(G)(1)).

R7-5-506(F): For increased clarity, this subsection was amended to cross reference R7-5-502.

R7-5-506(B)(3): A provision in this subsection was moved to R7-5-506(F) to reflect the timing for the notice being provided.

R7-5-509(A): This subsection was reformatted.

R7-5-509(H): The phrase “or fails to timely submit” was added to clarify the requirement and align with the Board’s operational performance framework.

R7-5-510(C)(1): This subsection was amended to clarify the notice is of a complete CAP having been received and not that the CAP has been completed.

R7-5-601: Corrected a typographical error in the Section number.

R7-5-601(A): Clarified notice is provided before the Board makes a determination and decides whether to impose charter oversight.

R7-5-602(C)(1): The word “academic” was removed to align with A.R.S. §15-241.

R7-5-602(C)(4), (D) and (E)(3): Changes made to align with the current academic performance framework and as a result of public comment received regarding R7-5-508.

R7-5-603(A)(1): Language was removed to align with A.R.S. §15-241.

R7-5-604: To more accurately reflect the order of events and what occurs at each stage, R7-5-604(B) was deleted, a new R7-5-604(A) was added, and the original R7-5-604(A) became R7-5-604(B).

R7-5-604(A) (Now R7-5-604(B)): “15-183 and 15-512” replaced with “15-183 or 15-512” to align with A.R.S. §15-185.

R7-5-607(A): Deleted language to align with A.R.S. § 15-183(I)(3).

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

Four stakeholders submitted written comments. Eleven stakeholders attended the oral proceeding held on November 29, 2016. The following issues were discussed:

Comment	Analysis	Board Response
General comment: Struck by the	As noted below, public comment	The “shall” in R7-5-501(B) was

<p>use of “shall” in two or three dozen instances where the use takes away discretion from the Board and Board staff. Specific circumstances identified were the Board’s involvement in the employee-employer relationship (R7-5-501(B)(1)(c)), the Board’s access to students (R7-5-501(B)(1)(c)), the Board directing complainants to file complaints with other agencies (viewed “direct” like “shall” in R7-5-507(B)(1)), and the five references to shall in R7-5-505.</p>	<p>resulted in changes being made to R7-5-501(B)(1)(c), R7-5-505 and R7-5-507(B)(1). However, following the oral proceeding, it was determined only one “shall” reference should be changed to a “may” to ensure the Board retains its discretion.</p>	<p>changed to “may”.</p>
<p>R7-5-101: The definitions for “academic performance dashboard”, “financial performance dashboard” and “operational performance dashboard” limit the dashboards to “color-coded graphics” and do not provide flexibility.</p>	<p>The Board’s current dashboards are “color-coded graphics.” If the Board decides to change the format of any or all of the dashboards in the future, the rule definitions will be updated to be consistent with the change.</p>	<p>No change</p>
<p>R7-5-101: The Board defines “day” as a business day. Schools are often closed when other businesses are open. The Board should consider the school’s calendar when providing notice or identifying deadlines under the Board’s rules.</p>	<p>The Board’s portfolio of more than 535 schools makes it difficult to review school calendars when setting deadlines and before sending notices. However, several of the Board’s processes allow for extensions of time that were not included in the rules.</p>	<p>A provision was added to R7-5-501 allowing Board staff to grant an extension in certain circumstances and identifying factors Board staff shall consider in determining whether to grant an extension.</p>
<p>R7-5-301(F): The rule requires advance notice when a charter</p>	<p>The Board concurs that the amount of advanced notice</p>	<p>Subsections providing at least 72-hours’ notice were added to</p>

<p>holder’s post-charter action request will be considered by the Board. However, the rule does not specify the amount of advanced notice. Suggestions for the amount of advanced notice ranged from at least two business days to seven business days. The latter is the same notice provided to a new charter applicant.</p>	<p>should be specified in rule. Agendas are typically posted a week in advance of Board meetings. For amendment requests and renewal, early renewal and transfer application packages, a 72-hour notice requirement allows for revisions to be made to the Board agenda for time-sensitive amendment requests and application packages while still providing advance notice of the meeting to the charter holder.</p>	<p>R7-5-301(C), R7-5-302(H) (Now R7-5-302(G)) and R7-5-303(H).</p>
<p>R7-5-303(B): A shorter overall time frame was proposed for charter amendment requests that update the charter holder’s address, involve changing the charter representative or school governing body, or involve changing the officers, directors, members or partners of the charter holder entity on file with the Board. For the personnel change amendment requests specifically, the current time frame could limit how quickly individuals are able to assume their responsibilities and, in limited cases, could affect the ability to have a quorum. An option presented was reducing the overall time frame to 10</p>	<p>Following the oral proceeding, the Board analyzed the time it took to process the four amendment requests specifically identified by the participants (“Amendment Subset”). The review period covered amendment requests submitted between July 1, 2015 and December 1, 2016 or acted upon between July 1, 2015 and December 13, 2016. During this period, 1,663 amendment requests were processed, which equates to approximately 98 amendment requests per month. Of the 1,663 amendment requests, 1,211 (72.8%) were Amendment Subset requests. Nearly half of the Amendment</p>	<p>No change to the time frames now at R7-5-303(F). The Board expects the processing time identified in the “Analysis” column to continue for Amendment Subset requests.</p>

<p>business days.</p>	<p>Subset requests (583) were either approved or, if applicable, deemed administratively incomplete in 10 or fewer business days. Approximately 82% of the Amendment Subset requests (988) were either approved or, if applicable, deemed administratively incomplete in 20 or fewer business days. Overall, the time to act on the 1,211 Amendment Subset requests ranged from 1 business day to 54 business days. While most of the Amendment Subset requests are acted on in 20 or fewer business days, additional time is necessary to accommodate staff taking vacation/leave, the volume of amendment requests, Board staff's other workload, or staffing changes. Further, based on the data, establishing different processing time frames for different amendment requests is unnecessary.</p>	
<p>R7-5-401(D): There is a typo in this rule – “yea” should be “year”.</p>	<p>The comment is correct.</p>	<p>The typo was corrected.</p>
<p>R7-5-404(B): It is reassuring to read that the Board shall ensure the academic performance</p>	<p>The Board appreciates the support.</p>	<p>No change</p>

<p>framework includes modifications for non-traditional charters including small charters with very low enrollment and alternative schools. It is hoped that the Board will continue to recognize there are other types of non-traditional charter schools that may also need modifications to the academic performance framework as seen in the Academic Performance Framework and Guidance as revised June 13, 2016.</p>		
<p>R7-5-501(A)(3): The phrase “adverse condition” is not defined and, therefore, is vague and overbroad. Concern was raised that this provision would allow the Board to increase its monitoring whenever it desired by simply asserting there is an “adverse condition” the charter holder failed to report.</p>	<p>It was determined this provision was an unnecessary source of possible confusion.</p>	<p>The provision was deleted.</p>
<p>R7-5-501(B)(1)(c): Allowing unfettered communication by Board staff with students and school employees is problematic. Parents should be given advance notice of any proposed communication between their children and Board staff. Interviews by Board staff of</p>	<p>In the Board’s existing rules, this provision addressed information received through the Board’s complaint process. The current rulemaking includes a section on complaints (R7-5-507), making R7-5-501(B)(1)(c) unnecessary.</p>	<p>The subsection was deleted and R7-5-501(B) was amended to include complaints as one of the means used by the Board to supervise a charter holder.</p>

<p>certain student populations, such as those in state custody, may raise other issues and require certain approvals be in place before the interview occurs. Because “misconduct” is not defined, disputes between charter employees and their employer could take on greater significance and require additional obligations on the part of the Board and charter holder. Communications with a school’s current employees about a matter that may result in litigation should be undertaken with caution. Clarification is needed for whether the phrase “by any member of the charter school’s staff” modifies “allegations” or “misconduct”.</p>		
<p>R7-5-502(D): Unannounced site visits, especially to small charter schools, can be very disruptive to the educational process. Unannounced site visits would be necessary in cases of concerns about the health and safety of students or for the sole purpose of counting students. Otherwise, it seems reasonable to give a school advance notice of a site visit, both in consideration of the school’s instructional process and</p>	<p>The rules identify four types of site visits: 1) those conducted to review or evaluate a charter holder’s compliance with R7-5-501(A); 2) those conducted to corroborate information and to gather information that permits the Board to evaluate a charter holder’s compliance with R7-5-501(A); 3) first-year site visits (R7-5-505); and 4) academic-systems-review site visits (R7-5-506). Generally, site visits</p>	<p>No change was made to the provision found in R7-5-502(D), but provisions were added to R7-5-505 and R7-5-506 indicating that for first-year and academic-systems-review site visits Board staff will provide the charter holder an opportunity to identify dates within a specified time period that would not be conducive for the site visit.</p>

<p>the visiting Board designee’s time. Every day occurrences, especially for smaller schools like a teacher calling in sick and an administrator filling in, require effort to keep the instructional process moving. Announcing a site visit extends professional courtesy and reduces anxiety for the school’s leaders.</p>	<p>resulting from concerns about the health and safety of students or to count students would fall under one of the first two types. First-year and academic-systems-review site visits are used to see how a school operates day-to-day. Scheduling specific dates for first-year and academic-systems-review site visits may limit Board staff’s ability to see the school operate as it would on a “typical” day. With that said, the Board understands that conducting a site visit on an early release day or when parent-teacher conferences are occurring, for example, would also limit Board staff’s ability to see the school operate as it would on a “typical” day. The Board’s processes require Board staff to provide the charter holder with the opportunity to identify dates within a specified time period that would not be conducive for a first-year site visit or an academic-systems-review site visit. For academic-systems-review site visits, R7-5-506 currently requires Board staff to provide written notice to the charter holder of the two-week interval during which the site</p>	
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	<p>visit will be conducted.</p> <p>In conducting any site visit, R7-5-502(F)(2) requires the Board’s designee to make every effort not to disrupt the classroom environment.</p>	
<p>R7-5-505(B)(2): “Business relationship” is not defined leaving the meaning open to interpretation. A rule that would allow any entity with a business relationship with the charter holder to mandate that the Board conduct a compliance check would abdicate the Board’s discretion regarding compliance checks to a third-party that has no regulatory authority or any authority over charter schools. Under the other portions of the rule, a charter school can always request that Board staff provide compliance check information to an entity with which it has or may have a business relationship.</p>	<p>The rule’s provision that “Board staff may conduct a compliance check of a charter holder’s operational performance at any time” provides for Board staff to consider a request from a charter holder for a compliance check to be conducted and the results to be shared with a third-party.</p> <p>In addition to R7-5-505(B)(1) (Now R7-5-505(C)(1)), the Board conducts a compliance check when a lending institution, bond rating agency, or similar entity that has a loan or bond arrangement with a charter holder contacts Board staff to discuss a charter holder’s current standing with the Board. While this would fall under R7-5-505(B)(2), the Board believes clearly identifying this use would provide additional transparency.</p>	<p>The general provision was replaced with a provision that addresses the Board’s use of compliance checks when Board staff is contacted by certain entities to discuss a charter holder’s current standing with the Board.</p>
<p>R7-5-507(B)(1): It is inappropriate for Board staff to</p>	<p>The rule, as written, does not fully align with Board processes.</p>	<p>The word “direct” was removed and the provision modified to</p>

<p>“direct” a complainant to file the complaint with another agency if the complaint is not within the Board’s jurisdiction. Board staff should only provide a complainant with information about the potentially appropriate agency with which to file a complaint.</p>	<p>When a complaint falls outside of the Board’s jurisdiction, Board staff does not direct the complainant to file the complaint with other agencies, but does provide the complainant with information about the agency that may be able to assist.</p>	<p>reflect that Board staff shall inform the complainant that the complainant may file the complaint with the appropriate agency.</p>
<p>R7-5-507(C): Although 10 days may be enough time to prepare a complaint response in many instances, there may be circumstances in which additional time for a response is warranted. For example, a complaint may be received when a school is closed for a break, or a complaint may be so lengthy and detailed that 10 days will simply not provide enough time for a school to adequately respond to the complaint. The rule should provide Board staff with discretion to grant additional time to respond.</p>	<p>The rule, as written, does not fully align with Board processes, which allow for the granting of extensions.</p>	<p>A provision was added to clarify that Board staff may grant the charter holder an extension to submit the written response.</p>
<p>R7-5-507(C): This provision requires the charter holder’s response to address each allegation. For allegations that involve possible statutory or contractual noncompliance, the response should address each</p>	<p>The rule addresses only those complaints that fall within the Board’s jurisdiction or that may fall within the jurisdiction of another agency. It does not address instances where the Board facilitates communication</p>	<p>No change</p>

<p>allegation. However, complaints typically involve matters that do not pertain to statutory or contractual requirements. In those cases, charter holders would appreciate it if the Board identified those areas that require a response like the Office for Civil Rights and the Arizona Department of Education’s Exceptional Student Services do.</p>	<p>between the charter holder and complainant.</p>	
<p>R7-5-507(E): The notice of final action to be taken should be sent not only to the complainant but also to the charter holder.</p>	<p>The comment is correct.</p>	<p>A provision was added requiring Board staff to send the notice of the final action to be taken to the charter holder.</p>
<p>R7-5-508(A)(1): The reference to R7-5-503(D) needs to be updated as the proposed rules do not contain such a rule.</p>	<p>The comment is correct.</p>	<p>The reference to R7-5-503(D) was changed to R7-5-401(D).</p>
<p>R7-5-508: Arizona law allows a charter school authorizer to make decisions about a charter based on whether the charter holder is meeting the authorizer’s academic performance expectations or making “sufficient progress” towards those expectations. R7-5-508 recognizes this and allows the Board to require a charter holder to demonstrate sufficient progress. However, the rule does not address the contents or</p>	<p>Under previous versions of the Board’s academic performance framework, a charter holder that operated a school that didn’t meet the Board’s academic performance expectations was required to submit a detailed document to demonstrate progress toward meeting the expectations. The current academic framework states, “A Charter Holder that has one or more schools that receive an Overall Rating of ‘Does Not</p>	<p>To reflect accurately the requirements of the current academic performance framework and to eliminate confusion, revisions were made to R7-5-508 clarifying the demonstration of sufficient progress process.</p>

<p>format of what charter holders will be required to submit.</p>	<p>Meet Standard’ or ‘Falls Far Below Standard’ for three consecutive years has failed to demonstrate sufficient progress.” Now, instead of requiring a submission from a charter holder to demonstrate sufficient progress, the determination of sufficient progress is based on the charter holder’s year-to-year academic performance.</p>	
<p>R7-5-508(B)(3): There are no guidelines for the Board’s determination of the deadline, including that it must be reasonable in light of the factors identified by the Board in subsection (B)(2). A reasonable deadline should take into account why a school is not meeting the academic performance expectations, and it will necessarily depend on a host of facts that are specific to each school. Moreover, requiring the Board to set a deadline before it receives a school’s demonstration of sufficient progress necessarily eliminates the Board’s consideration of information that is likely relevant to setting that deadline.</p>	<p>Analysis provided for the public comment on R7-5-508 (see row above) is applicable to this comment as well.</p>	<p>As part of the changes made as a result of public comment received for R7-5-508 (see previous row), subsections (B)(1) through (B)(3) were deleted.</p>
<p>R7-5-510: Appreciation</p>	<p>The Board appreciates the</p>	<p>No change</p>

<p>expressed for the specific timelines set for compliance within the correction action plan section before further Board action is to be taken.</p>	<p>support.</p>	
<p>R7-5-510(A): The CAP requirement is triggered when the Board receives information that a charter holder is not in compliance with its charter or laws, which is a lower threshold than a determination that the charter holder is not in compliance with contractual or legal requirements. In addition, overlap may exist between this rule and other rules. For example, a charter holder required to respond to a complaint could also be required to submit a CAP. The rule should be revised to delineate the specific circumstances under which a CAP will be required.</p>	<p>The rule, as written, does not fully align with Board processes. The Board requires a charter holder to submit a CAP only for issues identified during site visits, audits, or as a result of actions taken by the Board to withhold up to 10% of the charter holder’s monthly state aid (R7-5-601(D)(2) and R7-5-605).</p>	<p>Specific references to CAPs were added to R7-5-502(G) and R7-5-505(D), which pertain to site visits.</p> <p>R7-5-510(A) was revised to focus the CAP requirement to site visits, audits, and withholding of a charter holder’s monthly state aid.</p>
<p>R7-5-510(B)(2): Suggested adding “deficiency” since some problems will not be offenses, which technically must be a violation of law, not merely a violation of a contract provision.</p>	<p>The comment is correct.</p>	<p>The provision was changed to “A description of the issue” to align with the changes identified in item 10 and to use the same term consistently throughout the rules.</p>
<p>R7-5-607(B)(1)(c): The charter holder should be allowed to provide additional context and its</p>	<p>The rule, as written, does not fully align with Board processes. Under current processes, the</p>	<p>The provision was changed to indicate that the written notice provided by the charter holder</p>

<p>views on the Board’s decision in the notice provided to parents and staff and not be limited to only providing the Board’s side of the story. The date and time of the hearing on the notice of intent to revoke may not be known within 48 hours of the issuance of the notice.</p>	<p>written notice provided by the charter holder must include the items specified in this rule, but is not limited to only these items.</p> <p>The 48 hours is from when the charter holder receives the notice of intent to revoke and not from when the Board votes to issue a notice of intent to revoke. The notice of intent to revoke provided to the charter holder includes the date, time and location of the hearing set with the Office of Administrative Hearings.</p>	<p>shall include the three items identified in the rule.</p> <p>R7-5-607(B) and R7-5-607(B)(1) were revised to clarify that the hearing information is included with the notice of intent to revoke provided to the charter holder.</p>
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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:

Charters issued under Article 2 and post-charter actions made under Article 3 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:

There are numerous federal laws that apply to public schools. However, no federal law is directly applicable to the subject of these rules. The rules are no more stringent than federal law.

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

No 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:

None of the rules in this rulemaking was made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 7. EDUCATION
CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS
ARTICLE 1. GENERAL PROVISIONS

Section

R7-5-101. Definitions

ARTICLE 2. APPLICATION FOR A NEW CHARTERS CHARTER; APPLICATION FOR CHARTER
REPLICATION

Section

R7-5-201. Application for a New Charter

R7-5-202. New Charter Application Processing Fee

R7-5-203. ~~Time frames~~ Time Frames for Granting or Denying a New Charter

R7-5-204. Review of Administratively Complete Application Package for a New Charter, Technical Assistance, and ~~In-Person~~ In-person Interview

R7-5-205. Execution of a New Charter

R7-5-206. ~~Good-Cause~~ Good-cause Extension to Execute a New Charter

R7-5-207. ~~Good-Cause~~ Good-cause Suspension of a New Charter

R7-5-208. Application for Replication Charter

ARTICLE 3. ~~CHARTER OVERSIGHT~~ POST-CHARTER ACTIONS

R7-5-301. Application for Charter Renewal; Early Renewal of Charter

R7-5-302. Charter Transfer Application

R7-5-303. Charter Amendment Requests

ARTICLE 4. ~~AMENDMENT TO A CHARTER~~ MINIMUM PERFORMANCE EXPECTATIONS

R7-5-401. ~~Amendment to a Charter~~ Minimum Academic Performance Expectations

- R7-5-402. Minimum Financial Performance Expectations
- R7-5-403. Minimum Operational Performance Expectations
- R7-5-404. Development and Use of Performance Frameworks

ARTICLE 5. ~~AUDITS AND AUDIT CONTRACTS~~ CHARTER SUPERVISION

Section

- ~~R7-5-301.~~ R7-5-501. ~~Audit Guidelines~~ General Supervision, Oversight, and Administrative Responsibility
- ~~R7-5-303.~~ R7-5-502. ~~Approval of Audit Contracts~~ Site Visits; Records; Notice of Violation
- R7-5-503. ~~Audit Completeness Determinations~~ Annual Academic Performance Review
- R7-5-504. ~~Review of Complete Audit~~ Annual Audit and Financial Performance Review
- R7-5-505. Annual Operational Performance Review
- R7-5-506. Five-year-interval Review
- R7-5-507. Complaints
- R7-5-508. Demonstration of Sufficient Progress towards Minimum Academic Performance Expectations
- R7-5-509. Financial Performance Response
- ~~R7-5-302.~~ ~~R7-5-510.~~ Corrective Action Plan

~~ARTICLE 3.~~ ARTICLE 6. CHARTER OVERSIGHT

Section

- ~~R7-5-304.~~ R7-5-601. ~~Disciplinary Action~~ Charter Oversight; General Provisions
- R7-5-602. Oversight of Charter Schools Assigned a Letter Grade of “F” by the Department
- R7-5-603. Oversight of Charter Schools Assigned a Letter Grade of “D” by the Department
- R7-5-604. Civil Penalty for Fingerprinting Violations
- R7-5-605. Withholding State Funds
- R7-5-606. Consent Agreement
- R7-5-607. Revocation

ARTICLE 1. GENERAL PROVISIONS

R7-5-101. Definitions

For the purpose of ~~In~~ this Chapter, the following definitions apply:

“Academic performance dashboard” means color-coded graphics that represent a charter school’s academic performance by measure for the three most recent fiscal years and identifies whether the schools operated by the charter holder meet the minimum academic performance expectations.

“Academic Performance Framework” means a document publicly available and posted on the Board’s web site that sets forth the minimum academic performance expectations for charter schools, measures of progress towards meeting the expectations, and consequences of failing to meet the expectations.

“Accounting industry regulatory body” means any state or federal regulatory body that has ~~the~~ authority to discipline a certified public accountant or audit firm.

“Administrative completeness review ~~time frame~~ time frame” means the number of days from the Board’s receipt of a submission for Board consideration until the Board staff determines whether the submission contains all components and is formatted as required by statute and rule. ~~The administrative completeness review time frame does not include the period during which the Board performs a substantive review of the submission.~~

“Annual application cycle” means ~~a new charter application~~ the process which is conducted the Board conducts each year to receive and review new charter application packages and grant or deny charters for the operation of new a charter schools and is based on the earliest fiscal year in which a new charter school may begin operation.

“Applicant” means a person that applies to the Board for a new charter, ~~a person who applies to transfer a charter from another charter school sponsor, a charter holder who applies to renew or replicate a charter sponsored by the Board, or a charter holder who applies to transfer an existing charter school site operated under a charter sponsored by the Board to a separate Board-sponsored charter held by the same charter holder.~~

“Application” means the Board-approved forms and instructions used by an applicant or charter holder to apply for a new charter, transfer a charter as provided under R7-5-302(A)(1), transfer a charter school as provided under R7-5-302(A)(2), or renew or replicate a charter sponsored by the Board.

“Application package” means an application form, narratives, and documents, including exhibits and attachments, as submitted by an applicant or charter holder.

“ASBCS Online” means the Board’s web-based interface, which is accessible through the web site of the Arizona State Board for Charter Schools’ website Schools.

“Audit” means a charter holder’s annual audit, ~~as required by~~ under A.R.S. § 15-914.

“Audit contract” means an engagement letter provided by an audit firm that describes the terms of a contract between a charter holder and the audit firm.

~~“Audit firm” means a business that conducts an independent audit for a charter school.~~

~~“Audit guidelines” means the Board approved general guidance on charter school audit requirements, which is available online.~~

“Authorized representative” means an individual with the power to bind an applicant contractually according to the applicant's Articles of Incorporation, operating agreement, or by-laws.

“Board” means the Arizona State Board for Charter Schools.

“CAP” means corrective action plan.

“Charter” means a contract between a person and the Board to operate a charter school under A.R.S. § 15-181 et seq.

“Charter holder” means a person that enters into a charter with the Board.

“Charter representative” means an individual with the power to bind a charter holder contractually according to the charter holder's Articles of Incorporation, operating agreement, or by-laws and is the point of contact ~~for~~ with the Board for the purposes of communication and accountability to ~~contract~~ charter terms and conditions.

~~“Charter school” means a public school operated under a charter granted under A.R.S. § 15-181 et seq~~ has the meaning specified at A.R.S. § 15-101.

“Date of notice” means the date on which an electronic notification is sent by the Board to an applicant or charter holder through the authorized representative or charter representative.

“Day” means a business day.

“Demonstration of sufficient progress” means the process for a charter holder to show the charter holder is making progress towards achieving the minimum academic performance expectations specified in the Academic Performance Framework.

“Department” means the Arizona Department of Education.

“Education Service Provider” means an organization that contracts with or has a governance relationship with an applicant or charter holder to provide comprehensive services.

“Financial performance dashboard” means a color-coded graphic that represents a charter holder’s financial performance by measure for the two most recent audited fiscal years and identifies whether the charter holder’s financial performance meets the minimum financial performance expectations.

“Financial Performance Framework” means a document publicly available and posted on the Board’s web site that sets forth the minimum financial performance expectations for charter holders, measures of performance, and consequences of failing to meet the expectations.

“Fiscal year” means the 12-month period beginning July 1 and ending June 30.

~~“Good standing” means that a supervising certified public accountant or audit firm has no current or pending disciplinary action or any regulatory action that requires the supervising certified public accountant or audit firm to complete conditions specified by an accounting industry regulatory body.~~

“Operational performance dashboard” means a color-coded graphic that represents a charter holder’s operational performance by measure for up to the five most recent fiscal years and identifies whether the charter holder’s operational performance meets the minimum operational performance expectations.

“Operational Performance Framework” means a document publicly available and posted on the Board’s web site that sets forth the minimum operational performance expectations for charter holders, measures of performance, and consequences of failing to meet the expectations.

~~“Overall time frame time frame” means the number of days after receipt of a submission for Board consideration until the Board decides whether to grant or deny the request contained within in the submission. The overall time frame time frame consists of both the administrative completeness review time frame time frame and the substantive review time frame time frame.~~

~~“Peer review” means an external quality control quality-control review, as required by generally accepted government auditing standards, that which determines whether an audit firm’s internal quality control quality-control system is in place and exists, is operating effectively, and provides assurance that established policies and procedures and applicable auditing standards are being followed.~~

“Performance expectations” means the minimum academic, financial, and operational performance expectations established by the Board.

“Person” means an individual, partnership, corporation, association, or public or private organization of any kind.

~~“Preliminary application package” means an administratively complete application package that is forwarded to the Technical Review Panel for scoring.~~

“Principals” means the officers, directors, members, partners, or board of an applicant or charter holder.

~~“Revised application package” means an application package including revisions submitted by an applicant after receiving written notification that the applicant’s preliminary application package failed to meet the scoring requirements of R7-5-204.~~

“Serious impact finding” means an issue identified by the Board that ~~in the opinion of the Board~~ believes has or potentially has a significant detrimental impact on the operation of the charter school or students, such as threat to the health and safety of children, failure to meet the academic needs of ~~the~~ children, gross violation of generally accepted accounting principles that increases the opportunity for fraud or theft, or ~~repeat~~ repeated issues of ~~non-compliance~~ noncompliance.

~~“Submission deadline” means a date and time established each year by the Board and identified in the application for a new charter by which a new charter application package shall be submitted to the Board to be considered in a specified annual application cycle.~~

~~“Substantive review ~~time frame~~ time frame” means the number of days after a submission for Board consideration is determined to be administratively complete until the Board decides whether to grant or deny the request contained ~~within~~ in the submission.~~

~~“Sufficiently qualified” means the Board’s determination that an applicant’s ~~application package~~, knowledge and understanding of the application package, experience, qualifications, current and prior charter compliance, capacity, personal and professional background, and creditworthiness indicate an ability to implement a charter or operate a charter school in accordance with federal and state law and the performance frameworks adopted ~~expectations established~~ by the Board ~~and requirements of statute and rule.~~~~

~~“Supervising certified public accountant” means the certified public accountant responsible for leading the audit ~~work~~ of a charter school or signing the final audit report.~~

~~“Technical Review Panel” means individuals approved by the Executive Director of the Board who use their expertise in charter school development, curriculum, and finance to assist ~~in the evaluation of a preliminary or revised~~ the Executive Director by conducting a preliminary evaluation of an application package.~~

ARTICLE 2. APPLICATION FOR A NEW CHARTERS CHARTER; APPLICATION FOR CHARTER REPLICATION

R7-5-201. Application for a New Charter

- A. By March 31 of each year, the Board shall approve and make available ~~online at its web site~~ on ASBCS Online an application for a new charter for a specified annual application cycle.
- B. A person ~~desiring that wants~~ to establish a charter school shall submit ~~an~~ a complete application package ~~online through the web based application wizard on ASBCS Online~~ by the submission deadline identified in the application.
- C. A person may ~~utilize an alternate submission process~~ submit a complete application package by using:
 - 1. The web-based application wizard on ASBCS Online; or
 - 2. An alternative submission process. Before using an alternative submission process, the person shall
 - 1. ~~A person utilizing the alternate submission process shall submit by hand delivery~~ deliver or mail a signed, notarized waiver request to the Board, in the form and by the waiver deadline ~~set out~~ identified in the application, and shall waive the right to have the Board consider an application package submitted through ASBCS Online during the same annual application cycle.
 - 2. ~~The Board shall send an acknowledgment of timely receipt of a waiver request within 10 days of receipt~~

of a waiver request.

3. ~~Any person who submits a timely waiver request waives the right to have the Board consider any application package submitted through ASBCS Online in the same annual application cycle. Instead, such a person shall only submit an application package according to the alternate submission process instructions and by the alternate submission process submission deadline identified in the application.~~
4. ~~An~~ The Board shall not accept an application package ~~shall not be accepted~~ through the alternative submission process unless a waiver request has been ~~received~~ submitted by the waiver deadline and acknowledged as timely by the Board.

C.D. An applicant for a new charter shall ensure ~~that~~ the submitted application package contains all the information, materials, documents, and attachments identified in the application ~~for a new charter for the current annual application cycle~~ and A.R.S. § 15-183(A), including the new charter application processing fee specified under R7-5-202, and is in the format specified in ~~that~~ the application, ~~which shall together constitute:~~

1. ~~A detailed educational plan,~~
2. ~~A detailed business plan,~~
3. ~~A detailed operational plan, and~~
4. ~~Any other materials the Board requires.~~

R7-5-202. New Charter Application Processing Fee

~~Each applicant shall pay~~ As specifically authorized under A.R.S. § 15-183(CC), the Board establishes and shall collect a new charter application processing fee, ~~in accordance with A.R.S. § 15-183(CC) of \$6,500 for each application package submitted to the Board.~~

1. ~~The new charter application processing fee is \$6,500 for each application package an applicant submits to the Board.~~
2. ~~Each~~ An applicant shall pay the new charter application processing fee in the form of a single personal check or cashier's check ~~with the applicant's name clearly identified on the front of the check that:~~
 - a. Is made payable to Arizona State Board for Charter Schools,;
 - b. Has the applicant's name imprinted on the front of the check, and
 - c. ~~The check shall be~~ Is delivered by mail or hand ~~delivery~~ to the Board office during regular business hours by the submission deadline.
3. ~~Failure to timely submit the new charter application processing fee shall result in the Board staff shall deem an application package being deemed~~ administratively incomplete under R7-5-203(B) if the new charter application processing fee is not received by the submission deadline.
4. ~~All Board staff shall deposit all checks shall be deposited~~ within five days of submission. If an applicant's new charter application processing fee payment to the Board check is dishonored for any reason including

~~an insufficient funds check~~ Board staff shall:

- a. ~~The application package shall be deemed~~ Deem the application package administratively incomplete under R7-5-203(B), and
- b. ~~The applicant shall use a cashier's check to pay the new charter application processing fee for any application package submitted to the Board by the applicant at any later date~~ Require the applicant to pay any future fees to the Board by cashier's check.

~~5.4.~~ If an application package is found to be administratively incomplete, under R7-5-203(B), and the applicant paid the new charter application processing fee, the Board shall refund the fee ~~shall be refunded~~ to the applicant. ~~The fee refund shall be mailed by U.S. Postal Service regular mail~~ by mailing a refund check to the authorized representative at the address provided in the application package.

~~6.5.~~ If an application package is found to be administratively complete under R7-5-203(B), the new charter application processing fee ~~shall become~~ becomes non-refundable except as required under A.R.S. § 41-1077(A).

R7-5-203. ~~Time-frames~~ Time Frames for Granting or Denying a New Charter

A. For granting or denying a new charter, the ~~time frames required~~ time frames are:

1. Administrative completeness review ~~time frame~~ time frame: 25 days;
2. Substantive review ~~time frame~~ time frame: 175 days; and
3. Overall ~~time frame~~ time frame: 200 days.

B. ~~An application package for a charter school~~ applicant for a new charter shall be submit to the Board an administratively complete ~~if~~ application package by the submission deadline. An application package is complete if:

1. The application package is from the current application cycle;
- ~~2.~~ The application package contains all the information, materials, documents, attachments, signatures, and notarizations identified in the application for a new charter for the current annual application cycle;
- ~~3.~~ All the application package's components are formatted as required by that application;
- ~~4.~~ All curriculum samples address the required standard;
- ~~5.~~ All templates are unmodified, completely filled out and completed, and from the current annual application cycle; and
- ~~6.~~ The application processing fee has been paid according to required under R7-5-202(1), (2), and (4) is paid.

C. The administrative completeness review ~~time frame, as~~ time frame listed in subsection (A)(1); begins the day after the Board receives an application package.

D. If an application package is administratively complete, Board staff shall send the applicant a written notice of administrative completeness.

E. If an application package is administratively incomplete, Board staff shall:

- ~~1. If the application package is administratively incomplete when received, the Board staff shall provide to~~
Send the applicant a written notice of deficiency that states the reasons the application package was found to be is administratively incomplete. ;
- ~~2. Upon written notice to the applicant that the application package is administratively incomplete, the Board staff shall~~ Administratively ~~close the applicant's file. ; and~~
3. Refund the new charter application processing fee paid under R7-5-202.

~~a.~~ **F.** If an applicant receives a written notice of deficiency under subsection (E) and if the submission deadline has not yet passed, an the applicant may correct the deficiencies in an the administratively incomplete application package and submit a new application package in the same annual application cycle, under by complying with R7-5-201; the applicant shall pay a new application processing fee, under R7-5-202.

~~b.~~ **G.** ~~An~~ If an applicant receives a written notice of deficiency under subsection (E) and who believes their the application package was erroneously designated as administratively incomplete, the applicant may submit a written request for reconsideration to the Board within 10 days of after the date of the notice of deficiency.

~~i.~~ **H.** ~~The~~ An applicant that submits a written request for reconsideration under subsection (G) shall ensure the request; for reconsideration shall contain

1. Contains a clear statement indicating how the previously submitted application package fulfilled each of the requirements that were identified as having been deficient.; and
- ~~2. The request for reconsideration shall not provide any~~ Has no ~~new or additional information, documents, or materials included or attached.~~

~~ii.~~ **I.** A Within 10 days after receiving a request for reconsideration, Board staff shall review the request and:

1. Determine whether the request complies with the requirements in subsection (H) and if not, that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and send the applicant written notice shall be notified that the request was not submitted according to subsection (i) and the applicant's properly and the applicant's file is remains closed.;

~~iii.~~ The Board staff shall review a request for reconsideration that is submitted according to subsection (i) and provide a decision on the request for reconsideration within 10 days of receipt.

~~iv.~~ 2. If the Board staff determines the application package was erroneously designated as administratively incomplete, the Board staff shall reopen the applicant's file and send the applicant a written notice of administrative completeness to the applicant. ; or

3. If the Board staff determines the application package was correctly designated as administratively incomplete, send the applicant written notice the applicant's file shall remain remains closed.

~~3.~~ If the application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.

~~4.J.~~ If the Board staff does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review ~~time frame~~ time frame, the application package is deemed administratively complete.

~~D.K.~~ A The substantive review ~~time frame~~, as time frame listed in subsection (A)(2), begins when an application package is determined to be administratively complete. ~~The Board staff shall ensure the~~ substantive review is conducted according to R7-5-204.

~~E.L.~~ Within the time provided in subsection (A)(3), ~~the~~ Board staff shall provide the applicant with written notice of ~~it's~~ the Board's decision to grant or deny a charter.

1. The Board shall deny a charter if ~~it~~ the Board determines ~~that~~ the application package does not meet the requirements of statute or rule or the applicant is not sufficiently qualified to operate a charter school. ~~The Board staff shall include in the~~ written notice ~~shall include~~ the basis for the denial and other information required under A.R.S. § 41-1092.03. ~~The~~ An applicant that receives a notice of denial may:
 - a. Submit a new application package under R7-5-201 ~~for consideration by the Board~~ in ~~any~~ a later annual application cycle; or
 - b. Appeal the Board's decision under A.R.S. Title 41, Chapter 6, Article 10.
2. The Board shall grant a charter if it determines that the application package meets the requirements of statute and rule and the applicant is sufficiently qualified to operate a charter school.

R7-5-204. Review of Administratively Complete Application Package for a New Charter, Technical Assistance, and ~~In-Person~~ In-person Interview

A. The Board shall ensure ~~review of~~ an administratively complete application package for a new charter is reviewed as follows:

1. The Technical Review ~~panel~~ Panel shall score ~~the preliminary~~ an application package using the evaluation criteria identified in the application to determine whether ~~an~~ the application package meets the Board's ~~scoring~~ requirements.
- ~~a.~~ 2. An The Technical Review Panel shall assign an application package ~~shall be assigned~~ a score of "Meets the Criteria," "Approaches the Criteria," or "Falls ~~Below~~ below the Criteria" for each evaluation criterion.
 - ~~i.~~ a. ~~An~~ The Technical Review Panel shall score an evaluation criterion ~~shall be scored~~ "Meets the Criteria" when the application section within which that evaluation criterion is identified ~~by the application~~:
 - ~~(1)~~ i. Addresses the evaluation criterion fully with specific and accurate information;
 - ~~(2)~~ ii. Reflects a thorough understanding of the evaluation criterion; and
 - ~~(3)~~ iii. Is clear and coherent.
- ~~ii.~~ b. ~~An~~ The Technical Review Panel shall score an evaluation criterion ~~shall be assigned a score of~~ "Approaches the Criteria" when the application section within which that evaluation criterion is

identified by the application:

- (1) i. Addresses the evaluation criterion partially ~~and~~ or lacks specific and accurate information for some aspect of the evaluation criterion;
 - (2) ii. Presents a partial understanding of the evaluation criterion; or
 - (3) iii. Is not clear and coherent.
- ~~iii. c.~~ iii. c. ~~An~~ The Technical Review Panel shall score an evaluation criterion ~~shall be assigned a score of~~ “Falls ~~Below~~ below the Criteria” when the application section within which that evaluation criterion is identified ~~by the application does not~~ fails to address the evaluation criterion.

~~b. 3.~~ 3. An application package meets the Board's ~~scoring~~ requirements if:

- ~~i. a.~~ i. a. No evaluation criterion ~~receives a score of~~ is scored “Falls ~~Below~~ below the Criteria;”
- ~~ii. b.~~ ii. b. No more than one evaluation criterion in each application section is scored as ~~Approaching~~ “Approaches the Criteria;” and
- ~~iii. c.~~ iii. c. ~~The application package receives a score of~~ Meets the Criteria for at At least 95% percent of the evaluation criteria in ~~each plan (~~ the educational plan, operational plan, and business plan) ~~is~~ scored “Meets the Criteria.”

~~2. B.~~ 2. B. The Board staff shall conduct a background and credit check of each principal and authorized representative of the applicant and ~~confirm~~ determine whether each principal and authorized representative possesses a valid fingerprint clearance card issued by the State of Arizona.

~~a.~~ a. If ~~issues arise from the information obtained~~ an issue arises during the background and credit ~~checks~~ check of any principal or authorized representative, ~~the~~ Board staff shall provide the ~~pertinent~~ principal or authorized representative written notice of the ~~issues~~ issue and ~~the principal will have the~~ an opportunity to provide a written response clarifying addressing the ~~information~~ issue. The Board shall consider information obtained from the background and credit check when making the decision to grant or deny a new charter.

~~b.~~ b. ~~Information obtained and communications conducted during this process shall be considered by the Board in making its decision on whether to grant or deny a charter.~~

~~3. C.~~ 3. C. ~~The Board staff shall notify the applicant if the preliminary~~ If an application package fails to meet the ~~scoring~~ Board's requirements as ~~evaluated by the Technical Review Panel~~ specified under subsection (A)(3), Board staff shall provide written notice to the applicant. ~~The Board staff shall~~ provide include in the notice:

- 1. The reasons the application package ~~fails~~ failed to meet the ~~scoring~~ Board's requirements; ~~and include the~~
- 2. ~~comments~~ Comments of the Technical Review Panel, which will serve as technical assistance and suggestions for improving the application package; and
- 3. The options specified under subsection (D).

~~4. D.~~ 4. D. ~~An~~ If an applicant ~~who~~ receives ~~notification that a preliminary application package fails to meet the~~

~~scoring requirements as evaluated by the Technical Review Panel~~ notice under subsection (C), the applicant may, within 20 days of the date of notice, submit to the Board:

- ~~1. a~~ 1. A revised application package, or a
- ~~2. A~~ 2. A written request that the ~~preliminary~~ previously submitted and scored application package be forwarded to the Board.
- ~~5. E.~~ 5. E. If a ~~revised application package or written request is not submitted to the Board within 20 days of the date of notice that a preliminary application package fails to meet the scoring requirements~~ an applicant that receives notice under subsection (C) fails to act under subsection (D), the Board staff shall close the applicant's file. An applicant whose file is closed and ~~who~~ who wants to obtain a new charter shall apply again under R7-5-201 in ~~any~~ a later annual application cycle.
- ~~6. F.~~ 6. F. If a an applicant submits a revised application package ~~is submitted under subsection (D),~~ the Technical Review Panel shall score the revised application package ~~using the scores and scoring requirements described in subsection (1) as specified under subsection (A).~~
- ~~7.~~ 7. If a the revised application package fails to meet the ~~scoring~~ Board's requirements as ~~evaluated by the Technical Review Panel~~ specified under subsection (A)(3), the Board staff shall ~~notify~~ provide written notice to the applicant of the intent to close the file. ~~The~~ Board staff shall include with the notice the comments of the Technical Review Panel.
- ~~8. G.~~ 8. G. An applicant ~~who~~ that receives ~~notification of the Board staff's intent to close the file~~ notice under subsection (F) may, within 20 days ~~of~~ after the date of notice, submit a written request that the revised application package be forwarded to the Board.
- ~~9.~~ 9. If a written request is not submitted ~~to the Board within 20 days of the date of notice that a revised application package fails to meet the scoring requirements,~~ the Board staff shall close the applicant's file. An applicant whose file is closed and ~~who~~ who wants to obtain a new charter shall apply again under R7-5-201 in ~~any~~ a later annual application cycle.
- ~~10. H.~~ 10. H. At least 30 days ~~prior to~~ before the last Board meeting before the substantive review ~~time frame~~ time frame expires, and within 90 days ~~of the determination that a preliminary or revised~~ after determining an application package meets the ~~scoring~~ Board's requirements as ~~evaluated by the Technical Review Panel, under subsection (A)(3) or the receipt of receiving an applicant's request under subsection (4) (D)(2) or (8) (G), that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Technical Review Panel,~~ the principals and authorized representative of the applicant shall make themselves available for an in-person interview with two or more members of the Technical Review Panel. In the interview, the members of the Technical Review Panel shall assess:
 - ~~a. 1.~~ a. 1. The applicant's understanding of the components presented in the ~~written~~ application package;
 - ~~b. 2.~~ b. 2. The applicant's capacity to implement a plan to operate a charter school in accordance with the performance ~~frameworks adopted~~ expectations established by the Board;

- e. 3. The applicant's clarification of any ~~issues that arise~~ issue revealed in the course of the due diligence process for ~~any~~ the applicant; any principal, authorized representative, or Education Service Provider; and
- d. 4. Any other ~~factors~~ factor relevant to determining whether the applicant is sufficiently qualified to operate a charter school.

~~11. I.~~ Board staff shall provide an applicant with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package and ~~The Board shall consider an application package to determine whether to approve or deny the application package and whether to grant or deny the~~ a new charter if the Technical Review Panel determines that the application package meets or exceeds the scoring requirements or if ~~to the applicant requests under subsection (4) or (8) that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Technical Review Panel.~~

a. ~~For the purpose of deciding whether to approve or deny the application package, the Board shall consider:~~

- i. ~~The application package; and~~
- ii. ~~A copy of the scoring rubric completed by the Technical Review Panel.~~

b. ~~For the purpose of deciding whether to grant or deny a new charter, the~~ The Board shall use the following information to determine whether the applicant is sufficiently qualified by considering the following to operate a charter school:

- i. 1. The application package;
- ii. 2. ~~A copy of the~~ The scoring rubric completed by the Technical Review Panel;
- iii. 3. The results of the in-person interview of the applicant's principals and authorized representative;
- iv. 4. Information obtained through ~~verification and investigation and verification~~ of the employment, experience, and education backgrounds ~~including employment, experience, education, fingerprint clearance card, and assessment of creditworthiness for each of the principals~~ each principal and authorized representative of the applicant;
- v. 5. Information concerning any current or former charter operations for any principal, authorized representative, or Education Service Provider ~~or principal~~ of the applicant;
- vi. 6. A Board staff report; and
- vii. 7. Testimony presented at the Board meeting.

~~12. The Board shall provide an applicant, with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package.~~

J. After the Board meeting held under subsection (I), Board staff shall provide written notice to the applicant regarding the Board's decision to grant or deny a new charter to the applicant. If the Board denies a new charter to the applicant, the Board shall include the information required under A.R.S. § 41-1092.03 in the

written notice.

R7-5-205. Execution of a New Charter

- A. After the ~~Board's decision~~ Board decides to grant a new charter, ~~and~~ but before the charter is signed, the applicant shall submit to the Board the following:
1. ~~No change~~ A completed I.R.S. Form W-9, Request for Taxpayer Identification Number and Certification, obtained from the Department or online at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 2. ~~Charter school site location~~ The following information including for each charter school approved for educational use:
 - a. Certificate of occupancy ~~for each charter school site approved for educational use;~~ and
 - b. Fire marshal report ~~for each charter school site approved for educational use;~~ or
 - c. If either the certificate of occupancy ~~and~~ or fire marshal report ~~are~~ is not available, a completed Occupancy Compliance Assurance and Understanding form obtained from the Board;
 3. A completed General Statement of Assurances form obtained from the Department;
 4. A statement indicating where all public notices of meetings will be posted as required ~~by the Secretary of State~~ under A.R.S. § 38-431.02; and
 5. ~~Copy~~ A copy of the lease agreement or other documentation of a secured charter school facility for each charter school ~~site~~.
- B. ~~A charter shall be signed by the~~ The Board President or designee and authorized representative of the applicant shall sign the charter within 12 months after the Board's decision to grant the charter.
1. If a the charter is not timely signed, the Board's decision to grant the new charter expires, unless the applicant applies for and is granted a ~~good-cause~~ good-cause extension to execute the charter under R7-5-206.
 2. If an applicant ~~who~~ that is granted a new charter but does not timely sign the charter and does not obtain a ~~good-cause~~ good-cause extension wants to obtain a new charter, the applicant shall apply again under R7-5-201 in ~~any~~ a later annual application cycle.
- C. A charter holder shall begin providing educational instruction no later than the second fiscal year after the Board's decision to grant the charter, unless the charter holder is granted a ~~good-cause~~ good-cause extension to execute a charter under R7-5-206 or ~~good-cause~~ good-cause suspension of a charter under R7-5-207.
1. A charter holder ~~who~~ that is granted a ~~good-cause~~ good-cause extension to execute a charter under R7-5-206 or ~~good-cause~~ good-cause suspension of a charter under R7-5-207 shall begin providing educational instruction no later than the third fiscal year after the Board's decision to grant the charter.
 2. If a charter holder does not begin providing educational instruction as required ~~by subsections under~~ subsection (C) and or (C)(1), the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).

- D.** ~~A~~ At least 10 days before beginning to provide educational instruction, a charter holder shall submit to the Board the following written proof that the charter school is in compliance with federal, state, and local ~~rules, regulations, and statutes~~ laws relating to health, safety, civil rights, and insurance ~~at least 10 days before the first day it will begin providing educational instruction by submitting:~~
1. Charter school ~~site~~ contact information;
 2. Insurance policy binder issued by an insurance company licensed to do business in Arizona;
 3. County health certificate for each ~~site~~ charter school at which students will be taught;
 4. Evidence of a public meeting, required by A.R.S. § 15-183(C)(7), at least 30 days before the charter holder opens a ~~site for the~~ charter school;
 5. Certificate of attendance of the charter representative or principal at the special education training for new charters offered by the ~~Department's Exceptional Student Services Division~~ Department; and
 6. Any other documents required to demonstrate compliance with federal, state, and local ~~rules, regulations, and statutes~~ laws relating to health, safety, civil rights, and insurance.
- E.** If a charter holder ~~has completed~~ submitted an Occupancy Compliance Assurance and Understanding form under subsection (A)(2), the Board shall not advise the Department to initiate state aid funding ~~shall not initiate until the Board staff has determined that~~ determines the required certificate of occupancy and fire marshal report submissions are complete and sufficient.
- F.** A new charter is effective upon ~~the signing of~~ by both parties for ~~a term of~~ 15 years ~~commencing~~ beginning on the date stated in the charter, unless revoked under A.R.S. § 15-183(I).

R7-5-206. ~~Good Cause~~ Good-cause Extension to Execute a New Charter

- A.** Before the Board's decision to grant a new charter expires under R7-5-205(B), an applicant ~~who~~ that has not yet executed the charter may submit to the Board a written request for a ~~good-cause~~ good-cause extension to execute a charter.
- ~~4-~~ The applicant shall ensure the written request for a ~~good-cause~~ good-cause extension to execute a charter ~~shall:~~
- a. ~~1. Explain~~ Explains and ~~provide~~ provides evidence of why the applicant is unable to implement the plans contained in the application package and execute the charter within the allotted 12 months;
 - b. ~~2. Explain~~ Explains the applicant's new timeline for implementing the plans contained in the application package, and why the new timeline is viable and adequate ~~for achieving the proposed to enable the applicant to execute the charter by the new timeline start-up date of the school and appropriate for operating a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule;~~ and
 - e. ~~3. Provide~~ Provides clear and specific action steps with target completion dates that will enable the applicant to implement the plans contained in the application package in accordance with the new

timeline ~~provided~~ and the requirements of R7-5-205(C)(1).

- ~~2.~~ **B.** The Board ~~may~~ shall grant a ~~good-cause~~ good-cause extension to execute a charter if an applicant demonstrates good cause. When ~~considering a request for a~~ deciding whether the applicant demonstrates good cause ~~extension to execute a charter~~, the Board shall consider:
- ~~a.~~ 1. The timeliness of the ~~submission of the~~ request for a good-cause extension and the proposed extension date;
 - ~~b.~~ 2. The viability of the applicant's new timeline for implementing the plans contained in the application package;
 - ~~c.~~ 3. Whether the new timeline ~~provided by the applicant~~ is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
 - ~~d.~~ 4. ~~Unforeseen~~ The circumstances ~~affecting the applicant indicates affected~~ the applicant's ability to execute the charter within the allotted 12 months;
 - ~~e.~~ 5. Whether there have been changes in the principals of the applicant; and
 - ~~f.~~ 6. ~~The status of~~ extent to which the applicant is in compliance with all applicable federal, ~~State~~ state, and local laws, ~~and with all of the terms of a charter.~~
- ~~3.~~ **C.** The Board shall not grant more than one ~~good-cause~~ good-cause extension to execute a particular charter ~~to any applicant for the same charter.~~
- ~~4.~~ **D.** If the Board grants a ~~good-cause~~ good-cause extension to execute a charter, the Board shall specify the date by which the applicant shall execute the charter and begin providing educational instruction based on the timeline provided by the applicant and the requirements of R7-5-205(C)(1). If the applicant does not execute the charter by the specified date, the Board's decision to grant the charter ~~shall expire~~ expires.

R7-5-207. ~~Good-Cause~~ Good-cause Suspension of a New Charter

- A.** ~~Prior to~~ Before the first day of the fiscal year ~~that in which~~ a charter holder must begin providing educational instruction, the charter holder, if eligible under subsection (B), ~~of a not yet operational charter~~ may submit to the Board a written request for a ~~good-cause~~ good-cause suspension of a the charter.
- ~~1.~~ **B.** A charter holder is eligible to apply for a ~~good-cause~~ good-cause suspension of a the charter if:
- ~~a.~~ 1. The charter holder has not been granted a ~~good-cause~~ good-cause extension to execute a the charter,
 - ~~b.~~ 2. The charter holder has not begun providing educational instruction under the charter, and
 - ~~c.~~ 3. The charter holder has not received or has returned state equalization or other state or federal funding for which provision of instruction is a requirement of receipt.
- ~~2.~~ **C.** The charter holder shall ensure the written request for a ~~good-cause~~ good-cause suspension of a charter shall:

- a. ~~1.~~ ~~Explain~~ Explains and ~~provide~~ provides evidence for why the charter holder is unable to implement the plans contained in the application package and begin providing educational instruction as required under R7-5-205(C);
 - b. ~~2.~~ ~~Explain~~ Explains the charter holder's new timeline for implementing the plans contained in the application package; and why the new timeline is viable and adequate ~~for achieving the proposed start-up date of the school and appropriate for operating~~ to enable the charter holder to operate a charter school in accordance with the charter and performance frameworks adopted expectations established by the Board and requirements of statute and rule. ; and
 - e. ~~3.~~ ~~Provide~~ Provides clear and specific action steps with target completion dates that will enable the charter holder to implement the plans contained in the application package in accordance with the new timeline provided and the requirements of R7-5-205(C)(1).
3. ~~D.~~ The Board ~~may~~ shall grant a ~~good-cause~~ good-cause suspension of a charter if the charter holder demonstrates good cause. When ~~considering a request for a~~ deciding whether the charter holder demonstrates good cause suspension of a charter, the Board shall consider:
- 1. Whether the charter holder is eligible under subsection (B) for a good-cause suspension of a charter;
 - a. ~~2.~~ The timeliness of the ~~submission of the request~~ for a good-cause suspension of a charter and the proposed extension date;
 - b. ~~3.~~ The viability of the charter holder's new timeline for implementing the plans contained in the application package;
 - e. ~~4.~~ Whether the new timeline ~~provided by the charter holder~~ is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
 - d. ~~5.~~ ~~Unforeseen~~ The circumstances affecting the charter holder indicates affected the charter holder's ability to begin providing educational instruction as required under R7-5-205(C);
 - e. ~~6.~~ Whether there have been changes in the principals of the charter holder; and
 - f. ~~7.~~ The ~~status of~~ extent to which the charter holder is in compliance with all applicable federal, ~~State~~ state, and local laws; and ~~with all of the~~ terms of the charter.
4. ~~E.~~ The Board shall not grant more than one ~~good-cause~~ good-cause suspension of a particular charter to any charter holder ~~for the same charter and shall not grant a good-cause suspension of a charter to any charter holder who previously received a good-cause extension to execute a charter for the same charter.~~
5. ~~A charter holder who is granted a good-cause suspension may execute and submit an amendment to the charter indicating a new effective date which shall conform to the date on which the charter holder shall begin providing educational instruction.~~
6. ~~F.~~ A charter holder ~~who is~~ granted a ~~good-cause~~ good-cause suspension of a the charter shall not apply to receive any state equalization or other state or federal funding for which provision of instruction is a

requirement of receipt until the fiscal year in which the charter holder plans to begin providing educational instruction, ~~and~~ The holder of a suspended charter shall promptly return any such funding it receives prior to before the fiscal year in which it begins providing educational instruction.

~~7.~~ G. A charter holder granted a ~~good-cause~~ good-cause suspension of a charter shall begin providing educational instruction as required by R7-5-205(C). If a charter holder does not begin providing educational instruction as required, the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).

R7-5-208. Application for Replication Charter

- A. The charter holder of an existing high quality charter school may be eligible to apply for a replication charter rather than a new charter. A replication charter allows the charter holder to implement the existing educational program, corporate and governance structure, and financial and operational processes at a new charter school.
- B. A charter holder that wishes to apply for a replication charter shall submit to the Board a Replication Eligibility form. Board staff shall review the form and determine whether the charter holder is eligible to apply for a replication charter. A charter holder is eligible to apply for a replication charter if the charter holder is in compliance with provisions of its charter, contractual agreements with the Board, federal and state law and this Chapter, and meets the academic eligibility requirements specified in the replication application instructions, which are publicly available and posted on the Board's web site.
- C. Within 15 days after receiving a Replication Eligibility form, Board staff shall provide written notice to the charter holder of whether the charter holder may apply for a replication charter and, if eligible, shall make the replication application available to the charter holder.
- D. If a charter holder submits an application package for a replication charter by the last business day of September, Board staff shall process the application package in an expedited manner and ensure the application package is considered at the Board's meeting in November.
- E. As required under A.R.S. § 41-1073, the Board establishes the following time frames for approving or disapproving a replication charter:
 - 1. Administrative review time frame: 15 days;
 - 2. Substantive review time frame: 50 days; and
 - 3. Overall time frame: 65 days.
- F. The provisions at R7-5-205(A), regarding execution of a new charter, apply to a replication charter.
- G. R7-5-206, regarding a good-cause extension to execute a new charter, and R7-5-207, regarding good-cause suspension of a new charter, do not apply to a replication charter.

ARTICLE 3. CHARTER OVERSIGHT POST-CHARTER ACTIONS

R7-5-301. Application for Charter Renewal; Early Renewal of Charter

- A.** The Board shall make available on its web site instructions regarding eligibility and submission requirements for renewal and early renewal of a charter.
- B.** A charter holder shall submit to the Board electronically through ASBCS Online the renewal application package identified in subsection (E) or the early renewal application package identified in subsection (L). The Board shall not accept a paper submission.
- C.** The Board shall provide the charter holder at least 72-hours' written notice of the date, time, and location of the Board meeting at which the Board will consider the charter holder's renewal or early renewal application package. The charter holder shall attend the Board meeting.
- D.** At least 18 months before a charter is scheduled to expire, the Board shall provide the charter holder with a renewal application that is customized based on the charter holder's performance history. The Board shall require a charter holder that does not meet the performance expectations specified in Article 4 to submit more information than a charter holder that does meet the performance expectations.
- E.** As required under A.R.S. § 15-183(I), a charter holder that intends to seek renewal of the charter shall submit to the Board a renewal application package at least 15 months before the charter is scheduled to expire.
- F.** The Board shall not consider a renewal application package that is not submitted by the date specified in subsection (E).
- G.** As part of the charter renewal process, Board staff shall conduct an academic-systems-review site visit, as described in R7-5-506, of the charter holder.
- H.** The Board shall notify a charter holder of the Board's decision to renew or deny renewal of the charter at least 12 months before the charter is scheduled to expire.
- I.** As specified under A.R.S. § 15-183(I), the Board may deny renewal of a charter if the Board determines the charter holder failed to meet or make sufficient progress toward the academic performance expectations or failed to meet the operational performance expectations specified in Article 4, complete the obligations of the charter, or comply with federal or state law or this Chapter. If the Board denies renewal of a charter, Board staff shall provide written notice to the charter holder that includes the information required under A.R.S. § 41-1092.03(A).
- J.** A charter holder is eligible to apply for early renewal of the charter if the charter holder:

 - 1.** Submits to the Board a letter of intent to apply for early renewal at least 24 months before the charter is scheduled to expire;
 - 2.** Has operated a school under the charter for at least five years;
 - 3.** Meets the performance expectations specified in Article 4; and
 - 4.** Had no compliance matters within the last three years that required action by the Board or other governmental entity.
- K.** Within 15 days after receiving a letter of intent to apply for early renewal under subsection (J)(1), Board staff

shall provide written notice to the charter holder of whether the charter holder is eligible to apply for early renewal and, if eligible, shall provide the charter holder with the renewal application referenced in subsection (D).

- L. A charter holder that receives notification under subsection (K) of eligibility to apply for early renewal shall submit to the Board the early renewal application package no later than one month after the charter holder receives notification under subsection (K).
- M. A charter holder applying for early renewal shall continue to meet the eligibility requirements specified in subsection (J) until the Board considers the early renewal application package at the Board meeting referenced under subsection (C). The Board shall not consider an early renewal application package submitted by a charter holder that has a change in eligibility status.
- N. Within three months after a charter holder timely submits an early renewal application package, Board staff shall conduct an academic-systems-review site visit, as described in R7-5-506, of the charter holder and shall place the charter holder's early renewal application package on an agenda for Board consideration.
- O. As specified under A.R.S. § 15-183(I)(2), the Board may deny early renewal of a charter if the Board determines the charter holder failed to meet or make sufficient progress toward the academic performance expectations or failed to meet the operational performance expectations specified in Article 4, complete the obligations of the charter, or comply with federal or state law or this Chapter. If the Board denies early renewal of a charter, Board staff shall provide written notice to the charter holder that includes the information required under A.R.S. § 41-1092.03(A).

R7-5-302. Charter Transfer Application

- A. A charter transfer application may be used to do either of the following:
 1. Transfer a charter to the Board; or
 2. Transfer a charter school that has operated under an existing charter for at least three years to its own charter with the same educational program and financial and operational processes.
- B. The Board shall make available on its web site instructions regarding eligibility and submission requirements for transfers specified under subsection (A).
- C. A charter holder that intends to transfer as specified under subsection (A) shall submit to the Board a letter of intent to transfer.
- D. Within 15 days after receiving a letter of intent to transfer, Board staff shall provide written notice to the charter holder of whether the charter holder may apply for transfer.
- E. A charter holder eligible to transfer under subsection (D) shall submit to the Board a paper charter transfer application package until electronic submission through ASBCS Online is available. After electronic submission through ASBCS Online is available, the Board shall not accept a paper submission.
- F. For a transfer to occur on July 1, a charter holder shall submit the letter of intent to transfer by the last

business day of November of the prior fiscal year and the transfer application package by the last business day of February of the prior fiscal year.

G. The Board shall provide the charter holder at least 72-hours' written notice of the date, time, and location of the Board meeting at which the Board will consider the charter holder's transfer application package. The charter holder shall attend the Board meeting.

H. As required under A.R.S. § 41-1073, the Board establishes the following time frames for approving or disapproving a charter transfer:

1. Administrative review time frame: 15 days;
2. Substantive review time frame: 60 days; and
3. Overall time frame: 75 days.

R7-5-303. Charter Amendment Requests

A. A change to a charter requires the consent of both the Board and charter holder. To obtain the Board's consent to a change to a charter, the charter holder shall submit a charter amendment request to the Board.

B. A charter holder shall not act in a manner contrary to the terms of the charter without obtaining the Board's prior consent to the change.

C. The Board shall make available on its web site instructions regarding eligibility and submissions requirements for each amendment request listed under subsection (D).

D. The Board shall accept requests for the following charter amendments:

1. Add or remove a grade level to a charter;
2. Addition of or change to an Arizona Online Instruction Program of Instruction; as expressly authorized under A.R.S. § 15-183(X), the Board shall charge a non-refundable processing fee of \$3,000 for each grade category involved in the charter amendment request;
3. Change in charter holder entity name;
4. Change in legal status of the charter holder;
5. Change of entity that holds the charter;
6. Change in charter mission;
7. Increase or decrease the number of annual instructional days;
8. Change in program of instruction including methods of instruction, criteria for promotion, and graduation requirements;
9. Exception from state procurement requirements;
10. Exception from the Uniform System of Financial Records for Charter Schools;
11. Change charter holder governance;
12. Change the mailing or physical address of the charter holder;
13. Change charter representative;

14. Increase or decrease the number of students the charter holder may serve;
 15. Add a charter school to an existing charter;
 16. Close a charter school under an existing charter;
 17. Change membership of a charter school governing body;
 18. Change the name of a charter school;
 19. Change the mailing or physical address of a charter school;
 20. Increase or decrease the grades served at a particular charter school; and
 21. Transfer of a charter school from the current charter to another existing charter with the same educational program and financial and operational processes.
- E.** A charter holder shall submit an amendment request listed under subsection (D) to the Board electronically through ASBCS Online. The Board shall not accept a paper amendment request unless agreed to by Board staff and the charter holder before the amendment request is submitted.
- F.** As required under A.R.S. § 41-1073, the Board establishes the following time frames for approving or disapproving a charter amendment request:
1. Administrative review time frame: 20 days;
 2. Substantive review time frame: 40 days; and
 3. Overall time frame: 60 days.
- G.** To determine the date on which the Board will approve or disapprove an amendment request listed under subsection (D), the charter holder shall consult the Board's meeting and submission-deadline schedule, which is posted on the Board's web site and ASBCS Online.
- H.** The Board shall provide the charter holder at least 72-hours' written notice of the date, time, and location of the Board meeting at which the Board will consider the charter holder's administratively and substantively complete amendment request. The charter holder shall attend the Board meeting.
- I.** The Board has delegated to staff authority to approve charter amendment requests listed under subsection (D) for which the standards for approval can be applied without the exercise of discretion.

ARTICLE 4. AMENDMENT TO A CHARTER MINIMUM PERFORMANCE EXPECTATIONS

R7-5-401. Amendment to a Charter Minimum Academic Performance Expectations

- A.** The Board shall assess a charter holder’s achievement of the minimum academic performance expectations using student achievement measures, specified in the Academic Performance Framework, that are indicators of academic performance.
1. The Board may assess a charter holder’s achievement of the minimum academic performance expectations at any time.
 2. The Board shall assess a charter holder’s achievement of the minimum academic performance expectations:
 - a. Annually when state assessment data are released for the previous year;
 - b. During the five-year-interval review required under A.R.S. § 15-183(I);
 - c. When considering the following submitted by the charter holder:
 - i. An application for a new charter.
 - ii. An application to transfer a charter school from an existing charter contract to a separate charter contract.
 - iii. A request to change the legal status of the charter holder; or
 - iv. A request to change the entity that holds the charter;
 - d. When considering an expansion request submitted by the charter holder to:
 - i. Add a new charter school to an existing charter.
 - ii. Add one or more grade levels to a charter.
 - iii. Increase the number of students the charter holder may serve.
 - iv. Add an Arizona Online Instruction program, or
 - v. Replicate an existing charter;
 - e. When considering a charter contract renewal request submitted by the charter holder;
 - f. Upon receipt of information that a charter school operated by the charter holder failed to meet the minimum academic performance expectations for three consecutive years;
 - g. Upon receipt of information that a charter school operated by the charter holder has been assigned a letter grade of “F” by the Department; and
 - h. When making a decision related to the charter holder’s achievement of the minimum academic performance expectations or compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- B.** The Board shall annually assign a charter holder an overall academic performance rating that reflects the degree to which the charter holder achieved the minimum academic performance expectations.
- C.** The Board shall determine a charter holder meets the minimum academic performance expectations if all

charter schools operated by the charter holder receive an annual overall academic performance rating of “meets standard,” “above standard,” or “exceeds standard” in the most recent year for which data are available. A charter holder that meets the minimum academic performance expectations may be:

1. Waived from some of the academic performance supervision requirements described in Article 5; and
2. Entitled to reduced submission requirements:
 - a. Regarding requests made to the Board; and
 - b. During the five-year-interval review required under A.R.S. § 15-183(I).

D. The Board shall determine a charter holder does not meet the minimum academic performance expectations if one or more of the charter schools operated by the charter holder did not receive an overall academic performance rating of “meets standard,” “above standard,” or “exceeds standard” in the most recent year for which data are available. A charter holder that does not meet the minimum academic performance expectations:

1. Shall be required to demonstrate sufficient progress towards achieving the minimum academic performance expectations;
2. May be subject to heightened submission requirements:
 - a. Regarding requests made to the Board, and
 - b. During the five-year-interval review required under A.R.S. § 15-183(I); and
3. May be subject to charter oversight as specified in Article 6.

R7-5-402. Minimum Financial Performance Expectations

A. The Board shall assess a charter holder’s achievement of the minimum financial performance expectations using data contained in the annual audit required under A.R.S. § 15-914 and conducted according to the standards specified in R7-5-504.

1. The Board may assess a charter holder’s achievement of the minimum financial performance expectations at any time.
2. The Board shall assess a charter holder’s achievement of the minimum financial performance expectations:
 - a. When considering an expansion request submitted by the charter holder to:
 - i. Add a new charter school to an existing charter,
 - ii. Add an Arizona Online Instruction program, or
 - iii. Replicate an existing charter;
 - b. During the five-year-interval review required under A.R.S. § 15-183(I);
 - c. When considering a charter contract renewal request submitted by the charter holder;
 - d. Upon receipt of information that a charter school operated by the charter holder failed to meet the

minimum academic performance expectations for three consecutive years:

- e. Upon receipt of information that a charter school operated by the charter holder has been assigned a letter grade of “F” by the Department; and
- f. When making a decision related to the charter holder’s achievement of the minimum academic performance expectations or compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter.

B. The Board shall annually assign a charter holder a financial performance rating, based on measures specified in the Financial Performance Framework, which reflects both the charter holder’s near-term financial health and longer-term financial stability.

C. The Board shall determine a charter holder meets the annual financial performance standard if the charter holder receives no measure rated “falls far below standard” and no more than one measure rated “does not meet standard” based on the most recent audit conducted under R7-5-504.

D. The Board shall determine a charter holder meets the minimum financial performance expectations if the charter holder:

- 1. Receives an overall rating of “meets the annual financial performance standard” based on the most recent audit conducted under R7-5-504; or
- 2. Receives an overall rating of “meets the annual financial performance standard” based on the previous audit and receives an overall rating of “does not meet the annual financial performance standard” based on the most recent audit with no measure rated “falls far below standard.”

E. The Board shall determine a charter holder does not meet the minimum financial performance expectations if the charter holder:

- 1. Receives an overall rating of “does not meet the annual financial performance standard” and one or more measures rated “falls far below standard” based on the most recent audit conducted under R7-5-504; or
- 2. Receives an overall rating of “does not meet the annual financial performance standard” based on both of the last two audits conducted under R7-5-504.

F. A charter holder that meets the minimum financial performance expectations may be entitled to reduced submission requirements at the times specified under subsection (A). The Board shall require a charter holder that does not meet the minimum financial performance expectations to submit a financial performance response as specified under R7-5-509 at the times specified in subsections (A)(2)(a)-(e) and may require a charter holder that does not meet the minimum financial performance expectations to submit a financial performance response as specified under R7-5-509 at the times specified in subsection (A)(2)(f).

R7-5-403. Minimum Operational Performance Expectations

A. The Board shall assess a charter holder’s achievement of the minimum operational performance expectations.

To avoid duplicative reporting burdens, the Board shall use data collected from a variety of sources that reflect on the charter holder's compliance with the charter contract, other contractual agreements with the Board, federal and state law, and this Chapter.

1. The Board may assess a charter holder's achievement of the minimum operational performance expectations at any time.
 2. The Board shall assess a charter holder's achievement of the minimum operational performance expectations:
 - a. When considering the following submitted by the charter holder:
 - i. An application for a new charter;
 - ii. An application to transfer a charter school from an existing charter contract to a separate charter contract;
 - iii. A request to change the legal status of the charter holder;
 - iv. A request to change the entity that holds the charter; or
 - v. A request to change program of instruction including methods of instruction, criteria for promotion, or graduation requirements;
 - b. When considering an expansion request submitted by the charter holder to:
 - i. Add a new charter school to an existing charter,
 - ii. Add one or more grade levels to a charter,
 - iii. Increase the number of students the charter holder may serve,
 - iv. Add an Arizona Online Instruction program, or
 - v. Replicate an existing charter;
 - c. During the five-year-interval review required under A.R.S. § 15-183(I);
 - d. When considering an application for charter renewal submitted by the charter holder;
 - e. Upon receipt of information that a charter school operated by the charter holder failed to meet the minimum academic performance expectations for three consecutive years; and
 - f. Upon receipt of information that a charter school operated by the charter holder has been assigned a letter grade of "F" by the Department.
- B.** The Board shall annually assign a charter holder an overall operational performance rating based on the measures specified in the Operational Performance Framework, which reflect the degree to which the charter holder achieved the minimum operational performance expectations. The Board shall make each charter holder's operational performance dashboard publicly available and post it on ASBCS Online.
- C.** The Board shall determine a charter holder meets the minimum operational performance standard if the charter holder receives no measure rated "falls far below standard" and no more than five measures rated "does not meet standard" for the evaluated year.
- D.** The Board shall determine a charter holder meets the minimum operational performance expectations if the

charter holder receives an overall rating of “meets the Board’s operational performance standard” in both of the two most recent years for which an overall rating was calculated and has no measure rated “falls far below standard” in the current year.

- E. The Board shall determine a charter holder does not meet the minimum operational performance expectations if the charter holder receives an overall rating of “does not meet the Board’s operational performance standard” in at least one of the two most recent years for which an overall rating was calculated or has at least one measure rated “falls far below standard” in the current year.
- F. If the Board determines a charter holder does not meet the minimum operational performance expectations, the Board shall consider charter oversight under Article 6.

R7-5-404. Development and Use of Performance Frameworks

- A. The Board shall revise the Academic, Financial, and Operational Performance Frameworks as needed. During the process of revision, the Board shall provide the public with notice and an opportunity to comment on proposed revisions. The Board shall adopt revisions at a public meeting.
- B. The Board shall ensure the Academic Performance Framework includes considerations for non-traditional charter schools, including small charter schools with very low enrollment and those designated by the Department as alternative schools.
- C. Use of the Academic Performance Framework is contingent on a charter school’s receipt of an annual achievement profile under A.R.S. § 15-241. The Board shall assign a rating of “no rating” to a charter school that does not provide enough data to make a calculation.
- D. If the Department does not timely release annual achievement profiles under A.R.S. § 15-241, rather than assigning a rating of “no rating” to all charter schools, the Board may use the most recent available data for each measure.

ARTICLE 5. AUDITS AND AUDIT CONTRACTS CHARTER SUPERVISION

R7-5-301. R7-5-501. Audit—Guidelines General Supervision, Oversight, and Administrative Responsibility

~~By July 1 of each year, the Board shall make available to the public at its office and online at its web site, written audit guidelines that provide general guidance on charter school audit requirements, including the deadline for submitting the completed audit to the Board and information that must be included for the audit to be deemed complete.~~

- A. A charter holder shall:
 - 1. ~~comply~~ Comply with the provisions of its charter, contractual agreements with the Board, and with federal and state laws, at all times, and this Chapter; and

2. Meet the minimum performance expectations specified in Article 4.

B. ~~The Board may use~~ may supervise a charter holder's compliance with subsection (A) using any of the following means in performing its administrative responsibilities to and general supervision and oversight of a charter holder:

1. ~~Oral, written, and electronic~~ or written communication with:

a. ~~the~~ The authorized charter representative or authorized charter school personnel; and

2. ~~b. Oral, written, and electronic communication with representatives~~ Representatives of federal, state, and local agencies having jurisdiction over ~~the~~ operation of the charter school or having ~~the~~ authority to investigate or adjudicate allegations of misconduct by any member of the charter school's staff;

3. ~~Oral, written, and electronic communication with students, parents, or outside parties regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff;~~

~~4.2.~~ Collection and review of reports, audits, data, records, documents, files, and communication from any source relating to any activity or program conducted by or for the charter school;

3. A site visit as described in R7-5-502;

4. Annual academic performance review as described in R7-5-503;

5. Annual audit and financial performance review as described in R7-5-504 and, if necessary, a financial performance response as described in R7-5-509;

~~5.6. A corrective action plan as described in R7-5-302~~ Operational performance review as described in R7-5-505; and

~~6. 7. A site visit as described in R7-5-303~~ Five-year-interval review of academic, financial, and operational performance, as described in R7-5-506; and

8. Complaints as described in R7-5-507.

C. If the specified deadline has not passed, Board staff may grant a charter holder an extension to submit a CAP or other response required under R7-5-502(G), R7-5-504(G), R7-5-505(D), R7-5-505(E), R7-5-506(B)(2), R7-5-507(C), or R7-5-509(B).

1. In determining whether to grant an extension, Board staff shall consider the following, as applicable:

a. Whether the charter school at issue was in session when the Board provided notice to the charter holder,

b. Whether the charter school at issue was in session during the period provided in the notice for the charter holder to respond to the Board, and

c. Whether additional time is required by the charter holder because of the number or complexity of matters to be addressed.

2. Even if the specified deadline has not passed, Board staff shall not grant an extension for a financial performance response required as part of the charter holder's renewal application.

~~R7-5-303. R7-5-502. Approval of Audit Contracts Site Visits; Records; Notice of Violation~~

- ~~A. In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit to the Board for approval an audit contract for each audit before the audit begins.~~
- ~~B. The Board shall disapprove an audit contract only for the following reasons:~~
- ~~1. Board knowledge that a person employed by the audit firm has been convicted under a federal or state statute for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;~~
 - ~~2. Failure of the audit firm or supervising certified public accountant to maintain good standing with an accounting industry regulatory body;~~
 - ~~3. Violation of or failure of the audit firm to meet generally accepted auditing standards or generally accepted government auditing standards as identified by an accounting industry regulatory body;~~
 - ~~4. Failure of the audit firm to receive an unmodified opinion during the audit firm's most recent peer review or failure of any auditor working on the audit to meet the continuing professional education requirements prescribed by generally accepted government auditing standards; or~~
 - ~~5. Failure to acknowledge that the audit firm shall adhere to the audit requirements listed in the Board's audit guidelines.~~
- ~~C. The Board shall provide written notification of approval or disapproval of an audit contract to the charter holder and the audit firm within 10 days of receipt of the audit contract.~~
- ~~D. The Board shall include the cause for disapproval in a notice of disapproval.~~
- ~~E. If the charter holder or audit firm provides documentation that demonstrates the cause for disapproval no longer exists, the Board shall approve the audit contract and notify all parties of the approval.~~
- ~~A. A designee of the Board or Department may conduct a site visit of a charter school to a review or evaluate the charter school's financial operations, academic program, or compliance with the provisions of its charter and federal and state laws holder's compliance with R7-5-501(A).~~
- ~~B. A designee of the Board or Department may conduct a site visit to corroborate information submitted to the Board or Department and to gather information, documentation, and testimony that permit the Board to ~~fulfill~~ evaluate the charter school is in holder's compliance with the provisions of its charter and federal and state laws R7-5-501(A).~~
- ~~C. A designee of the Board or Department shall ~~conduct~~ who conducts a site visit shall do so during regular operational hours of a the charter school or at any other reasonable time.~~
- ~~D. A designee of the Board or Department may conduct either an announced or unannounced site visit.~~
- ~~E. A designee of the Board or Department may conduct an investigation of a charter school in response to concerns raised by students, parents, employees, members of the community or other individuals or groups~~

~~regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff.~~

F.E. Upon request by a designee of the Board or Department, a charter holder shall open for inspection all records, documents, and files relating to any activity or program conducted by or for the charter school or the charter holder relating to the charter school.

G.F. Upon request by a designee of the Board or Department, a charter holder shall provide access to all school facilities.

1. During a site visit, a charter holder shall provide access to classrooms for the purpose of counting students, observing a program of instruction, or documenting individuals providing instruction.
2. In conducting a site visit, the designee of the Board or the Department shall make every effort not to disrupt the classroom environment.

H.G. The Board or Department shall inform a charter holder in writing of any ~~offense~~ issue identified during a site visit and ~~shall specify any further action that must be taken~~ required by the charter holder. To assist with this requirement, Board staff shall direct the charter holder to submit a CAP, as described in R7-5-510, which addresses the issue. In determining the appropriate action to take, the Board shall consider the items in R7-5-304(A).

I. ~~The Board shall require a charter holder with a serious impact finding to appear before the Board for possible disciplinary action under R7-5-304.~~

R7-5-503. Audit Completeness Determinations Annual Academic Performance Review

A. ~~In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit an audit to the Board for a determination regarding the audit's completeness.~~

B. ~~The Board shall find that an audit is incomplete if it does not include all of the items listed in the Board's audit guidelines.~~

C. ~~The Board shall provide written notification of a complete audit to the charter holder within five days of the receipt of the audit. The Board shall provide written notification of an incomplete audit to the charter holder and the audit firm within five days of receipt of the audit.~~

D. ~~The Board shall include the cause for the determination in a notice of an incomplete audit.~~

E. ~~If the charter holder or audit firm provides documentation that demonstrates the cause for an incomplete audit no longer exists, the Board shall deem the audit complete and notify the charter holder.~~

F. ~~The Board shall require that a charter holder whose audit does not include the items stated in the audit guidelines appear before the Board for possible disciplinary action under R7-5-304.~~

- A.** When the Department releases the annual achievement profile under A.R.S. § 15-241, the Board shall:
1. Calculate an overall academic rating for each charter school sponsored by the Board using the Academic Performance Framework, and
 2. Make the annual overall academic performance dashboard publicly available and post it on ASBCS Online.
- B.** If the Board determines a charter holder does not meet the Board's minimum academic performance expectations, as defined under R7-5-401(D), the Board shall require the charter holder to demonstrate sufficient progress towards achieving the minimum academic performance expectations.

R7-5-504. ~~Review of Complete Audits~~ Annual Audit and Financial Performance Review

- ~~A.~~** ~~The Board staff shall review each audit deemed complete.~~
- ~~B.~~** ~~The Board shall send a letter to a charter holder after the audit is reviewed. If the Board identifies an issue in the audit, the Board shall direct the charter holder to address the issue and based on an assessment of the factors in R7-5-302(A), may require the charter holder to submit a corrective action plan.~~
- ~~C.~~** ~~The Board shall require that a charter holder with a serious impact finding appear before the Board for possible disciplinary action under R7-5-304.~~

- A. By July 1 of each year, the Board shall make available on its web site written requirements regarding the audit each charter school is required to submit annually under A.R.S. §§ 15-183(E)(6) and 15-914.
- B. Before beginning the audit, a charter holder or the audit firm shall submit for the Board’s approval a copy of the audit contract the charter holder intends to execute with an audit firm.
1. Board staff shall approve the audit contract unless the Board has knowledge that one of the following is applicable:
 - a. A person employed by the audit firm has been convicted under federal or state law of a crime indicating lack of business integrity or honesty;
 - b. The audit firm or supervising certified public accountant is subject to a current or pending disciplinary action or a regulatory action requiring the audit firm or supervising certified public accountant to complete conditions specified by an accounting industry regulatory body;
 - c. The audit firm violates or fails to meet generally accepted auditing standards or generally accepted government auditing standards as identified by an accounting industry regulatory body;
 - d. The audit firm receives an opinion of “fail” during the audit firm’s most recent peer review;
 - e. An auditor scheduled to work on the audit fails to meet the continuing professional education requirements prescribed by generally accepted government auditing standards; or
 - f. The audit firm fails to agree to adhere to the audit requirements specified in subsection (A).
 2. Within 10 days after receiving a copy of an audit contract under subsection (B), the Board shall provide the charter holder and audit firm written notice whether the audit contract is approved.
 3. If the Board disapproves an audit contract submitted under subsection (B), the Board shall include the reason for the disapproval in the written notice provided under subsection (B)(2). If the charter holder or audit firm provides documentation to the Board demonstrating the cause for the disapproval no longer exists, Board staff shall approve the audit contract and provide written notice to the charter holder and audit firm.
- C. A charter holder or the audit firm that conducts an audit for the charter holder shall submit the annual audit to the Board for a determination whether the audit is complete. Within five days after receiving the annual audit, Board staff shall provide the charter holder and audit firm written notice whether the audit is complete.
- D. Board staff shall find an audit is incomplete if it does not comply with all requirements specified under subsection (A) or if the audit is prepared by an audit firm that fails to meet the requirements under subsection (B)(1)(a)-(e). If Board staff finds an audit is incomplete, Board staff shall include the reason for the finding in the notice provided under subsection (C). If the charter holder or audit firm provides documentation to the Board demonstrating the reason for the finding no longer exists, Board staff shall find the annual audit is complete and provide written notice to the charter holder and audit firm.
- E. A charter holder that fails to submit timely a complete audit may be subject to charter oversight as specified in Article 6.

- F. Board staff shall review each audit deemed complete.
- G. Board staff shall send notice to a charter holder after the audit is reviewed unless the Board has been notified the charter holder will not be operating during the next fiscal year. If the Board identifies an issue in the audit, Board staff shall direct the charter holder to address the issue and may require the charter holder to submit a CAP, as described in R7-5-510.
- H. If Board staff identifies a serious impact finding in the audit, the charter holder shall be subject to charter oversight as specified in Article 6 unless the charter holder provides credible evidence to the Board that the charter holder's next audit will find the charter holder in compliance.
- I. The Board shall annually calculate a financial performance rating for each charter holder using the Financial Performance Framework and the annual audit submitted to the Board by the charter holder. The Board shall make each charter holder's financial performance dashboard publicly available and post it on ASBCS Online.

R7-5-505. Operational Performance Review

- A. Board staff shall conduct a site visit to a charter school during the charter school's first year of operation, and thereafter as specified in R7-5-502, to evaluate the charter holder's compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- B. Before conducting the first-year site visit specified under subsection (A), Board staff shall ask the charter holder to identify dates within a specified time frame not conducive to an unscheduled first-year site visit. This includes dates of an early release, parent conferences, or school not being in session.
- C. Board staff may conduct a compliance check of a charter holder's operational performance at any time. The Board shall conduct a compliance check when:
 - 1. The charter holder seeks to amend the charter or makes another request of the Board; or
 - 2. A lending institution, bond rating agency, or similar entity that has a loan or bond arrangement with the charter holder contacts Board staff to discuss the charter holder's current standing with the Board.
- D. Within 10 days after completing the site visit under subsection (A), Board staff shall provide the charter holder with written notice of any compliance issues identified and, if applicable, require the charter holder to submit a CAP as described in R7-5-510.
- E. Within 10 days after completing a compliance check under subsection (C), Board staff shall provide the charter holder with written notice of any compliance issues identified and specify a deadline for addressing the issues.
- F. After receiving the notice provided under subsection (E), the charter holder shall provide the Board with written notice demonstrating that all identified compliance issues have been addressed by the specified deadline.
- G. The Board shall require a charter holder that fails to provide the notice required under subsection (F) or fails to demonstrate that all identified compliance issues have been addressed to appear before the Board and:

1. May subject the charter holder's requests to heightened review.
2. Shall not place the charter holder's requests on a Board agenda, and
3. May subject the charter holder to charter oversight as described in Article 6.

R7-5-506. Five-year-interval Review

- A.** As required under A.R.S. § 15-183(D)(3), the Board shall review a charter holder at five-year intervals for:
1. Compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter; and
 2. Achievement of the minimum performance expectations specified in Article 4.
- B.** Board staff shall provide a charter holder with notice of a five-year-interval review. Board staff shall include in the notice:
1. The information the charter holder is required to submit to the Board,
 2. The deadline by which the charter holder shall submit the required information, and
 3. A request for the charter holder to identify dates within a specified time frame not conducive to an unscheduled academic-systems-review site visit. This includes dates of an early release, parent conferences, or school not being in session.
- C.** The Board shall require a financial performance response, as described under R7-5-509, from a charter holder that does not meet the Board's minimum financial performance expectations.
- D.** The Board shall require a charter holder to review and confirm information concerning the charter's mission statement, program of instruction, instructional days, school calendar, charter representative, grade levels served, enrollment cap, principals, school site, and charter holder locations and, as applicable submit requests for appropriate post-charter actions as described in Article 3.
- E.** A charter holder that fails to submit the information required by the deadline specified in subsection (B) shall appear before the Board and may be subject to charter oversight as described in Article 6.
- F.** As part of a five-year-interval review, Board staff shall conduct an unscheduled academic-systems-review site visit, in accordance with R7-5-502, to gather evidence regarding the charter holder's implementation of a comprehensive program of instruction and a method to measure pupil progress toward outcomes required in the charter. Using the information provided by the charter holder under subsection (B)(3), Board staff shall provide written notice to the charter holder of the two-week interval during which Board staff will conduct the unscheduled academic-systems-review site visit.

R7-5-507. Complaints

- A.** To make a complaint regarding a charter holder, a person shall submit to the Board a document through ASBCS Online that:
1. Alleges with particularity the charter holder is not in compliance with its charter, other contractual

agreements with the Board, federal or state law, or this Chapter;

2. Includes a statement of the facts on which the allegation of violation is based; and
3. Includes supporting evidence, if available.

- B.** Board staff shall review the complaint to determine whether the complaint is within the Board’s jurisdiction.
1. If Board staff determines the complaint is not within the Board’s jurisdiction but may be within the jurisdiction of another agency, Board staff shall inform the complainant of the agency that has jurisdiction and that the complainant may file the complaint with the appropriate agency; or
 2. If Board staff determines the complaint is within the Board’s jurisdiction, Board staff shall, within five days after receiving the complaint, send a copy to the charter holder complained against.
- C.** A charter holder complained against shall, within 10 days after receiving a copy of the complaint provided under subsection (B)(2), provide a written response to the Board that addresses each allegation, the statement of facts, and supporting evidence in the complaint. The charter holder may include evidence of compliance with the response. Board staff may grant the charter holder an extension to submit the written response.
- D.** Board staff shall review the complaint and the charter holder’s response to determine whether a violation of the charter, other contractual agreements with the Board, federal or state law, or this Chapter can be substantiated. Board staff shall conduct further investigation if additional information is needed. Board staff may place the charter holder on an agenda for the Board to determine whether the charter holder is in compliance with the charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- E.** Within 10 days after receiving the charter holder’s response under subsection (C), Board staff shall send:
1. The complainant a copy of the response, and
 2. The complainant and charter holder notice of the final action to be taken.

R7-5-508. Demonstration of Sufficient Progress towards Minimum Academic Performance Expectations

- A.** The Board shall require a charter holder to demonstrate the charter holder is making sufficient progress towards achieving the minimum academic performance expectations if:
1. The Board determines under R7-5-401(D) the charter holder does not meet the minimum academic performance expectations; or
 2. A charter school operated by the charter holder is assigned a letter grade of “F” by the Department.
- B.** Within 30 days after issuing overall ratings, the Board shall provide the charter holder with a written notification of the charter holder’s progress toward meeting the minimum academic performance expectations.
- C.** If a charter school operated by a charter holder receives an overall rating of “does not meet” or “falls far below” for three consecutive years, the Board shall conclude the charter holder has failed to demonstrate sufficient progress.

D. If the Board concludes a charter holder has failed to demonstrate sufficient progress, the charter holder may be subject to charter oversight as specified in Article 6.

R7-5-509. Financial Performance Response

A. The Board shall require a charter holder to prepare a financial performance response if the Board determines under R7-5-402(E) the charter holder does not meet the minimum financial performance expectations at one of the times specified in R7-5-402(A)(2)(a)-(e).

B. Board staff shall provide written notice to a charter holder that is required to submit a financial performance response. Board staff shall ensure the notice includes the following:

1. Information on how to access the charter holder's financial performance dashboard, and
2. The deadline for submitting the financial performance response to the Board.

C. For each measure for which a charter holder received a "does not meet standard" or "falls far below standard" during the most recent audited fiscal year presented in the financial performance dashboard and by the deadline specified in subsection (B)(2), the charter holder shall:

1. Explain why the charter holder failed to meet the measure's target in the audited fiscal year,
2. Explain the charter holder's effort to improve its performance so it is possible to meet the measure's target in the next fiscal year or a subsequent fiscal year, and
3. Provide evidence that supports the charter holder's explanation and analysis under subsections (C)(1) and (2).

D. Within 60 days after receiving a financial performance response or when the five-year interval review is closed out for a financial performance response submitted as part of a five-year interval review, Board staff shall provide the charter holder with written notice that the response is acceptable or not acceptable. Board staff shall find a financial performance response acceptable if it includes the explanations and evidence required under subsection (C).

E. If Board staff finds a financial performance response is not acceptable, the Board shall allow the charter holder to supplement the financial performance response if the charter holder is in a process that requires the financial performance response to be considered at a Board meeting.

F. If the Board allows a charter holder to supplement a financial performance response under subsection (E), Board staff shall:

1. Include the deadline for submitting the supplemented financial performance response in the notice provided under subsection (D); and
2. Find the supplemented financial performance response acceptable if it includes the explanations and evidence required under subsection (C).

G. Board staff shall include the supplemented financial performance response and the determination made under subsection (F)(2) in the meeting materials provided to the Board. The supplemented financial performance

response and the Board's final determination shall be posted on ASBCS Online.

H. If a charter holder fails to submit or fails to submit timely a required financial performance response, the failure shall be noted in the charter holder's operational performance dashboard posted on ASBCS Online.

R7-5-302, R7-5-510. Corrective Action Plan

~~A. Upon receipt of information under R7-5-301(B) that a charter holder is not in compliance with the provisions of its charter or federal or state laws, the Board shall consider the following factors in determining whether a corrective action plan (CAP) is required:~~ Board staff shall require a charter holder to prepare a CAP for:

- ~~1. The seriousness of the offense;~~ Any issue identified during a site visit described in R7-5-502 or R7-5-505,
- ~~2. The charter holder's history of compliance with the provisions of its charter and federal and state laws;~~ An issue identified through the audit described in R7-5-504, or
- ~~3. The length of time the offense has been occurring; and~~ Actions taken by the Board to withhold up to 10 percent of the charter holder's monthly state aid as described in R7-5-601 and R7-5-605.
- ~~4. Any other factors relating to the charter holder's compliance with the provisions of its charter and federal or state laws~~

~~B. If the Board requires a CAP, it shall make a written request to the charter holder for the submission of a CAP to be implemented to remedy the offense. The request shall include:~~ Board staff shall provide written notice to a charter holder required to prepare a CAP. Board staff shall ensure the written notice includes the following:

1. An explanation of why the charter holder is required to submit a CAP,
- ~~1.2.~~ A description of the offense issue,
- ~~2.3.~~ A list of the specific criteria to be included information required in the CAP,
- ~~3.4.~~ A The deadline for the submission of submitting the CAP to the Board,
- ~~4.5.~~ A timeline for the implementation of The time during which the charter holder is required to implement the CAP, and
- ~~5.6.~~ The consequences for failure if the charter holder fails to submit or implement the CAP.

~~C. The Board shall decide to accept the CAP based on whether the specified criteria stated in the request are included in the CAP. Within 10 days after receiving the CAP, Board staff shall provide written notice to the charter holder that:~~

- ~~1. The Board shall provide written notification to the authorized representative regarding the acceptance or rejection of the CAP. A complete CAP was received and implementation is required; or~~
- ~~2. Written notification that the Board rejected the CAP shall include the reason for the rejection, the deadline for submission of the revised CAP, and the consequences for failure to submit a CAP that meets the specified criteria. Additional information is required and the deadline for submitting the additional information to the Board.~~

- D.** ~~The Board staff shall monitor, through site visits and review of documentary evidence, the charter holder's implementation of the approved CAP to ensure until the Board determines the offense is rectified issue has been corrected.~~
1. ~~The charter holder shall demonstrate to the Board through documentation or a site visit that steps have been taken to correct the offense or, in the case of a serious impact finding, that the charter holder is currently in compliance.~~
 2. ~~The Board shall consider possible disciplinary action under R7-5-304 against the charter holder if the charter holder fails to implement the CAP and rectify the offense.~~
- E.** If a charter holder fails to submit a required CAP, fails to submit additional information required under subsection (C)(2), or fails to implement the CAP timely, the charter holder may be subject to charter oversight as specified in Article 6.

ARTICLE 3. ~~ARTICLE 6.~~ CHARTER OVERSIGHT

~~R7-5-304. R7-5-601. Disciplinary Action Charter Oversight: General Provisions~~

- A.** ~~The Before the Board may discipline determines a charter holder for violation of is not in compliance with its charter, other contractual agreements with the Board, or federal or state laws, or this Chapter and decides whether to impose charter oversight, the Board shall provide notice to the charter holder.~~
- B.** The Board shall provide the charter holder with at least 72-hours' notice of the date, time, and location of the meeting at which the Board will decide whether to impose charter oversight. The Board shall include in the notice the purpose of the meeting and why the Board is considering imposing charter oversight.
- C.** In determining the appropriate disciplinary charter oversight action to take, the Board shall consider the following, as applicable:
 1. Threat to the health or safety of children;
 2. Whether the charter holder's historical compliance record indicates repeated or multiple breaches of the provisions of its charter, other contractual agreements with the Board, or federal or state laws, or this Chapter;
 3. Whether the charter holder has failed to meet the minimum academic ~~needs of the children~~ performance expectations specified under R7-5-401;
 4. Length of time the ~~offense~~ issue has been occurring;
 5. The charter holder's compliance with and response to ~~staff~~ Board investigation ~~in~~ by providing necessary information and documentation within requested ~~time frames~~ time frames;
 6. Whether there has been a misuse of funds; and
 7. Any other factor that ~~has a bearing~~ bears on the charter holder's ability and willingness to ~~operate in compliance with the provisions~~ comply with its charter, other contractual agreements with the Board, and

federal and state laws, and this Chapter.

B.D. ~~The Board shall take disciplinary action against a charter holder based on the Board's assessment of the factors listed in subsection (A). Disciplinary action may~~ Charter oversight actions available to the Board include, but are not limited to ~~any~~ of the following:

1. ~~Requiring a corrective action plan as described in R7-5-302~~ Imposing a civil penalty, as authorized under A.R.S. § 15-185 and described under R7-5-604;
2. ~~Requesting the Department to withhold up to 10 percent of the a charter school's holder's monthly state aid in accordance with~~ as authorized under A.R.S. § 15-185(H) and described under R7-5-605 and requiring the charter holder to submit a CAP as described under R7-5-510. Upon proof of corrected deficiencies and that the charter holder is in compliance, the Board shall request the Department to restore the full amount of state aid payments to the charter school;
3. ~~Entering into a consent agreement with the a charter holder as described under R7-5-606; for the resolution of the non-compliance. The Board shall ensure that the consent agreement:~~
 - a. ~~Describes each offense;~~
 - b. ~~Stipulates the facts agreed to by the Board and the charter holder;~~
 - c. ~~Specifies the actions the charter holder must take to demonstrate compliance and avoid further disciplinary action;~~
 - d. ~~Provides a timeline for the charter holder to complete the actions specified in the consent agreement;~~
 - e. ~~Stipulates that if the charter holder fails to comply with the terms and conditions of the consent agreement, the Board may, after giving the number of days notice specified in the consent agreement, hold a hearing at which the Board receives information to determine whether evidence exists that the charter holder has failed to comply with the consent agreement. If the Board determines that the charter holder has breached the consent agreement, the Board may revoke the charter holder's charter; and~~
 - f. ~~Is approved by the Board and the charter holder and signed by the Board president or designee and the authorized representative;~~
4. ~~Issuing a notice of intent to revoke the a charter in accordance with~~ as authorized under A.R.S. § 15-183(F) and described under R7-5-607. if the Board determines there is cause to believe that the charter holder may have breached one or more provisions of its charter; and
5. ~~Revoking the a charter in accordance with~~ as authorized under A.R.S. § 15-183(F) and described under R7-5-607.

R7-5-602. Oversight of Charter Schools Assigned a Letter Grade of "F" by the Department

A. If the Department notifies the Board, as required under A.R.S. § 15-241, that a charter school has been

assigned a letter grade of “F,” the Board shall require the charter holder to appear before the Board for consideration of whether the Board will issue a notice of intent to revoke the charter under R7-5-607 or restore the charter to acceptable performance through a consent agreement under R7-5-606.

B. Upon receipt of the Department’s notice under subsection (A), the Board shall provide written notice to the charter holder that the school has been designated a failing school.

C. Within 30 days after receipt of the notice provided under subsection (B), the charter holder shall:

1. As required under A.R.S. § 15-241, provide written notice to the parents or guardians of all students attending the school that the Department has assigned the school a letter grade of “F” because the school is demonstrating a failing level of performance. The charter holder shall provide to the Board a copy of the notice required under this subsection;
2. Provide the Board with a list of the names and mailing addresses of the parents or guardians of all students attending the school;
3. Ensure the charter school’s public communications that make a statement concerning the charter school’s academic performance, including the charter school’s web site and promotional materials, accurately describe the charter school’s most current annual achievement profile assigned by the Department; and
4. If notified the charter holder does not meet the minimum financial performance expectations, submit a financial performance response as described under R7-5-509.

D. If required, Board staff shall evaluate the financial performance response specified under R7-5-509.

E. The Board shall provide the charter holder with at least 72 hours’ written notice of the date, time, and location of the public meeting at which the Board will consider whether to restore the charter to acceptable performance or revoke the charter. In making this decision, the Board shall consider all relevant factors including:

1. Whether the charter holder complied fully with the provisions of subsection (C);
2. Whether the charter holder failed to meet the minimum academic performance expectations based on student achievement measures specified in the Academic Performance Framework;
3. Whether the charter holder has demonstrated, under R7-5-508, sufficient progress toward achieving the minimum academic performance expectations;
4. Whether the charter holder meets the minimum financial performance expectations;
5. Whether the charter holder timely complied with Board requests for information and documents;
6. Whether the charter holder’s historical compliance record indicates repeated or multiple breaches of its charter, other contractual agreements with the Board, federal or state law, or this Chapter; and
7. Any other factor the Board determines has a bearing on the charter holder’s ability or willingness to comply with the provisions of its charter, other contractual agreements with the Board, federal and state law, and this Chapter.

F. If the Board decides to restore the charter to acceptable performance, the Board shall enter into a consent

agreement with the charter holder as provided under R7-5-606. If the Board decides to revoke the charter, the Board shall issue a notice of intent to revoke the charter as provided under R7-5-607.

R7-5-603. Oversight of Charter Schools Assigned a Letter Grade of “D” by the Department

A. Within 30 days after the Department notifies a charter holder under A.R.S. § 15-241 that a charter school operated by the charter holder has been assigned a letter grade of “D,” the charter holder shall:

1. Comply fully with A.R.S. § 15-241 by providing written notice to the parents or guardians of all students attending the school. The charter holder shall include the following in the notice:
 - a. The Department has assigned the charter school a letter grade of “D;”
 - b. The charter holder is required under A.R.S. § 15-241.02 to prepare an improvement plan within 90 days after the charter school was assigned a letter grade of “D;” and
 - c. The charter holder is required to present the improvement plan to the Board at a public meeting;
2. Provide the Board a copy of the notice required under subsection (A)(1);
3. Provide the Board with a list of the names and mailing addresses of the parents or guardians of all students attending the school; and
4. Ensure the charter school’s public communications that make a statement concerning the charter school’s academic performance, including the charter school’s web site and promotional materials, accurately describe the charter school’s most current academic performance rating assigned by the Department.

B. The Board shall require a charter holder that fails to comply fully with subsection (A) to appear before the Board for consideration of the charter holder’s noncompliance and may subject the charter holder to additional charter oversight.

C. Under A.R.S. § 15-241.02, the Board is required to revoke the charter of a charter school if the Board determines the improvement plan required under subsection (A)(1)(b) was not properly implemented.

R7-5-604. Civil Penalty for Fingerprinting Violation

A. After identifying a violation of A.R.S. §§ 15-183, 15-512 or both, Board staff shall provide the charter holder with written notice of noncompliance with statutory fingerprinting requirements and the date, time, and location of the Board meeting at which the Board will consider whether to impose a civil penalty under A.R.S. § 15-185.

B. If the Board determines a charter holder has failed to comply with the statutory fingerprinting requirements in A.R.S. §§ 15-183 or 15-512, the Board may impose a civil penalty of \$1,000 per occurrence as provided under A.R.S. § 15-185.

C. Within 30 days after a civil penalty is imposed under subsection (B), the charter holder may submit to the Board a written appeal of the civil penalty. The charter holder shall include the following information in the written appeal:

1. Name and address of the appellant;
2. Concise statement of the reason for the appeal;
3. Relief sought; and
4. If the appellant will be represented by an attorney, the attorney's name, address, and telephone number.

D. The Board shall hold a hearing to consider the appeal within 60 days after receiving the appeal.

R7-5-605. Withholding State Funds

A. Under A.R.S. § 15-185, if the Board determines at a public meeting that a charter holder is not in compliance with its charter or federal or state law, the Board may request the Department to withhold up to 10 percent of the charter holder's monthly apportionment of state aid.

B. If the Board decides to request that the Department withhold part of the charter holder's monthly apportionment of state aid, the Board shall provide written notice to the charter holder. The Board shall include the following in the notice:

1. The reason the withholding is being imposed.
2. The percentage of the charter holder's monthly apportionment of state aid to be withheld.
3. The date on which the withholding will begin, and
4. Actions required by the charter holder before the full amount of state aid is restored.

C. If a percentage of the charter holder's monthly apportionment of state aid is withheld for six months and the charter holder has not completed the actions required under subsection (B)(4), the Board shall consider the charter holder's noncompliance and may subject the charter holder to additional charter oversight including issuing a notice of intent to revoke under R7-5-607.

D. If a percentage of the charter holder's monthly apportionment of state aid is withheld for failure to submit an audit for two months, the Board shall consider the charter holder's noncompliance and may subject the charter holder to additional charter oversight including issuing a notice of intent to revoke under R7-5-607.

E. When the Board determines the charter holder is in compliance with its charter and federal and state law, the Board shall request that the Department restore the full amount of state aid to the charter holder.

R7-5-606. Consent Agreement

A. If the Board determines that a charter holder is not in compliance with its charter, other contractual agreements with the Board, federal or state law, or this Chapter, the Board may enter into a consent agreement with the charter holder to resolve the noncompliance.

B. The Board shall include the following in a consent agreement:

1. The reason for the consent agreement;
2. The facts and conditions to which the Board and charter holder agreed;
3. The actions the charter holder must take to demonstrate compliance and avoid further charter oversight;

4. The time within which the charter holder is to complete the actions specified under subsection (B)(3); and
5. After approval by both the Board and charter holder, the signatures of both the Board president and charter representative.

R7-5-607. Revocation

- A.** If the Board determines that a charter holder is not in compliance with its charter, federal or state law, or this Chapter, the Board may issue a written notice of intent to revoke the charter as authorized under A.R.S. § 15-183.
- B.** When a charter holder receives a notice of intent to revoke and notice of hearing, the charter holder shall:
1. Within 48 hours after receiving the notice of intent to revoke and notice of hearing, provide written notice that includes the following to all staff and the parents or guardians of all students attending the school:
 - a. A notice of intent to revoke has been received;
 - b. The notice of intent to revoke may be inspected at the charter school location; and
 - c. The date, time, and location of the hearing set with the Office of Administrative Hearings; and
 2. Within 20 days after receiving the notice of intent to revoke, provide the Board with:
 - a. A copy of the notice required under subsection (B)(1), and
 - b. A list of the names and mailing addresses of the parents or guardians of all students attending the school.
- C.** Both the Board and charter holder shall appear for an administrative hearing before an administrative law judge at the Office of Administrative Hearings on the date provided in the notice of intent to revoke.
- D.** After the administrative hearing under subsection (C) and receipt of the decision of the administrative law judge, the Board shall hold a public meeting at which the Board shall:
1. Decide whether to accept, reject, or modify the decision of the administrative law judge; and
 2. Take action on the charter.

From: Dawn Wallace [mailto:dwallace@az.gov]
Sent: Wednesday, January 06, 2016 1:39 PM
To: Whitney Chapa <Whitney.Chapa@asbcs.az.gov>
Cc: Victor Riches <vriches@az.gov>; Henry Darwin <HDarwin@az.gov>; Rene Guillen <rguillen@az.gov>
Subject: Approval for Rulemaking Exemption

Hello Whitney,

The Governor's Office is approving your agency's request for an exemption from the rulemaking moratorium on the basis that the request meets the following justification under Executive Order 2015-01 (2b) to reduce or ameliorate a regulatory burden while achieving the same regulatory objective. The State Board for Charter Schools (Board) currently has their statutorily-required, performance framework reflected in Board policy, but desires to formalize Board policy into rule and to insert additional sections in proposed rulemaking.

A.R.S. 15-183(R) requires the Board to adopt a publicly-available, performance framework that is used to determine the academic performance expectation of the Board's sponsored charter schools and the measurement of sufficient progress toward the academic performance expectations. Additionally, the framework must include the operational expectations of the charter school, the school's adherence to all applicable laws and obligations of the charter contract and intervention and improvement policies. In response to this statute, in the fall of 2012, the Board adopted the "Academic Performance Framework and Guidance" and "Financial Performance Framework and Guidance" into Board policy. In October 2014, the Board adopted the "Operational Performance Framework and Guidance." The Board's performance frameworks were developed from national best practices and through input from Arizona stakeholders, including charter school operators.

As part of the agency's request, the State Board for Charter Schools included documentation of support for the exemption from the rulemaking moratorium:

- Kim Anderson, Assistant Attorney General, Arizona Attorney General's Office – letter dated December 18, 2015
- Eileen Sigmund, President & CEO of the Arizona - email dated December 4, 2015
- Whitney Chapa, Executive Director, State Board for Charter Schools – letter dated November 13, 2015/email to Board President/Vice-President dated December 4, 2015
- Auditor General Performance Audit Report – Recommendation 1.7 – letter dated June 1, 2015

The State Board for Charter Schools' attorney advises in her letter that the Board's "inability to codify its performance framework in rule has subjected the Board to legal challenges to actions based on upon its framework." Examples provided included a

charter school that failed to meet the Board's academic performance expectations that challenged the Board's policy as a "rule" under the Arizona Procedures Act (APA). Similar case law was provided related to the Arizona State Retirement System in which policy was adopted without rulemaking and thereby found to invalidate the Board's action. According to the Assistant AG, Kim Anderson, a consortium of charter schools is prepared to litigate on this issue.

Additionally, as part of the Board's Sunset Review, the Auditor General recommended to the Board that "to ensure that it can exercise appropriate oversight of charter schools based on its performance standards, the Board should adopt rules to define board standards for academic, financial and operational performance and the sufficient progress toward these standards and consequences for not meeting standards or making progress toward the standards." The Board did not implement this recommendation due to the rulemaking moratorium. However, due to a leadership change and the passage of an appropriate transition period, the new Executive Director was directed by the Board to seek a rulemaking exemption.

The Arizona Charter Schools Association, a membership of Arizona charter schools, that advocates, provides academic and operations support and school development, has no objection to the Board's request for exemption for proposed rulemaking.

The Governor's Office agrees that the performance framework, authorized by law, and adopted by the Board ensures that Arizona students and their parents are best served through quality educational options. If this oversight is compromised by its inability to withstand legal scrutiny due to format and administrative process, the Board should be allowed to codify its framework through the formal rulemaking process. The Governor's Office is satisfied that the rulemaking process will allow the appropriate public input for all stakeholders, including charter operators, to provide feedback on the substantive policy. Additionally, the Governor's Office agrees with the Assistant Attorney General that the Board's oversight should be more predictable and consistent to ensure fairness in practice.

If you have any additional questions, please let me know.

Dawn Wallace
Education Policy Advisor
Office of the Arizona Governor
1700 W Washington St
Phoenix, AZ 85007
O: [602.542.1316](tel:602.542.1316)
C: [602-769-7551](tel:602-769-7551)
E: dwallace@az.gov

November 29, 2016

Dear Acting Executive Directors:

The purpose of this letter is to publicly share comment regarding ASBCS Notice of Proposed Rulemaking. I am commenting as an individual professional, based on my experience as a charter employee but also including my work with charter schools statewide, as well as my other professional preparation and decades of experience.

My comments begin with a compliment, then address the rules in priority order.

R7-5-404.B.

It is reassuring to read that the Board shall ensure that the academic performance framework include modifications for non-traditional charters including small charters with very low enrollment and alternative schools. I hope that the Board will continue to recognize that there are other types of non-traditional charter schools that may also need modifications to the academic performance framework as seen in the *Academic Performance Framework and Guidance* as revised June 13, 2016.

R7-5-501.B.1.c

The Board should not be able to communicate in any form, oral or written, with minor students without first receiving parental permission. Protection of parental rights is a fundamental that we teach in 'Research 101'. Anyone outside of those involved in the regular educational process need to obtain parental permission before communicating with a minor student.

R7-5-501.A.3

Where would it be appropriate and most effective to define "any adverse condition" for "operations"? It seems very necessary to define *adversity* in order to avoid arbitrary and capricious application.

R7-5-502.D

Unannounced site visits, especially to small charter schools, can be very disruptive of the educational process. Unannounced site visits would be necessary in cases of concerns about the health and safety of students. Unannounced visits may also be required for the sole purpose of a head count. Otherwise, it seems reasonable to give a charter advance notice of a site visit, both in consideration of the charter's instructional process and the visiting Board or Department's designees' time. Every day occurrences, especially for smaller charters like a teacher calling in sick and an administrator filling in, require effort to keep the instructional process moving. Announcing a site extends professional courtesy and reduces anxiety for the charter's leaders.

R7-5-101

Does ASBC want to limit itself to a definition of dashboards, academic, financial, and operational, by specifically mentioning “color-coded graphics”? It seems the proposed rules definitions might not want to be that limiting. Rules should be flexible enough to allow change in the future.

I would like to conclude with this comment. It is not specific to the Proposed Rules, yet will come as procedures/processes are developed to implement the rules. Under point number eight on page three, the document states, “The Board believes the rulemaking will have minimal economic impact on current charter holders and applicants for a charter.” It may be correct that the rules themselves have little economic impact. The piece that can have major economic, small business, and consumer impact is the processes and procedures that ASBCS staff develop to implement the rules.

I experienced how onerous and burdensome the previous PMP and DSP processes were for schools. The timing of release of academic dashboards and assignment of PMPs-DSPs did little to contribute to a charter’s continuous improvement efforts. PMPs and DSPs were assigned well into the current school year. Quality charter schools had already made their plans using internal data. Some dashboard data were replicable, yet it was frustrating that some data were not. Charters assigned a DSP were required to spend time retroactively, rather than looking forward to implementation of improvement plans for the future. The previous DSP format required that a charter invest staff time to translate its improvement plan, often from a format required by another external agency like AdvancED. Such duplication is costly. It was frustrating to a charter to try to communicate in a way that ASBCS staff expected to receive information.

Further, I recently experienced that the processes ASBCS staff developed for a charter amendment request, which is allowed by rule, resulted in hours of extra work for the charter holder. Please be mindful of the impact of newly developed procedures. I believe that you should seek input from the charter operators and their designees when new procedures are developed - rather than simply posting the new requirements on the ASBCS website. This will provide you with additional information that can improve the processes, and it will also communicate to charter holders that although you are a regulator, you respect and appreciate their expertise and experience.

Thank you for this opportunity to provide comment.

Respectfully,

A handwritten signature in black ink, appearing to read "Amy Schlessman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy Schlessman, Ph.D.



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November 22, 2016

Andrea Leder and Johanna Medina
Co-acting Executive Directors
Arizona State Board for Charter Schools

RE: Comment on Proposed Rulemaking

Dear Ms. Leder and Ms. Medina:

We realize that Arizona law allows a charter school authorizer to make decisions about a charter based on whether the charter holder is meeting the authorizer's academic performance expectations or making "sufficient progress" toward those expectations. Proposed rule R7-5-508 recognizes this and allows the Arizona State Board for Charter Schools to require a charter holder to demonstrate sufficient progress. However, the proposed rule does not address the contents or format of what schools will be required to submit. We would like to take this opportunity to comment on the DSP procedure itself – as we did during charter renewal. We understand that ASBCS may not choose to include this level of detail in rule, but it is important that our comments are considered in connection with the current rulemaking process.

The previous DSP process was overly burdensome and complicated. It required a school to learn how to respond to school and business practices in a very specific manner. It carried with it an onerous, high stakes outcome for the school. As such, it was incumbent upon the school to put forth an extraordinary all-out effort. We found this resulted in:

- 1) Over \$60,000 in personnel time needed to learn how to complete and address a complicated document, as well communicate with ASBCS staff, as well as Arizona Charter School Association staff and our legal counsel for support and clarifications.
- 2) A major disruption in our educational process due to the assignment of personnel to address the DSP documents.
- 3) A major disruption in our business operations due to the assignment of personnel to address the DSP documents.
- 4) A major disruption in our administration due to the assignment of key personnel to address the DSP documents.



Honor the Promise of Education™

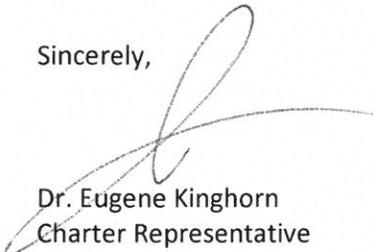
Cumulatively, these major regulatory tasks resulted in disrupting the education process for our students through the reallocation of both human and financial resources to this effort.

Of course, this reallocation of resources is at odds with the primary mission of all schools – to educate students. We hope that ASBCS will be mindful of this when developing a DSP process, and that ASBCS will tailor the DSP requirements so that they are not burdensome and do not overshadow the primary purpose of the schools.

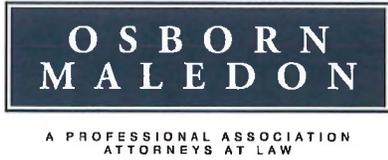
In addition to the content issues addressed above, the previous DSP timeframe was problematic. The timeframe in which ASBCS provided the dashboard and then communicated DSP status and requirements was often well into the next school year, when a charter's continuous improvement plans were already made. We had to spend time looking backwards rather than spending time on our current improvement plans. The dashboards did not provide timely information for schools to inform future planning. We did use internal data to plan. Due to replication issues and the lack of total transparency regarding the data used to prepare the dashboards, we were forced to spend time in reverse addressing an outdated dashboard. We would prefer a more functional document that could inform the continuous improvement cycle.

We appreciate your consideration of our input. Because of the significance of the DSP process, it may be useful to include some content and format parameters in Rule R7-5-508. That would provide schools with the assurance they need that the process will be reasonable.

Sincerely,



Dr. Eugene Kinghorn
Charter Representative



Lynne C. Adams

ladams@omlaw.com

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21st Floor
Phoenix, Arizona 85012

Direct Line 602.640.9348

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Facsimile 602.640.9050

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November 28, 2016

VIA EMAIL AND REGULAR MAIL

Ms. Andrea Leder
Ms. Johanna Medina
Acting Executive Directors
Arizona State Board for Charter Schools
P.O. Box 18328
Phoenix, Arizona 85009

Re: ASBCS Notice of Proposed Rulemaking

Dear Andrea and Johanna:

I am providing my written comments regarding the Board's Notice of Proposed Rulemaking, as published in volume 22, issue 44 of the Arizona Administrative Register, and the proposed rule revisions contained in that Notice. My comments are provided in rule number order, not in order of importance or concern.

- **Proposed Rule R7-5-301.F.** The proposed rule requires advanced notice to a charter holder of a meeting at which the Board will consider a "post-charter action" related to the charter holder. However, the rule does not specify the amount of advanced notice required, and the Board could therefore satisfy the notice requirement by providing *any* amount of advance notice. In recognition of the fact that many charter holders need to travel to Phoenix for meetings and/or may need to make arrangements for other school personnel to cover their responsibilities at school, the rule should be revised to require the Board to provide at least two business days' notice to charter holders. Given that the Board staff initially posts meeting agendas at least a week in advance (and requires charter holders to submit post-charter actions well in advance of the meeting at which they will be heard), this revision is reasonable and reflects appropriate sensitivity to the charter holder's scheduling concerns.

- **Proposed Rule R7-5-401.D.** There is a typo in this rule. The word "yea" should be "year."

- **Proposed Rule R7-5-501.A.3.** This new rule provision would require a charter holder to "[n]otify the Board of any adverse condition that may affect the charter school's opening or operations." This requirement does not appear to be based on any statutory provision or authority, and is so vague and overbroad as to likely be unconstitutional. Indeed, it appears to be a catch-all provision that would allow the Board to increase its monitoring and investigations

of charter schools whenever it desires simply by asserting that there is an “adverse condition” that a school has failed to report.

There is no definition or guidance regarding what type of “adverse condition” would trigger this requirement. Would the termination of a school principal trigger this requirement? Would the enrollment of a greater number of students requiring special education services than anticipated? Would a change in bus routes? Of course, any “condition,” regardless of its characterization, “may affect” a school’s operations to some degree, however slight. The question then becomes, under this proposed rule, who would determine whether a condition is “adverse” enough to require notification to the Board by a school?

The Board already has the authority to monitor a charter holder’s compliance with its charter, the law and any other contractual agreements with the Board. This requirement is not based on any legal authority and is likely legally infirm, and it must therefore be removed from the proposed rules.

- **Proposed Rule R7-5-501.B.1.c.** This proposed rule would allow the Board to engage in oral or written communication with a school’s students, parents, charter school staff or outside parties in connection with an inquiry into a school’s operations *or* allegations of charter school “misconduct” made by a member of the school’s staff. Allowing unfettered communication by Board staff with students and school employees is itself problematic, but when coupled with the potential for communication based on any allegations of “misconduct by a member of the charter school’s staff,” this portion of the rule clearly exceeds the Board’s authority.

As an initial matter, the rule would allow the Board staff to potentially become involved in a whole host of school operational issues. It is unclear from the rule whether the “allegations of misconduct” referred to are those that are made *by* a member of the school’s staff or *about* a member of the school’s staff. Does the phrase “by any member of the charter school’s staff” modify “allegations” or “misconduct”?

Moreover, because the term “misconduct” is not defined by the rules and is a very broad term, an allegation of any type—about working conditions, employment contract issues, sexual harassment, or any other operational issue—would *require* the Board to exercise its “supervisory” authority under this rule. In other words, disputes between charter employees and their employer schools could take on greater significance and require additional obligations on the part of the Board and schools. Such disputes could now play out both in court and before the Board—and potentially also before the Office of Civil Rights or the National Labor Relations Board. In the past, the Board has appropriately remained uninvolved in such operational issues, and it should continue to do so.

In addition, communications with a school’s current employees about a matter that may result in litigation should be undertaken with caution. Ethical Rule 4.2, to which all Arizona

lawyers are subject, limits the communications between a lawyer for a party and employees for an organization without the organization's consent. The rule is premised upon the possibility that the employees' comments will be imputed to the school for purposes of liability. Even if the Board's lawyer were not present for those conversations, the same concerns are present in communications between Board staff and school employees. Of course, a school could always consent to allowing Board staff to communicate with its employees in connection with an investigation, but because the investigation may lead to liability on behalf of the school, it should be notified about the proposed contact and given an opportunity to approve it.

Similarly, parents should be given advance notice of any proposed communication between their children and Board staff. A blanket rule that allows Board staff to interview students—even very young students or students with disabilities—without prior parent or guardian notice and consent may not only contravene parental rights and authority to make decisions regarding their children, it would certainly create parental concern. In light of the state statutes that give parents significant rights in connection with their children's education, a rule that allows communication with, and potentially an interview of, their children by a governmental regulatory body without advance permission contravenes the spirit of the law, if not the letter.

Moreover, interviews by Board staff of certain student populations may raise other issues. For example, schools that serve students who are in state custody must agree to keep the students' identities confidential and not allow them to speak with anyone other than school staff or individuals who have been authorized by the appropriate state agency. Although Board staff may be able to speak with these students under certain circumstances, necessary approvals would need to be in place first.

Finally, although communications between Board staff and "outside parties" may be appropriate at times, they would be clearly inappropriate at times if related to allegations of misconduct either related to or made by a charter school employee.

The Board should delete Proposed Rule R7-5-501.B.1.c. Even without this provision, the Board has sufficient authority to "supervise" a charter school's compliance under the remaining portions of the rule, and any complaints about a school's operational issues from anyone should be addressed by Board under Rule R7-5-507, not this rule.

- **Proposed Rule R7-5-505.B.2.** This proposed new rule provision would *require* Board staff to conduct a "compliance check" of a school whenever it is "asked to do so by an outside entity with oversight of the charter holder *or a business relationship with the charter holder.*" A rule that would allow any entity with a business relationship with a charter holder—any charter school vendor or anyone who broadly does "business" with a school—to mandate that the Board conduct an operational compliance check is not only bad for the Board, it is bad for charter holders. The proposed rule already allows Board staff to conduct a compliance check at any time. The quoted provision above would abdicate the Board's discretion regarding

compliance checks to a third-party that has no regulatory authority (or indeed any type of authority) over charter schools.

That is particularly problematic for schools. For example, should they become involved in a dispute of any type with a vendor, the proposed rule would allow the vendor to insist that the Board staff review the charter school's operations for no reason or even for a bad reason. Moreover, parents may view their relationship with a charter school as a "business relationship" and use this rule as a weapon against a school in the event of a dispute. Of course, a charter school can always request that the Board staff provide information about its current operational performance and compliance to an entity with which it has or may have a business relationship, but that is very different than allowing such entities or individuals to *dictate* to the Board that a compliance check occur. The italicized portion of the proposed rule above should be deleted.

- **Proposed Rule 7-5-507.B.1.** The proposed rule directs Board staff to "direct" any complainant to file their complaint with another agency if the complaint is not within the Board's jurisdiction. It is inappropriate for the Board staff to "direct" a complainant to file the complaint elsewhere. Instead, Board staff should merely provide a complainant with information about the potentially appropriate agency or agencies with which to file the complaint. The rule should be changed to delete the word "direct" and add the italicized words below so that the clause reads as follows: ". . . and *inform* the complainant *that they may* file the complaint with the appropriate agency. . .".

- **Proposed Rule R7-5-507.C.** The proposed rule currently provides charter schools with 10 days in which to provide the Board with a response to a complaint. Although that may be enough time to prepare a response in many instances, there may be circumstances in which additional time for a response is warranted. For example, a complaint may be received when a school is closed for a break, or a complaint may be so lengthy and detailed that 10 days will simply not provide enough time for a school to adequately respond to the complaint. The rule currently envisions a response that is similar to the answer that must be filed in response to a judicial complaint, including requiring the inclusion of facts and evidence that support the school's position. For complaints filed with a court, a school would typically have 20 days to file an answer, and that time could easily be extended by agreement of the parties or with the permission of the court. This rule needs to reflect similar flexibility, and it should be revised to provide the Board staff with the discretion to grant schools additional time to respond. The following sentence should be added at the end of this section: "Upon request by the charter holder demonstrating good cause, Board staff shall grant the charter holder a reasonable extension in which to provide a written response to the complaint."

- **Proposed Rule 7-5-507.E.** As currently drafted, the proposed rule only requires Board staff to provide the complainant with notice of the Board's final action regarding the complaint. The school should also receive notice of the Board's final action, and the proposed rule should therefore be revised as follows: ". . . Board staff shall send the complainant a copy of

the response, *and shall send the complainant and the charter holder* notice of the final action to be taken.”

- **Proposed Rule 7-5-508.A.1.** The reference to Rule R7-5-503(D) needs to be updated. The proposed revised rules do not contain such a rule.
- **Proposed Rule 7-5-508.B.3.** This proposed rule requires Board staff to set a deadline for a charter school to meet the minimum academic performance expectations if a school is required to demonstrate sufficient progress. There are no guidelines for the Board’s determination of the deadline, including that it must be reasonable in light of the factors identified by the Board in section B.2 of that proposed rule (the “indicators and measures” in the framework that the charter school is not meeting). A reasonable deadline should take into account why a school is not meeting the academic performance expectations, and it will necessarily depend on a host of facts that are specific to each school. Moreover, requiring the Board to set a deadline before it receives a school’s demonstration of sufficient progress necessarily eliminates the Board’s consideration of information that is likely relevant to setting that deadline.

The rule should be amended to add the following reasonableness requirement, as indicated by italic font: “The deadline for meeting the minimum academic performance expectations, *which shall be reasonable in light of the factors identified in subsection (B)(2).*” The Board may also wish to revise the rule so that the Board sets the deadline for a school to meet the academic performance expectations *after* the Board staff has had an opportunity to review the school’s demonstration of sufficient progress.

- **Proposed Rule R7-5-510.A.** The proposed revision to this rule would require a school to prepare and submit a Corrective Action Plan whenever it may not be in compliance with its charter, other contractual agreements with the Board, relevant statutes or rules. There are two concerns regarding the proposed rule. First, the CAP requirement is triggered “[w]hen the Board *receives information* that a charter holder” is not in compliance with its contractual or legal requirements. That is a lower threshold than a determination that the charter holder is actually not in compliance with its contractual or legal requirements. Under this provision, a charter school could be subject to a CAP requirement if a third-party (a parent or a vendor, for example) provided information to the Board about an alleged violation. But the requirement should be triggered by a *determination*, either by the Board or another entity with oversight of the charter holder, that the school is not in compliance with its obligations, not merely by the Board’s receipt of information. That determination could be made by Board staff in the same manner in which it reviews complaints that it receives under proposed Rule R7-5-507, and that would allow the charter holder to respond to any allegations of noncompliance.

In addition, the receipt of the same information from any person is addressed in proposed Rule R7-5-507, which deals with complaints, and thus there is overlap between the rules. The submission of information to the Board in a complaint should not result in a CAP requirement

without a determination by the Board, and yet without revisions, R7-5-510.A would on its face require just that.

Second, this provision is so broad in scope that it would appear to overlap with requirements regarding demonstrating sufficient progress to academic performance expectations, any perhaps other required submissions. For example, if a school is required by its charter to meet the Board's academic performance expectations (and I understand that some schools' charters do require this) and it does not, the school would be required by this proposed rule to submit a CAP *in addition to* demonstrating sufficient progress toward the expectations under R7-5-508.

This rule should be revised to indicate its appropriately narrow scope: to delineate that a school will be required to submit a CAP only for certain types of contractual or legal compliance issues and only when a determination has been made by the Board or another entity with regulatory authority over the school that it is not in compliance with its contractual or legal obligations.

- **Proposed Rule R7-5-607.B.1.c.** This proposed rule would require charter schools to provide information to all parents and staff if the Board has issued a notice of intent to revoke the charter. This requirement does not appear to be based on any statutory provision or authority, and it likely undermines a school's operational stability because it requires notification *before* a hearing on whether the notice even has merit. Thus, the administrative law judge may determine after a hearing that the notice of intent was improvidently issued by the Board (something that has occurred not infrequently in the past), but parents and staff may have already made enrollment and employment decisions based on the notification required by this rule. In addition, because the date and time of hearings on notices of intent to revoke are often not set within 48 hours of the issuance of a notice or are later changed by agreement of the parties, requiring that information to be shared with parents immediately may not only be unavailable, if it is available, it may be misleading.

This rule should be revised to allow the school to provide additional context in any notice that it is required to provide, including that the notice of intent to revoke the charter is not yet final, but will be decided by a neutral judge at the Office of Administrative Hearings; that the school disputes the allegations in the notice of intent to revoke (if it does) or that it believes that its actions should not subject it to the revocation of its charter; that the date, time and location of the hearing will be made publicly available at the school when it has been set; and any other statements that the school wishes to make about the notice of intent to revoke. In other words, as the proposed rule now stands, the Board's side of the story is the only one that is being told. Until there is a determination after a hearing on the notice of intent, the school should also be allowed to share its views in the same communication. To not recognize the school's right to do so would be to unfairly prejudice its operations before a final determination on the matter.

Ms. Andrea Leder
Ms. Johanna Medina
November 28, 2016
Page 7

Thank you for considering my comments on the proposed rules. Please contact me if you have any questions.

Very truly yours,



Lynne C. Adams

/lca

Cc: Kim Anderson (via email only)
6881505

Whitney Chapa

From: Burkam, Charles <cburkam@arizonawaldorf.org>
Sent: Friday, October 21, 2016 4:00 PM
To: Whitney Chapa
Subject: Re: Proposed Rules

Whitney,

You are welcome. I know how much effort that goes into such a process, and how little positive feedback one ever gets!

Have a great weekend.

Charles Burkam
Executive Director

Desert Marigold School
6210 S. 28th Street, Phoenix, AZ 85042
www.arizonawaldorf.org

On Fri, Oct 21, 2016 at 2:58 PM, Whitney Chapa <Whitney.Chapa@asbcs.az.gov> wrote:

Charles,

Very much appreciate the feedback and the time to review the proposed rulemaking.

Thank you,

Whitney

From: Burkam, Charles [<mailto:cburkam@arizonawaldorf.org>]
Sent: Friday, October 14, 2016 6:00 PM
To: Whitney Chapa <Whitney.Chapa@asbcs.az.gov>
Cc: Eileen Sigmund <eileen@azcharters.org>
Subject: Fwd: Proposed Rules

The message below did not get through the first time because the email address that came in the Charter Assn newsletter has a "z" in stead of "s" in asbcs.az.gov.

Charles Burkam

Executive Director

Desert Marigold School
6210 S. 28th Street, Phoenix, AZ 85042
www.arizonawaldorf.org

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

From: **Burkam, Charles** <cburkam@arizonawaldorf.org>
Date: Fri, Oct 14, 2016 at 2:59 PM
Subject: Proposed Rules
To: Whitney.Chapa@azbcs.az.gov
Cc: Eileen Sigmund <eileen@azcharters.org>

Dear Whitney,

An extensive job and thoroughly done. This provides much more specific detail as well as a more evenly balanced approach than was the practice previously. I particularly appreciate the specific timelines set for compliance within the Corrective Action Plan (CAP) section before further Board action is to be taken-not that I think I will even need to be aware of them! Thank you for bringing these changes about and your positive response to the comments and suggestions from the charter community.

The only suggestion I have is that in Section R7-5-510. B. 2: needs elaboration as some problems will not be offenses, which technically must be a violation of law, not merely a violation of a contract provision.

I suggest adding "and/or deficiencies" so that it reads: B. 2 "A description of the offense(s) and/or deficiencies."

Yours truly,

Charles Burkam

Executive Director

Desert Marigold School

6210 S. 28th Street, Phoenix, AZ 85042
www.arizonawaldorf.org

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 7. EDUCATION

CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS

1. Identification of the rulemaking:

The Board is amending its rules to make them consistent with statutory changes made in 2012 and 2013, to make the changes identified in a five-year-review report approved by Council on October 4, 2016, and to place in rule the Board's application of its academic, financial, and operational performance frameworks for charter holders.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Dawn Wallace, Education Policy Advisor in the Governor's office, in an e-mail dated January 6, 2016.

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

Until the rulemaking is completed, the Board's rules will not include the changes identified above.

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 best practice to include the changes identified above.

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

When the rulemaking is completed, the changes identified above will have been made.

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

The Board believes the rulemaking will have minimal economic impact on current charter holders and applicants for a charter. The rulemaking involves no substantive change to the Board's current rules and policies.

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: Ashley Berg

Address: Arizona State Board for Charter Schools

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.

1616 W Adams Street, Suite 170

Phoenix, AZ 85007

or

PO Box 18328

Phoenix, AZ 85009

Telephone: 602-364-3106

Fax: 602-364-3089

E-mail: Ashley.berg@asbcs.az.gov

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

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

Applicants for a charter, charter holders, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

In Article 2, the Board clarified the procedure for applying for a charter, including putting into rule the procedure for applying for a replication charter. The substance of the rules has not changed so the Board believes the economic impact of the rules on charter applicants will be minimal. The Board recognizes, however, that procedures necessary to comply with the rules, including payment of a \$6,500 application processing fee, involve cost for an applicant. During FY2016, the Board received 15 application packages for a new charter and six application packages for replication of an existing charter. One of the applicants for a new charter was denied for failure to meet statutory requirements. All applicants for a replication charter were granted a replication charter. During the last two years, seven applicants that were granted a new charter failed to execute the charter during the time required, and as a result, the Board's decision to grant a charter expired. Five of the seven were applicants for a replication charter. The Board assumes those that apply for a charter have determined the costs of doing so are outweighed by the benefits of being a charter holder.

Charter holders will be directly affected by the provisions in Articles 3 through 6. Although many of the rules are new, the substance of the rules is not new. Much of the substance of the rules was previously available on the Board's web site or in Board policy. Because the substance of the rules has not changed, the Board believes the economic impact on charter holders will be minimal. The Board recognizes, however, that procedures necessary to

(A.R.S. § 41-1055(C)).

comply with the rules involve cost for a charter holder. The Board believes having the information in rule will benefit charter holders by enabling them to find information quickly and in one place. As of July 1, 2016, the Board is the sponsor of 426 charter holders that operate 539 charter schools. There are currently more than 170,000 children enrolled in a charter school. This number has increased annually since 2006.

During the last year, post-charter actions included 1,230 charter amendments and 50 charter renewal application packages. One of the charter renewal application packages was for early renewal. All charter renewals were granted. There were no application packages for charter transfer. The only post-charter action for which there is a fee is the addition or change to an Arizona Online Instruction Program of Instruction. Only 17 of the 539 charter schools (3.2%) offer an AOI Program of Instruction. Post-charter actions are voluntarily initiated by a charter holder who has determined the post-charter action is in the best interest of the charter holder.

Article 4 provides for the application of the Board's academic, financial, and operational performance frameworks. The performance frameworks are not new. To minimize the economic impact of compliance, to the extent possible, the Board uses data gathered for other purposes in its academic and operational frameworks. The financial framework uses the statutorily required annual audit.

The Board is required to exercise general supervision over charter schools it sponsors (See A.R.S. §§ 15-182(E)(1) and 15-183(R)). The manner in which this is done is specified in Article 5. During the last year, the Board made 21 first-year site visits and conducted 81 five-year-interval reviews. Seventy-one charter holders were required to submit a financial performance response because the charter holder failed to meet the minimum financial performance expectations. Forty-one charter holders were required to prepare a corrective action plan (CAP). Five of the CAPs were required because the charter holder failed to submit the required annual audit timely. The remaining CAPs were based on issues identified in annual audits. The primary reason for requiring a CAP was failure to comply with the statutory fingerprinting requirement. Preparing a financial performance response or CAP requires time and may involve seeking outside assistance. A charter holder can avoid this economic expense by achieving the financial and operational performance expectations.

Under the rulemaking, the procedure for a charter holder to demonstrate sufficient progress toward meeting the Board's academic performance expectations is simplified. Under previous versions of the Board's academic performance framework, a charter holder that operated a school that did not meet the Board's academic performance expectations was required to submit a detailed document to demonstrate progress toward meeting the expectations. The current academic framework states, "A Charter Holder that has one or more schools that receive an Overall Rating of 'Does Not Meet Standard' or 'Falls Far below Standard' for three consecutive years has failed to demonstrate sufficient progress." Now, instead of requiring a submission from a charter holder to demonstrate sufficient progress, the Board makes the determination based on the charter holder's year-to-year academic performance.

During FY2016, the Board received 55 complaints regarding charter holders. None of the complaints alleged non-compliance with the charter, other agreements with the Board, federal or state law, or Board rules. Rather, the complaints concerned school staff, policies, employment, operations, and student discipline. All of the complaints were handled by the Board facilitating communication between the complainant and the charter holder. None resulted in disciplinary action.

The Board may also take action when the Board determines a charter holder is not in compliance with its charter, other contractual agreements with the Board, federal or state laws, or Board rules. During the last year, the Board imposed no civil penalties for fingerprinting violations, entered no consent agreements with charter holders, and revoked no charters. Ten percent of state aid was withheld from five charter holders for failing to submit timely the required audit. After the audit was submitted, the withheld funds were released to the charter holder as required under A.R.S. § 15-185(H). Being subject to charter oversight can be expensive for a charter holder until the noncompliance is corrected and may lead to charter revocation. However, a charter holder can avoid charter oversight by complying fully with the charter, other contractual agreements with the Board, federal or state laws, and Board rules.

The Board incurred the expense of making these rules and will incur the expense of implementing and enforcing them. The procedures required to implement the rules are in place.

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. It will not require any new full-time employees to implement or enforce the rules.
 - b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivisions are directly affected by the rulemaking.
 - c. Costs and benefits to businesses directly affected by the rulemaking:

Charter holders are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.
6. Impact on private and public employment:

The rules will have no impact on private or public employment.
 7. Impact on small businesses²:
 - a. Identification of the small business subject to the rulemaking:

Charter holders are businesses directly affected by the rulemaking. Some of them are small businesses. Their costs and benefits are discussed in item 4.
 - b. Administrative and other costs required for compliance with the rulemaking:

An application package, an application processing fee, and an in-person interview are required to make application for a charter. All post-charter actions require submission of an application package or request and may require an appearance before the Board. A charter holder that fails to comply with its charter, other contractual agreements with the Board, federal or state laws, or Board rules will incur the cost of extra supervision or charter oversight.
 - c. Description of methods that may be used to reduce the impact on small businesses:

Charter holders are provided tax-payer monies with which to provide quality education to children. It is not possible to reduce the impact of the rules on charter holders that are small businesses and provide necessary protections to children and tax payers.
 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. Because the Board is responsible for ensuring charter schools provide a learning environment that improves pupil achievement and because this rulemaking establishes procedures for assessing whether

charter schools improve pupil achievement, children who attend charter schools are indirectly benefited by the rulemaking.

9. Probable effects on state revenues:

The rules will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The Board believes the rules provide the least intrusive and least costly method of fulfilling its statutory responsibilities.

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

TITLE 7. EDUCATION
CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS

Authority: A.R.S. § 15-182

Editor's Note: 7 A.A.C. 5 made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R7-5-101, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

Section
R7-5-101. Definitions

ARTICLE 2. NEW CHARTERS

Article 2, consisting of R7-5-201 through R7-5-204, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

Section
R7-5-201. Application for a New Charter
R7-5-202. New Charter Application Processing Fee
R7-5-203. Time-frames for Granting or Denying a New Charter
R7-5-204. Review of Administratively Complete Application Package, Technical Assistance, and In-Person Interview
R7-5-205. Execution of a Charter
R7-5-206. Good Cause Extension to Execute a Charter
R7-5-207. Good Cause Suspension of a Charter

ARTICLE 3. CHARTER OVERSIGHT

Article 3, consisting of R7-5-301 through R7-5-304, made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

Section
R7-5-301. General Supervision, Oversight, and Administrative Responsibility
R7-5-302. Corrective Action Plan
R7-5-303. Site Visits; Records; Notice of Violation
R7-5-304. Disciplinary Action

ARTICLE 4. AMENDMENT TO A CHARTER

Article 4, consisting of R7-5-401, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

Section
R7-5-401. Amendment to a Charter

ARTICLE 5. AUDITS AND AUDIT CONTRACTS

Article 5, consisting of R7-5-501 through R7-5-504, made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

Section
R7-5-501. Audit Guidelines
R7-5-502. Approval of Audit Contracts
R7-5-503. Audit Completeness Determinations
R7-5-504. Review of Complete Audits

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R7-5-101, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

R7-5-101. Definitions

For the purpose of this Chapter, the following definitions apply:
"Accounting industry regulatory body"

"Administrative completeness review time-frame" means the number of days from the Board's receipt of a submission for Board consideration until the Board staff determines whether the submission contains all components and is formatted as required by statute and rule. The administrative completeness review time-frame does not include the period during which the Board performs a substantive review of the submission.

"Annual application cycle" means a new charter application process which is conducted each year to grant charters for the operation of new charter schools and is based on the earliest fiscal year in which a new charter school may begin operation.

"Applicant" means a person that applies to the Board for a new charter, a person who applies to transfer a charter from another charter school sponsor, a charter holder who applies to renew or replicate a charter sponsored by the Board, or a charter holder who applies to transfer an existing charter school site operated under a charter sponsored by the Board to a separate Board-sponsored charter held by the same charter holder.

"Application" means the Board-approved forms and instructions used by an applicant to apply for a new charter, transfer a charter, or renew or replicate a charter sponsored by the Board.

"Application package" means an application, narratives, and documents including exhibits and attachments as submitted by an applicant.

"ASBCS Online" means the Board's web-based interface accessible through the Arizona State Board for Charter Schools' website.

"Audit" means a charter holder's annual audit, as required by A.R.S. § 15-914.

"Audit contract" means an engagement letter provided by an audit firm that describes the terms of a contract between a charter holder and the audit firm.

"Audit firm" means a business that conducts an independent audit for a charter school.

"Audit guidelines" means the Board-approved general guidance on charter school audit requirements, which is available online.

"Authorized representative" means an individual with the power to bind an applicant contractually according to the applicant's Articles of Incorporation, operating agreement, or by-laws.

"Board" means the Arizona State Board for Charter Schools.

"Charter" means a contract between a person and the Board to operate a charter school under A.R.S. § 15-181 et seq.

"Charter holder" means a person that enters into a charter with the Board.

"Charter representative" means an individual with the power to bind a charter holder contractually according to the charter holder's Articles of Incorporation, operating agreement, or by-laws and is the point of contact for the Board for the purposes of communication and accountability to contract terms and conditions.

"Charter school" means a public school operated under a charter granted under A.R.S. § 15-181 et seq.

“Date of notice” means the date on which an electronic notification is sent by the Board to an applicant or charter holder through the authorized representative or charter representative.

“Day” means a business day.

“Department” means the Arizona Department of Education.

“Fiscal year” means the 12-month period beginning July 1 and ending June 30.

“Good standing” means that a supervising certified public accountant or audit firm has no current or pending disciplinary action or any regulatory action that requires the supervising certified public accountant or audit firm to complete conditions specified by an accounting industry regulatory body.

“Overall time-frame” means the number of days after receipt of a submission for Board consideration until the Board decides whether to grant or deny the request contained within the submission. The overall time-frame consists of both the administrative completeness review time-frame and the substantive review time-frame.

“Peer review” means an external quality control review as required by generally accepted government auditing standards that determines whether an audit firm’s internal quality control system is in place and operating effectively, and provides assurance that established policies and procedures and applicable auditing standards are being followed.

“Person” means an individual, partnership, corporation, association, or public or private organization of any kind.

“Preliminary application package” means an administratively complete application package that is forwarded to the Technical Review Panel for scoring.

“Principals” means the officers, members, partners, or board of an applicant.

“Revised application package” means an application package including revisions submitted by an applicant after receiving written notification that the applicant’s preliminary application package failed to meet the scoring requirements of R7-5-204.

“Serious impact finding” means an issue identified by the Board that in the opinion of the Board has or potentially has a significant impact on the operation of the charter school or students, such as threat to the health and safety of children, failure to meet the academic needs of the children, gross violation of generally accepted accounting principles that increases the opportunity for fraud or theft, or repeat issues of non-compliance.

“Submission deadline” means a date and time established each year by the Board and identified in the application for a new charter by which a new charter application package shall be submitted to the Board to be considered in a specified annual application cycle.

“Substantive review time-frame” means the number of days after a submission for Board consideration is determined to be administratively complete until the Board decides whether to grant or deny the request contained within the submission.

“Sufficiently qualified” means the Board’s determination that an applicant’s application package, knowledge and understanding of the application package, experience, qualifications, current and prior charter compliance, capacity, personal and professional background, and creditworthiness indicate an ability to implement a charter or operate a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule.

“Supervising certified public accountant” means the certified public accountant responsible for leading the audit work or signing the final audit.

“Technical Review Panel” means individuals approved by the Executive Director of the Board who use their expertise in charter school development, curriculum, and finance to assist in the evaluation of a preliminary or revised application package.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

ARTICLE 2. NEW CHARTERS

Article 2, consisting of R7-5-201 through R7-5-204, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

R7-5-201. Application for a New Charter

- A. By March 31 of each year, the Board shall approve and make available online at its web site an application for a new charter for a specified annual application cycle.
- B. A person desiring to establish a charter school shall submit an application package online through the web-based application wizard on ASBCS Online by the submission deadline identified in the application. A person may utilize an alternate submission process:
 1. A person utilizing the alternate submission process shall submit by hand delivery or mail a signed, notarized waiver request to the Board in the form and by the waiver deadline set out in the application.
 2. The Board shall send an acknowledgment of timely receipt of a waiver request within 10 days of receipt of a waiver request.
 3. Any person who submits a timely waiver request waives the right to have the Board consider any application package submitted through ASBCS Online in the same annual application cycle. Instead, such a person shall only submit an application package according to the alternate submission process instructions and by the alternate submission process submission deadline identified in the application.
 4. An application package shall not be accepted through the alternative submission process unless a waiver request has been received by the waiver deadline and acknowledged as timely by the Board.
- C. An applicant for a new charter shall ensure that the submitted application package contains all the information, materials, documents, and attachments identified in the application for a new charter for the current annual application cycle and in the format specified in that application, which shall together constitute:
 1. A detailed educational plan,
 2. A detailed business plan,
 3. A detailed operational plan, and
 4. Any other materials the Board requires.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

R7-5-202. New Charter Application Processing Fee

Each applicant shall pay a new charter application processing fee, in accordance with A.R.S. § 15-183(CC).

1. The new charter application processing fee is \$6,500 for each application package an applicant submits to the Board.
2. Each applicant shall pay the new charter application processing fee in the form of a single personal check or cashier's check with the applicant's name clearly identified on the front of the check made payable to Arizona State Board for Charter Schools. The check shall be delivered by mail or hand delivery to the Board office during regular business hours by the submission deadline.
3. Failure to timely submit the new charter application processing fee shall result in the application package being deemed administratively incomplete under R7-5-203(B).
4. All checks shall be deposited within five days of submission. If an applicant's new charter application processing fee payment to the Board is dishonored for any reason including an insufficient funds check:
 - a. The application package shall be deemed administratively incomplete under R7-5-203(B), and
 - b. The applicant shall use a cashier's check to pay the new charter application processing fee for any application package submitted to the Board by the applicant at any later date.
5. If an application package is found to be administratively incomplete, under R7-5-203(B), and the applicant paid the new charter application processing fee, the fee shall be refunded to the applicant. The fee refund shall be mailed by U.S. Postal Service regular mail to the authorized representative at the address provided in the application package.
6. If an application package is found to be administratively complete under R7-5-203(B), the new charter application processing fee shall become non-refundable.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Section R7-5-202 renumbered to Section R7-5-203; new Section R7-5-202 made by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

R7-5-203. Time-frames for Granting or Denying a New Charter

- A. For granting or denying a charter, the time-frames required are:
 1. Administrative completeness review time-frame: 25 days;
 2. Substantive review time-frame: 175 days; and
 3. Overall time-frame: 200 days.
- B. An application package for a charter school shall be administratively complete if:
 1. The application package contains all the information, materials, documents, attachments, signatures, and notarizations identified in the application for a new charter for the current annual application cycle;
 2. All the application package's components are formatted as required by that application;
 3. All curriculum samples address the required standard;
 4. All templates are unmodified, completely filled out, and from the current annual application cycle; and
 5. The application processing fee has been paid according to R7-5-202(1), (2), and (4).

- C. The administrative completeness review time-frame, as listed in subsection (A)(1), begins the day after the Board receives an application package.
 1. If the application package is administratively incomplete when received, the Board staff shall provide to the applicant a notice of deficiency that states the reasons the application package was found to be administratively incomplete.
 2. Upon written notice to the applicant that the application package is administratively incomplete, the Board staff shall close the applicant's file.
 - a. If the submission deadline has not yet passed, an applicant may correct deficiencies in an administratively incomplete application package and submit a new application package in the same annual application cycle, under R7-5-201; the applicant shall pay a new application processing fee, under R7-5-202.
 - b. An applicant who believes their application was erroneously designated as administratively incomplete may submit a written request for reconsideration to the Board within 10 days of the date of notice.
 - i. The request for reconsideration shall contain a clear statement indicating how the previously submitted application package fulfilled each of the requirements that were identified as having been deficient. The request for reconsideration shall not provide any new or additional information, documents, or materials.
 - ii. A request for reconsideration that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and the applicant shall be notified that the request was not submitted according to subsection (i) and the applicant's file is closed.
 - iii. The Board staff shall review a request for reconsideration that is submitted according to subsection (i) and provide a decision on the request for reconsideration within 10 days of receipt.
 - iv. If the Board staff determines the application package was erroneously designated as administratively incomplete, the Board staff shall reopen the applicant's file and send a written notice of administrative completeness to the applicant. If the Board staff determines the application package was correctly designated as administratively incomplete, the applicant's file shall remain closed.
3. If the application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review time-frame, the application package is deemed administratively complete.
- D. A substantive review time-frame, as listed in subsection (A)(2), begins when an application package is determined to be administratively complete. The substantive review is conducted according to R7-5-204.
- E. Within the time provided in subsection (A)(3), the Board shall provide the applicant with written notice of its decision to grant or deny a charter.

1. The Board shall deny a charter if it determines that the application package does not meet the requirements of statute or rule or the applicant is not sufficiently qualified to operate a charter school. The written notice shall include the basis for the denial. The applicant may:
 - a. Submit a new application package under R7-5-201 for consideration by the Board in any later annual application cycle; or
 - b. Appeal the Board's decision.
2. The Board shall grant a charter if it determines that the application package meets the requirements of statute and rule and the applicant is sufficiently qualified to operate a charter school.
 - iii. The application package receives a score of Meets the Criteria for at least 95% of the evaluation criteria in each plan (educational plan, operational plan, and business plan).
2. The Board staff shall conduct a background and credit check of each principal of the applicant and confirm each principal possesses a valid fingerprint clearance card.
 - a. If issues arise from the information obtained during the background and credit checks of any principal, the Board staff shall provide the pertinent principal written notice of the issues and the principal will have the opportunity to provide a written response clarifying the information.
 - b. Information obtained and communications conducted during this process shall be considered by the Board in making its decision on whether to grant or deny a charter.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Section R7-5-203 renumbered to Section R7-5-204; new Section R7-5-203 renumbered from R7-5-202 and amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

R7-5-204. Review of Administratively Complete Application Package, Technical Assistance, and In-Person Interview

The review of an administratively complete application package is as follows:

1. The Technical Review panel shall score the preliminary application package using the evaluation criteria identified in the application to determine whether an application package meets the Board's scoring requirements.
 - a. An application package shall be assigned a score of "Meets the Criteria," "Approaches the Criteria," or "Falls Below the Criteria" for each evaluation criterion.
 - i. An evaluation criterion shall be scored "Meets the Criteria" when the section within which that evaluation criterion is identified by the application:
 - (1) Addresses the evaluation criterion fully with specific and accurate information;
 - (2) Reflects a thorough understanding of the evaluation criterion; and
 - (3) Is clear and coherent.
 - ii. An evaluation criterion shall be assigned a score of "Approaches the Criteria" when the section within which that evaluation criterion is identified by the application:
 - (1) Addresses the evaluation criterion partially and lacks specific and accurate information for some aspect of the evaluation criterion;
 - (2) Presents a partial understanding of the evaluation criterion; or
 - (3) Is not clear and coherent.
 - iii. An evaluation criterion shall be assigned a score of "Falls Below the Criteria" when the section within which that evaluation criterion is identified by the application does not address the evaluation criterion.
 - b. An application package meets the Board's scoring requirements if:
 - i. No evaluation criterion receives a score of Falls Below the Criteria;
 - ii. No more than one evaluation criterion in each section is scored as Approaching the Criteria; and
3. The Board staff shall notify the applicant if the preliminary application package fails to meet the scoring requirements as evaluated by the Technical Review Panel. The Board staff shall provide reasons the application package fails to meet the scoring requirements and include the comments of the Technical Review Panel, which will serve as technical assistance and suggestions for improving the application package.
4. An applicant who receives notification that a preliminary application package fails to meet the scoring requirements as evaluated by the Technical Review Panel may, within 20 days of the date of notice, submit a revised application package or a written request that the preliminary application package be forwarded to the Board.
5. If a revised application package or written request is not submitted to the Board within 20 days of the date of notice that a preliminary application package fails to meet the scoring requirements, the Board staff shall close the applicant's file. An applicant whose file is closed and who wants to obtain a charter shall apply again under R7-5-201 in any later annual application cycle.
6. If a revised application package is submitted, the Technical Review Panel shall score the revised application package using the scores and scoring requirements described in subsection (1).
7. If a revised application package fails to meet the scoring requirements as evaluated by the Technical Review Panel, the Board staff shall notify the applicant of the intent to close the file. The Board staff shall include with the notice the comments of the Technical Review Panel.
8. An applicant who receives notification of the Board staff's intent to close the file may, within 20 days of the date of notice, submit a written request that the revised application package be forwarded to the Board.
9. If a written request is not submitted to the Board within 20 days of the date of notice that a revised application package fails to meet the scoring requirements, the Board staff shall close the applicant's file. An applicant whose file is closed and who wants to obtain a charter shall apply again under R7-5-201 in any later annual application cycle.
10. At least 30 days prior to the last Board meeting before the substantive review time-frame expires, and within 90 days of the determination that a preliminary or revised application package meets the scoring requirements as evaluated by the Technical Review Panel, or the receipt of an applicant's request under subsection (4) or (8) that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Tech-

- nical Review Panel, the principals of the applicant shall make themselves available for an in-person interview with two or more members of the Technical Review Panel. In the interview, the members of the Technical Review Panel shall assess:
- a. The applicant's understanding of the components presented in the written application package;
 - b. The applicant's capacity to implement a plan to operate a charter school in accordance with the performance frameworks adopted by the Board;
 - c. The applicant's clarification of any issues that arise in the course of the due diligence process for any applicant, principal, or Education Service Provider; and
 - d. Any other factors relevant to determining whether the applicant is sufficiently qualified to operate a charter school.
11. The Board shall consider an application package to determine whether to approve or deny the application package and whether to grant or deny the charter if the Technical Review Panel determines that the application package meets or exceeds the scoring requirements or if the applicant requests under subsection (4) or (8) that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Technical Review Panel.
 - a. For the purpose of deciding whether to approve or deny the application package, the Board shall consider:
 - i. The application package; and
 - ii. A copy of the scoring rubric completed by the Technical Review Panel.
 - b. For the purpose of deciding whether to grant or deny a new charter, the Board shall determine whether the applicant is sufficiently qualified by considering the following:
 - i. The application package;
 - ii. A copy of the scoring rubric completed by the Technical Review Panel;
 - iii. The results of the in-person interview of the applicant's principals;
 - iv. Information obtained through verification and investigation of the backgrounds including employment, experience, education, fingerprint clearance card, and assessment of creditworthiness for each of the principals of the applicant;
 - v. Information concerning any current or former charter operations for any Education Service Provider or principal of the applicant;
 - vi. A Board staff report; and
 - vii. Testimony presented at the Board meeting.
 12. The Board shall provide an applicant, with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1). Section R7-5-204 renumbered to Section R7-5-205; new Section R7-5-204 renumbered from R7-5-203 and amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

R7-5-205. Execution of a Charter

- A. After the Board's decision to grant a new charter, and before the charter is signed, the applicant shall submit to the Board the following:
 1. No change
 2. Charter school site location information including:
 - a. Certificate of occupancy for each charter school site approved for educational use, and
 - b. Fire marshal report for each charter school site approved for educational use, or
 - c. If the certificate of occupancy and fire marshal report are not available, a completed Occupancy Compliance Assurance form;
 3. General Statement of Assurances form obtained from the Department;
 4. A statement indicating where all public notices of meetings will be posted as required by the Secretary of State under A.R.S. § 38-431.02; and
 5. Copy of the lease agreement or other documentation of a secured charter school facility for each charter school site.
- B. A charter shall be signed by the Board President or designee and authorized representative of the applicant within 12 months after the Board's decision to grant the charter.
 1. If a charter is not timely signed, the Board's decision to grant the new charter expires, unless the applicant applies for and is granted a good cause extension to execute the charter under R7-5-206.
 2. If an applicant who is granted a new charter but does not timely sign the charter and does not obtain a good cause extension wants to obtain a new charter, the applicant shall apply again under R7-5-201 in any later annual application cycle.
- C. A charter holder shall begin providing educational instruction no later than the second fiscal year after the Board's decision to grant the charter, unless the charter holder is granted a good cause extension to execute a charter under R7-5-206 or good cause suspension of a charter under R7-5-207.
 1. A charter holder who is granted a good cause extension to execute a charter under R7-5-206 or good cause suspension of a charter under R7-5-207 shall begin providing educational instruction no later than the third fiscal year after the Board's decision to grant the charter.
 2. If a charter holder does not begin providing educational instruction as required by subsections (C) and (C)(1) the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).
- D. A charter holder shall submit to the Board written proof that the charter school is in compliance with federal, state, and local rules, regulations, and statutes relating to health, safety, civil rights and insurance at least 10 days before the first day it will begin providing educational instruction by submitting:
 1. Charter school site contact information;
 2. Insurance policy binder issued by an insurance company licensed to do business in Arizona;
 3. County health certificate for each site at which students will be taught;
 4. Evidence of a public meeting, required by A.R.S. § 15-183(C)(7), at least 30 days before the charter holder opens a site for the charter school;
 5. Certificate of attendance of the charter representative or principal at the special education training for new charters offered by the Department's Exceptional Student Services Division; and
 6. Any other documents required to demonstrate compliance with federal, state, and local rules, regulations, and

statutes relating to health, safety, civil rights and insurance.

- E.** If a charter holder has completed an Occupancy Compliance Assurance form, state aid funding shall not initiate until the Board has determined that the required certificate of occupancy and fire marshal report submissions are complete and sufficient.
- F.** A new charter is effective upon the signing of both parties for a term of 15 years commencing on the date stated in the charter, unless revoked under A.R.S. § 15-183(I).

Historical Note

New Section R7-5-205 renumbered from R7-5-204 and amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

R7-5-206. Good Cause Extension to Execute a Charter

Before the Board's decision to grant a new charter expires, an applicant who has not yet executed the charter may submit to the Board a written request for a good cause extension to execute a charter.

1. The written request for a good cause extension to execute a charter shall:
 - a. Explain and provide evidence of why the applicant is unable to implement the plans contained in the application package and execute the charter within the allotted 12 months;
 - b. Explain the applicant's new timeline for implementing the plans contained in the application package, and why the timeline is viable and adequate for achieving the proposed start-up date of the school and appropriate for operating a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule.
 - c. Provide clear and specific action steps with target completion dates that will enable the applicant to implement the plans contained in the application package in accordance with the timeline provided and the requirements of R7-5-205(C)(1).
2. The Board may grant a good cause extension to execute a charter if an applicant demonstrates good cause. When considering a request for a good cause extension to execute a charter, the Board shall consider:
 - a. The timeliness of the submission of the request and the proposed extension date;
 - b. The viability of the applicant's new timeline for implementing the plans contained in the application package;
 - c. Whether the new timeline provided by the applicant is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
 - d. Unforeseen circumstances affecting the applicant's ability to execute the charter within the allotted 12 months;
 - e. Whether there have been changes in the principals of the applicant; and
 - f. The status of compliance with all applicable federal, State and local laws, and with all of the terms of a charter.
3. The Board shall not grant more than one good cause extension to execute a charter to any applicant for the same charter.
4. If the Board grants a good cause extension to execute a charter, the Board shall specify the date by which the applicant shall execute the charter and begin providing educational instruction based on the timeline provided by

the applicant and the requirements of R7-5-205(C)(1). If the applicant does not execute the charter by the specified date, the Board's decision to grant the charter shall expire.

Historical Note

Section R7-5-206 made by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

R7-5-207. Good Cause Suspension of a Charter

Prior to the first day of the fiscal year that a charter holder must begin providing educational instruction, the charter holder of a not-yet-operational charter may submit to the Board a written request for a good cause suspension of a charter.

1. A charter holder is eligible to apply for a good cause suspension of a charter if:
 - a. The charter holder has not been granted a good cause extension to execute a charter,
 - b. The charter holder has not begun providing educational instruction under the charter, and
 - c. The charter holder has not received or has returned state equalization or other state or federal funding for which provision of instruction is a requirement of receipt.
2. The written request for a good cause suspension of a charter shall:
 - a. Explain and provide evidence for why the charter holder is unable to implement the plans contained in the application package and begin providing educational instruction as required under R7-5-205(C);
 - b. Explain the charter holder's new timeline for implementing the plans contained in the application package, and why the new timeline is viable and adequate for achieving the proposed start-up date of the school and appropriate for operating a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule.
 - c. Provide clear and specific action steps with target completion dates that will enable the charter holder to implement the plans contained in the application package in accordance with the timeline provided and the requirements of R7-5-205(C)(1).
3. The Board may grant a good cause suspension of a charter if the charter holder demonstrates good cause. When considering a request for a good cause suspension of a charter, the Board shall consider:
 - a. The timeliness of the submission of the request and the proposed extension date;
 - b. The viability of the charter holder's new timeline for implementing the plans contained in the application package;
 - c. Whether the new timeline provided by the charter holder is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
 - d. Unforeseen circumstances affecting the charter holder's ability to begin providing educational instruction as required under R7-5-205(C);
 - e. Whether there have been changes in the principals of the charter holder; and
 - f. The status of compliance with all applicable federal, State and local laws, and with all of the terms of the charter.
4. The Board shall not grant more than one good cause suspension of a charter to any charter holder for the same charter and shall not grant a good cause suspension of a

charter to any charter holder who previously received a good cause extension to execute a charter for the same charter.

5. A charter holder who is granted a good cause suspension may execute and submit an amendment to the charter indicating a new effective date which shall conform to the date on which the charter holder shall begin providing educational instruction.
6. A charter holder who is granted a good cause suspension of a charter shall not apply to receive any state equalization or other state or federal funding for which provision of instruction is a requirement of receipt until the fiscal year in which the charter holder plans to begin providing educational instruction and shall promptly return any such funding it receives prior to the fiscal year in which it begins providing educational instruction.
7. A charter holder granted a good cause suspension of a charter shall begin providing educational instruction as required by R7-5-205(C). If a charter holder does not begin providing educational instruction as required, the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).

Historical Note

Section R7-5-207 made by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

ARTICLE 3. CHARTER OVERSIGHT

R7-5-301. General Supervision, Oversight, and Administrative Responsibility

- A. A charter holder shall comply with the provisions of its charter and with federal and state laws at all times.
- B. The Board may use any of the following means in performing its administrative responsibilities to and general supervision and oversight of a charter holder:
 1. Oral, written, and electronic communication with the authorized representative or charter school personnel;
 2. Oral, written, and electronic communication with representatives of federal, state, and local agencies having jurisdiction over the operation of the charter school or having the authority to investigate or adjudicate allegations of misconduct by any member of the charter school's staff;
 3. Oral, written, and electronic communication with students, parents, or outside parties regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff;
 4. Collection and review of reports, audits, data, records, documents, files, and communication from any source relating to any activity or program conducted by or for the charter school;
 5. A corrective action plan as described in R7-5-302; and
 6. A site visit as described in R7-5-303.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

R7-5-302. Corrective Action Plan

- A. Upon receipt of information under R7-5-301(B) that a charter holder is not in compliance with the provisions of its charter or federal or state laws, the Board shall consider the following factors in determining whether a corrective action plan (CAP) is required:
 1. The seriousness of the offense;
 2. The charter holder's history of compliance with the provisions of its charter and federal and state laws;

3. The length of time the offense has been occurring; and
4. Any other factors relating to the charter holder's compliance with the provisions of its charter and federal or state laws.

- B. If the Board requires a CAP, it shall make a written request to the charter holder for the submission of a CAP to be implemented to remedy the offense. The request shall include:
 1. A description of the offense,
 2. A list of the specific criteria to be included in the CAP,
 3. A deadline for the submission of the CAP,
 4. A timeline for the implementation of the CAP, and
 5. The consequences for failure to submit or implement the CAP.
- C. The Board shall decide to accept the CAP based on whether the specified criteria stated in the request are included in the CAP.
 1. The Board shall provide written notification to the authorized representative regarding the acceptance or rejection of the CAP.
 2. Written notification that the Board rejected the CAP shall include the reason for the rejection, the deadline for submission of the revised CAP, and the consequences for failure to submit a CAP that meets the specified criteria.
- D. The Board shall monitor the charter holder's implementation of the approved CAP to ensure the offense is rectified.
 1. The charter holder shall demonstrate to the Board through documentation or a site visit that steps have been taken to correct the offense or, in the case of a serious impact finding, that the charter holder is currently in compliance.
 2. The Board shall consider possible disciplinary action under R7-5-304 against the charter holder if the charter holder fails to implement the CAP and rectify the offense.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

R7-5-303. Site Visits; Records; Notice of Violation

- A. A designee of the Board or Department may conduct a site visit of a charter school to a review or evaluate the charter school's financial operations, academic program, or compliance with the provisions of its charter and federal and state laws.
- B. A designee of the Board or Department may conduct a site visit to corroborate information submitted to the Board and to gather information, documentation, and testimony that permit the Board to fulfill its oversight function under the law and ensure the charter school is in compliance with the provisions of its charter and federal and state laws.
- C. A designee of the Board or Department shall conduct a site visit during regular operational hours of a charter school or at any other reasonable time.
- D. A designee of the Board or Department may conduct either an announced or unannounced site visit.
- E. A designee of the Board or Department may conduct an investigation of a charter school in response to concerns raised by students, parents, employees, members of the community or other individuals or groups regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff.
- F. Upon request by a designee of the Board or Department, a charter holder shall open for inspection all records, documents, and files relating to any activity or program conducted by or for the charter school or the charter holder relating to the charter school.
- G. Upon request by a designee of the Board or Department, a charter holder shall provide access to all school facilities.

1. During a site visit, a charter holder shall provide access to classrooms for the purpose of counting students, observing a program of instruction, or documenting individuals providing instruction.
 2. In conducting a site visit, the designee of the Board or the Department shall make every effort not to disrupt the classroom environment.
- H.** The Board or Department shall inform a charter holder in writing of any offense identified during a site visit and shall specify any further action that must be taken by the charter holder. In determining the appropriate action to take, the Board shall consider the items in R7-5-304(A).
- I.** The Board shall require a charter holder with a serious impact finding to appear before the Board for possible disciplinary action under R7-5-304.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

R7-5-304. Disciplinary Action

- A.** The Board may discipline a charter holder for violation of its charter or federal or state laws. In determining the appropriate disciplinary action to take, the Board shall consider the following:
1. Threat to the health or safety of children;
 2. Whether the charter holder's historical compliance record indicates repeated or multiple breaches of the provisions of its charter or federal or state laws;
 3. Whether the charter holder has failed to meet the academic needs of the children;
 4. Length of time the offense has been occurring;
 5. The charter holder's compliance with and response to staff investigation in providing necessary information and documentation within requested time-frames;
 6. Whether there has been a misuse of funds; and
 7. Any other factor that has a bearing on the charter holder's ability and willingness to operate in compliance with the provisions its charter and federal and state laws.
- B.** The Board shall take disciplinary action against a charter holder based on the Board's assessment of the factors listed in subsection (A). Disciplinary action may include any of the following:
1. Requiring a corrective action plan as described in R7-5-302;
 2. Requesting the Department to withhold up to 10 percent of the charter school's monthly state aid in accordance with A.R.S. § 15-185(H). Upon proof of corrected deficiencies and that the charter holder is in compliance, the Board shall request the Department to restore the full amount of state aid payments to the charter school;
 3. Entering into a consent agreement with the charter holder for the resolution of the non-compliance. The Board shall ensure that the consent agreement:
 - a. Describes each offense;
 - b. Stipulates the facts agreed to by the Board and the charter holder;
 - c. Specifies the actions the charter holder must take to demonstrate compliance and avoid further disciplinary action;
 - d. Provides a timeline for the charter holder to complete the actions specified in the consent agreement;
 - e. Stipulates that if the charter holder fails to comply with the terms and conditions of the consent agreement, the Board may, after giving the number of days notice specified in the consent agreement, hold a hearing at which the Board receives information to

determine whether evidence exists that the charter holder has failed to comply with the consent agreement. If the Board determines that the charter holder has breached the consent agreement, the Board may revoke the charter holder's charter; and

- f. Is approved by the Board and the charter holder and signed by the Board president or designee and the authorized representative;
4. Issuing a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I) if the Board determines there is cause to believe that the charter holder may have breached one or more provisions of its charter; and
 5. Revoking the charter in accordance with A.R.S. § 15-183(I).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

ARTICLE 4. AMENDMENT TO A CHARTER

Article 4, consisting of R7-5-401, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

R7-5-401. Amendment to a Charter

- A.** A charter holder that wishes to amend its charter shall submit to the Board:
1. A completed charter amendment form approved by the Board,
 2. The support documentation indicated on the charter amendment form, and
 3. Evidence that the proposed charter amendment has been approved by the charter school's governing body.
- B.** For approving or disapproving an amendment, the time-frames required by A.R.S. § 41-1072 et seq. are:
1. Administrative completeness review time-frame: 20 days.
 2. Substantive review time-frame: 40 days.
 3. Overall time-frame: 60 days.
- C.** A charter holder shall conform to the terms of the charter until an amendment is approved by the Board.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

ARTICLE 5. AUDITS AND AUDIT CONTRACTS

R7-5-501. Audit Guidelines

By July 1 of each year, the Board shall make available to the public at its office and online at its web site, written audit guidelines that provide general guidance on charter school audit requirements, including the deadline for submitting the completed audit to the Board and information that must be included for the audit to be deemed complete.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

R7-5-502. Approval of Audit Contracts

- A.** In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit to the Board for approval an audit contract for each audit before the audit begins.
- B.** The Board shall disapprove an audit contract only for the following reasons:
1. Board knowledge that a person employed by the audit firm has been convicted under a federal or state statute for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury,

- forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
2. Failure of the audit firm or supervising certified public accountant to maintain good standing with an accounting industry regulatory body;
 3. Violation of or failure of the audit firm to meet generally accepted auditing standards or generally accepted government auditing standards as identified by an accounting industry regulatory body;
 4. Failure of the audit firm to receive an unmodified opinion during the audit firm's most recent peer review or failure of any auditor working on the audit to meet the continuing professional education requirements prescribed by generally accepted government auditing standards; or
 5. Failure to acknowledge that the audit firm shall adhere to the audit requirements listed in the Board's audit guidelines.
- C. The Board shall provide written notification of approval or disapproval of an audit contract to the charter holder and the audit firm within 10 days of receipt of the audit contract.
 - D. The Board shall include the cause for disapproval in a notice of disapproval.
 - E. If the charter holder or audit firm provides documentation that demonstrates the cause for disapproval no longer exists, the Board shall approve the audit contract and notify all parties of the approval.
- B. The Board shall find that an audit is incomplete if it does not include all of the items listed in the Board's audit guidelines.
 - C. The Board shall provide written notification of a complete audit to the charter holder within five days of the receipt of the audit. The Board shall provide written notification of an incomplete audit to the charter holder and the audit firm within five days of receipt of the audit.
 - D. The Board shall include the cause for the determination in a notice of an incomplete audit.
 - E. If the charter holder or audit firm provides documentation that demonstrates the cause for an incomplete audit no longer exists, the Board shall deem the audit complete and notify the charter holder.
 - F. The Board shall require that a charter holder whose audit does not include the items stated in the audit guidelines appear before the Board for possible disciplinary action under R7-5-304.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577,
effective February 7, 2006 (Supp. 06-1).

R7-5-504. Review of Complete Audits

- A. The Board staff shall review each audit deemed complete.
- B. The Board shall send a letter to a charter holder after the audit is reviewed. If the Board identifies an issue in the audit, the Board shall direct the charter holder to address the issue and based on an assessment of the factors in R7-5-302(A), may require the charter holder to submit a corrective action plan.
- C. The Board shall require that a charter holder with a serious impact finding appear before the Board for possible disciplinary action under R7-5-304.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577,
effective February 7, 2006 (Supp. 06-1).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 577,
effective February 7, 2006 (Supp. 06-1).

R7-5-503. Audit Completeness Determinations

- A. In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit an audit to the Board for a determination regarding the audit's completeness.

15-181. Charter schools; purpose; scope

A. Charter schools may be established pursuant to this article to provide a learning environment that will improve pupil achievement. Charter schools provide additional academic choices for parents and pupils. Charter schools may consist of new schools or all or any portion of an existing school. Charter schools are public schools that serve as alternatives to traditional public schools and charter schools are not subject to the requirements of article XI, section 1, Constitution of Arizona, or chapter 16 of this title.

B. Charter schools shall comply with all provisions of this article in order to receive state funding as prescribed in section 15-185.

15-182. State board for charter schools; membership; terms; compensation; duties

A. The state board for charter schools is established consisting of the following members:

1. The superintendent of public instruction or the superintendent's designee.
2. Six members of the general public, at least two of whom shall reside in a school district where at least sixty per cent of the children who attend school in the district meet the eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free lunches, and at least one of whom shall reside on an Indian reservation, who are appointed by the governor pursuant to section 38-211.
3. Two members of the business community who are appointed by the governor pursuant to section 38-211.
4. A teacher who provides classroom instruction at a charter school and who is appointed by the governor pursuant to section 38-211.
5. An operator of a charter school who is appointed by the governor pursuant to section 38-211.
6. Three members of the legislature who shall serve as advisory members and who are appointed jointly by the president of the senate and the speaker of the house of representatives.

B. The superintendent of public instruction shall serve a term on the state board for charter schools that runs concurrently with the superintendent's term of office. The members appointed pursuant to subsection A, paragraph 6 of this section shall serve two year terms on the state board for charter schools that begin and end on the third Monday in January and that run concurrently with their respective terms of office. Members appointed pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall serve staggered four year terms that begin and end on the third Monday in January.

C. The state board for charter schools shall annually elect a president and such other officers as it deems necessary from among its membership.

D. Members of the state board for charter schools are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

E. The state board for charter schools shall:

1. Exercise general supervision over charter schools sponsored by the board and recommend legislation pertaining to charter schools to the legislature.

2. Grant charter status to qualifying applicants for charter schools pursuant to section 15-183.
 3. Adopt and use an official seal in the authentication of its acts.
 4. Keep a record of its proceedings.
 5. Adopt rules for its own government.
 6. Determine the policy of the board and the work undertaken by it.
 7. Delegate to the superintendent of public instruction the execution of board policies.
 8. Prepare a budget for expenditures necessary for the proper maintenance of the board and the accomplishment of its purpose.
- F. The state board for charter schools may:
1. Contract.
 2. Sue and be sued.
 3. Use the services of the auditor general.
 4. Subject to title 41, chapter 4, article 4 and legislative appropriation, employ staff.
- G. The state board for charter schools may accept gifts or grants of monies or real or personal property from public and private organizations, if the purpose of the gift or grant specified by the donor is approved by the board and is within the scope of the board's powers and duties. The board shall establish and administer a gift and grant fund for the deposit of monies received pursuant to this subsection.

15-183. Charter schools; application; requirements; immunity; exemptions; renewal of application; reprisal; fee; funds; annual reports

- A. An applicant seeking to establish a charter school shall submit a written application to a proposed sponsor as prescribed in subsection C of this section. The application, application process and application time frames shall be posted on the sponsor's website and shall include the following, as specified in the application adopted by the sponsor:
1. A detailed educational plan.
 2. A detailed business plan.
 3. A detailed operational plan.
 4. Any other materials required by the sponsor.
- B. The sponsor of a charter school may contract with a public body, private person or private organization for the purpose of establishing a charter school pursuant to this article.
- C. The sponsor of a charter school may be either a school district governing board, the state board of education, the state board for charter schools, a university under the jurisdiction of the Arizona board of regents, a community college district with enrollment of more than fifteen thousand full-time equivalent students or a group of community college districts with a combined enrollment of more than fifteen thousand full-time equivalent students, subject to the following requirements:
1. For charter schools that submit an application for sponsorship to a school district governing board:
 - (a) An applicant for a charter school may submit its application to a school district governing board, which shall either accept or reject sponsorship of the charter school within ninety days. An applicant may submit a revised application for

reconsideration by the governing board. If the governing board rejects the application, the governing board shall notify the applicant in writing of the reasons for the rejection. The applicant may request, and the governing board may provide, technical assistance to improve the application.

(b) In the first year that a school district is determined to be out of compliance with the uniform system of financial records, within fifteen days of the determination of noncompliance, the school district shall notify by certified mail each charter school sponsored by the school district that the school district is out of compliance with the uniform system of financial records. The notification shall include a statement that if the school district is determined to be out of compliance for a second consecutive year, the charter school will be required to transfer sponsorship to another entity pursuant to subdivision (c) of this paragraph.

(c) In the second consecutive year that a school district is determined to be out of compliance with the uniform system of financial records, within fifteen days of the determination of noncompliance, the school district shall notify by certified mail each charter school sponsored by the school district that the school district is out of compliance with the uniform system of financial records. A charter school that receives a notification of school district noncompliance pursuant to this subdivision shall file a written sponsorship transfer application within forty-five days with the state board of education, the state board for charter schools or the school district governing board if the charter school is located within the geographic boundaries of that school district. A charter school that receives a notification of school district noncompliance may request an extension of time to file a sponsorship transfer application, and the state board of education, the state board for charter schools or a school district governing board may grant an extension of not more than an additional thirty days if good cause exists for the extension. The state board of education and the state board for charter schools shall approve a sponsorship transfer application pursuant to this paragraph.

(d) A school district governing board shall not grant a charter to a charter school that is located outside the geographic boundaries of that school district.

(e) A school district that has been determined to be out of compliance with the uniform system of financial records during either of the previous two fiscal years shall not sponsor a new or transferring charter school.

(f) Notwithstanding any other law, a school district governing board shall not grant a charter to a new charter school that begins initial operations after June 30, 2013 or convert an existing district public school to a charter school that begins initial operations after June 30, 2013.

2. The applicant may submit the application to the state board of education or the state board for charter schools. Notwithstanding any other law, neither the state board for charter schools nor the state board of education shall grant a charter to a school district governing board for a new charter school that begins initial operations after June 30, 2013 or for the conversion of an existing district public school to a charter school that begins initial operations after June 30, 2013. The state board of education or the state board for charter schools may approve the application if the application meets the requirements of this article and may approve the charter if the proposed sponsor determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school and that the

applicant is applying to operate as a separate charter holder by considering factors such as whether:

(a) The schools have separate governing bodies, governing body membership, staff, facilities and student population.

(b) Daily operations are carried out by different administrators.

(c) The applicant intends to have an affiliation agreement for the purpose of providing enrollment preferences.

(d) The applicant's charter management organization has multiple charter holders serving varied grade configurations on one physical site or nearby sites serving one community.

(e) It is reconstituting an existing school site population at the same or new site.

(f) It is reconstituting an existing grade configuration from a prior charter holder with at least one grade remaining on the original site with the other grade or grades moving to a new site. The state board of education or the state board for charter schools may approve any charter schools transferring charters. The state board of education and the state board for charter schools shall approve any charter schools transferring charters from a school district that is determined to be out of compliance with the uniform system of financial records pursuant to this section, but may require the charter school to sign a new charter that is equivalent to the charter awarded by the former sponsor. If the state board of education or the state board for charter schools rejects the preliminary application, the state board of education or the state board for charter schools shall notify the applicant in writing of the reasons for the rejection and of suggestions for improving the application. An applicant may submit a revised application for reconsideration by the state board of education or the state board for charter schools. The applicant may request, and the state board of education or the state board for charter schools may provide, technical assistance to improve the application.

3. The applicant may submit the application to a university under the jurisdiction of the Arizona board of regents, a community college district or a group of community college districts. A university, a community college district or a group of community college districts shall not grant a charter to a school district governing board for a new charter school that begins initial operations after June 30, 2013 or for the conversion of an existing district public school to a charter school that begins initial operations after June 30, 2013. A university, a community college district or a group of community college districts may approve the application if it meets the requirements of this article and if the proposed sponsor determines, in its sole discretion, that the applicant is sufficiently qualified to operate a charter school.

4. Each applicant seeking to establish a charter school shall submit a full set of fingerprints to the approving agency for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. If an applicant will have direct contact with students, the applicant shall possess a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The criminal records check shall be completed before the issuance of a charter.

5. All persons engaged in instructional work directly as a classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist or principal shall have a valid fingerprint clearance card that is issued pursuant to title 41,

chapter 12, article 3.1, unless the person is a volunteer or guest speaker who is accompanied in the classroom by a person with a valid fingerprint clearance card. A charter school shall not employ a teacher whose certificate has been surrendered or revoked, unless the teacher's certificate has been subsequently reinstated by the state board of education. All other personnel shall be fingerprint checked pursuant to section 15-512, or the charter school may require those personnel to obtain a fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1. Before employment, the charter school shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations that may be relevant to a person's fitness for employment as prescribed in section 15-512, subsection F. The charter school shall notify the department of public safety if the charter school or sponsor receives credible evidence that a person who possesses a valid fingerprint clearance card is arrested for or is charged with an offense listed in section 41-1758.03, subsection B. Charter schools may hire personnel that have not yet received a fingerprint clearance card if proof is provided of the submission of an application to the department of public safety for a fingerprint clearance card and if the charter school that is seeking to hire the applicant does all of the following:

- (a) Documents in the applicant's file the necessity for hiring and placement of the applicant before receiving a fingerprint clearance card.
- (b) Ensures that the department of public safety completes a statewide criminal records check on the applicant. A statewide criminal records check shall be completed by the department of public safety every one hundred twenty days until the date that the fingerprint check is completed or the fingerprint clearance card is issued or denied.
- (c) Obtains references from the applicant's current employer and the two most recent previous employers except for applicants who have been employed for at least five years by the applicant's most recent employer.
- (d) Provides general supervision of the applicant until the date that the fingerprint card is obtained.
- (e) Completes a search of criminal records in all local jurisdictions outside of this state in which the applicant has lived in the previous five years.
- (f) Verifies the fingerprint status of the applicant with the department of public safety.

6. A charter school that complies with the fingerprinting requirements of this section shall be deemed to have complied with section 15-512 and is entitled to the same rights and protections provided to school districts by section 15-512.

7. If a charter school operator is not already subject to a public meeting or hearing by the municipality in which the charter school is located, the operator of a charter school shall conduct a public meeting at least thirty days before the charter school operator opens a site or sites for the charter school. The charter school operator shall post notices of the public meeting in at least three different locations that are within three hundred feet of the proposed charter school site.

8. A person who is employed by a charter school or who is an applicant for employment with a charter school, who is arrested for or charged with a nonappealable offense listed in section 41-1758.03, subsection B and who does not immediately report the arrest or charge to the person's supervisor or potential employer is guilty of unprofessional conduct and the person shall be immediately

dismissed from employment with the charter school or immediately excluded from potential employment with the charter school.

9. A person who is employed by a charter school and who is convicted of any nonappealable offense listed in section 41-1758.03, subsection B or is convicted of any nonappealable offense that amounts to unprofessional conduct under section 15-550 shall immediately do all of the following:

- (a) Surrender any certificates issued by the department of education.
- (b) Notify the person's employer or potential employer of the conviction.
- (c) Notify the department of public safety of the conviction.
- (d) Surrender the person's fingerprint clearance card.

D. An entity that is authorized to sponsor charter schools pursuant to this article has no legal authority over or responsibility for a charter school sponsored by a different entity. This subsection does not apply to the state board of education's duty to exercise general supervision over the public school system pursuant to section 15-203, subsection A, paragraph 1.

E. The charter of a charter school shall do all of the following:

1. Ensure compliance with federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance. The department of education shall publish a list of relevant rules, regulations and statutes to notify charter schools of their responsibilities under this paragraph.
2. Ensure that it is nonsectarian in its programs, admission policies and employment practices and all other operations.
3. Ensure that it provides a comprehensive program of instruction for at least a kindergarten program or any grade between grades one and twelve, except that a school may offer this curriculum with an emphasis on a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language.
4. Ensure that it designs a method to measure pupil progress toward the pupil outcomes adopted by the state board of education pursuant to section 15-741.01, including participation in the Arizona instrument to measure standards test and the nationally standardized norm-referenced achievement test as designated by the state board and the completion and distribution of an annual report card as prescribed in chapter 7, article 3 of this title.
5. Ensure that, except as provided in this article and in its charter, it is exempt from all statutes and rules relating to schools, governing boards and school districts.
6. Ensure that, except as provided in this article, it is subject to the same financial and electronic data submission requirements as a school district, including the uniform system of financial records as prescribed in chapter 2, article 4 of this title, procurement rules as prescribed in section 15-213 and audit requirements. The auditor general shall conduct a comprehensive review and revision of the uniform system of financial records to ensure that the provisions of the uniform system of financial records that relate to charter schools are in accordance with commonly accepted accounting principles used by private business. A school's charter may include exceptions to the requirements of this paragraph that are necessary as determined by the district governing board, the university, the community college district, the group of community college districts, the state board of education or

the state board for charter schools. The department of education or the office of the auditor general may conduct financial, program or compliance audits.

7. Ensure compliance with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.

8. Ensure that it provides for a governing body for the charter school that is responsible for the policy decisions of the charter school. Notwithstanding section 1-216, if there is a vacancy or vacancies on the governing body, a majority of the remaining members of the governing body constitute a quorum for the transaction of business, unless that quorum is prohibited by the charter school's operating agreement.

9. Ensure that it provides a minimum of one hundred eighty instructional days before June 30 of each fiscal year unless it is operating on an alternative calendar approved by its sponsor. The superintendent of public instruction shall adjust the apportionment schedule accordingly to accommodate a charter school utilizing an alternative calendar.

F. A charter school shall keep on file the resumes of all current and former employees who provide instruction to pupils at the charter school. Resumes shall include an individual's educational and teaching background and experience in a particular academic content subject area. A charter school shall inform parents and guardians of the availability of the resume information and shall make the resume information available for inspection on request of parents and guardians of pupils enrolled at the charter school. This subsection does not require any charter school to release personally identifiable information in relation to any teacher or employee, including the teacher's or employee's address, salary, social security number or telephone number.

G. The charter of a charter school may be amended at the request of the governing body of the charter school and on the approval of the sponsor.

H. Charter schools may contract, sue and be sued.

I. The charter is effective for fifteen years from the first day of the fiscal year as specified in the charter, subject to the following:

1. At least eighteen months before the expiration of the charter, the sponsor shall notify the charter school that the charter school may apply for renewal and shall make the renewal application available to the charter school. A charter school that elects to apply for renewal shall file a complete renewal application at least fifteen months before the expiration of the charter. A sponsor shall give written notice of its intent not to renew the charter school's request for renewal to the charter school at least twelve months before the expiration of the charter. The sponsor shall make data used in making renewal decisions available to the school and the public and shall provide a public report summarizing the evidence basis for each decision. The sponsor may deny the request for renewal if, in its judgment, the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Complete the obligations of the contract.

(d) Comply with this article or any provision of law from which the charter school is not exempt.

2. A charter operator may apply for early renewal. At least nine months before the charter school's intended renewal consideration, the operator of the charter school shall submit a letter of intent to the sponsor to apply for early renewal. The sponsor shall review fiscal audits and academic performance data for the charter school that are annually collected by the sponsor, review the current contract between the sponsor and the charter school and provide the qualifying charter school with a renewal application. On submission of a complete application, the sponsor shall give written notice of its consideration of the renewal application. The sponsor may deny the request for early renewal if, in the sponsor's judgment, the charter holder has failed to do any of the following:

- (a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.
- (b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.
- (c) Complete the obligations of the contract.
- (d) Comply with this article or any provision of law from which the charter school is not exempt.

3. A sponsor shall review a charter at five-year intervals using a performance framework adopted by the sponsor and may revoke a charter at any time if the charter school breaches one or more provisions of its charter or if the sponsor determines that the charter holder has failed to do any of the following:

- (a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.
- (b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.
- (c) Comply with this article or any provision of law from which the charter school is not exempt.

4. In determining whether to renew or revoke a charter holder, the sponsor must consider making sufficient progress toward the academic performance expectations set forth in the sponsor's performance framework as one of the most important factors.

5. At least sixty days before the effective date of the proposed revocation, the sponsor shall give written notice to the operator of the charter school of its intent to revoke the charter. Notice of the sponsor's intent to revoke the charter shall be delivered personally to the operator of the charter school or sent by certified mail, return receipt requested, to the address of the charter school. The notice shall incorporate a statement of reasons for the proposed revocation of the charter. The sponsor shall allow the charter school at least sixty days to correct the problems associated with the reasons for the proposed revocation of the charter. The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose.

J. The charter may be renewed for successive periods of twenty years.

K. A charter school that is sponsored by the state board of education, the state board for charter schools, a university, a community college district or a group of community college districts may not be located on the property of a school district unless the district governing board grants this authority.

L. A governing board or a school district employee who has control over personnel actions shall not take unlawful reprisal against another employee of the school

district because the employee is directly or indirectly involved in an application to establish a charter school. A governing board or a school district employee shall not take unlawful reprisal against an educational program of the school or the school district because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. For the purposes of this subsection, "unlawful reprisal" means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an education program and:

1. With respect to a school district employee, results in one or more of the following:
 - (a) Disciplinary or corrective action.
 - (b) Detail, transfer or reassignment.
 - (c) Suspension, demotion or dismissal.
 - (d) An unfavorable performance evaluation.
 - (e) A reduction in pay, benefits or awards.
 - (f) Elimination of the employee's position without a reduction in force by reason of lack of monies or work.
 - (g) Other significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification.
2. With respect to an educational program, results in one or more of the following:
 - (a) Suspension or termination of the program.
 - (b) Transfer or reassignment of the program to a less favorable department.
 - (c) Relocation of the program to a less favorable site within the school or school district.
 - (d) Significant reduction or termination of funding for the program.

M. Charter schools shall secure insurance for liability and property loss. The governing body of a charter school that is sponsored by the state board of education or the state board for charter schools may enter into an intergovernmental agreement or otherwise contract to participate in an insurance program offered by a risk retention pool established pursuant to section 11-952.01 or 41-621.01 or the charter school may secure its own insurance coverage. The pool may charge the requesting charter school reasonable fees for any services it performs in connection with the insurance program.

N. Charter schools do not have the authority to acquire property by eminent domain.

O. A sponsor, including members, officers and employees of the sponsor, is immune from personal liability for all acts done and actions taken in good faith within the scope of its authority.

P. Charter school sponsors and this state are not liable for the debts or financial obligations of a charter school or persons who operate charter schools.

Q. The sponsor of a charter school shall establish procedures to conduct administrative hearings on determination by the sponsor that grounds exist to revoke a charter. Procedures for administrative hearings shall be similar to procedures prescribed for adjudicative proceedings in title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, final decisions of the state board of education and the state board for charter schools from hearings conducted

pursuant to this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6.

R. The sponsoring entity of a charter school shall have oversight and administrative responsibility for the charter schools that it sponsors. In implementing its oversight and administrative responsibilities, the sponsor shall ground its actions in evidence of the charter holder's performance in accordance with the performance framework adopted by the sponsor. The performance framework shall be publicly available, shall be placed on the sponsoring entity's website and shall include:

1. The academic performance expectations of the charter school and the measurement of sufficient progress toward the academic performance expectations.
2. The operational expectations of the charter school, including adherence to all applicable laws and obligations of the charter contract.
3. Intervention and improvement policies.

S. Charter schools may pledge, assign or encumber their assets to be used as collateral for loans or extensions of credit.

T. All property accumulated by a charter school shall remain the property of the charter school.

U. Charter schools may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the charter school may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the charter school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement.

V. A transfer of a charter to another sponsor, a transfer of a charter school site to another sponsor or a transfer of a charter school site to a different charter shall be completed before the beginning of the fiscal year that the transfer is scheduled to become effective. An entity that sponsors charter schools may accept a transferring school after the beginning of the fiscal year if the transfer is approved by the superintendent of public instruction. The superintendent of public instruction shall have the discretion to consider each transfer during the fiscal year on a case by case basis. If a charter school is sponsored by a school district that is determined to be out of compliance with this title, the uniform system of financial records or any other state or federal law, the charter school may transfer to another sponsoring entity at any time during the fiscal year. A charter holder seeking to transfer sponsors shall comply with the current charter terms regarding assignment of the charter. A charter holder transferring sponsors shall notify the current sponsor that the transfer has been approved by the new sponsor.

W. Notwithstanding subsection V of this section, a charter holder on an improvement plan must notify parents or guardians of registered students of the intent to transfer the charter and the timing of the proposed transfer. On the approved transfer, the new sponsor shall enforce the improvement plan but may modify the plan based on performance.

X. Notwithstanding subsection Y of this section, the state board for charter schools shall charge a processing fee to any charter school that amends its contract to

participate in Arizona online instruction pursuant to section 15-808. The charter Arizona online instruction processing fund is established consisting of fees collected and administered by the state board for charter schools. The state board for charter schools shall use monies in the fund only for the processing of contract amendments for charter schools participating in Arizona online instruction. Monies in the fund are continuously appropriated.

Y. The sponsoring entity may not charge any fees to a charter school that it sponsors unless the sponsor has provided services to the charter school and the fees represent the full value of those services provided by the sponsor. On request, the value of the services provided by the sponsor to the charter school shall be demonstrated to the department of education.

Z. Charter schools may enter into an intergovernmental agreement with a presiding judge of the juvenile court to implement a law related education program as defined in section 15-154. The presiding judge of the juvenile court may assign juvenile probation officers to participate in a law related education program in any charter school in the county. The cost of juvenile probation officers who participate in the program implemented pursuant to this subsection shall be funded by the charter school.

AA. The sponsor of a charter school shall modify previously approved curriculum requirements for a charter school that wishes to participate in the board examination system prescribed in chapter 7, article 6 of this title.

BB. If a charter school decides not to participate in the board examination system prescribed in chapter 7, article 6 of this title, pupils enrolled at that charter school may earn a Grand Canyon diploma by obtaining a passing score on the same board examinations.

CC. Notwithstanding subsection Y of this section, a sponsor of charter schools may charge a new charter application processing fee to any applicant. The application fee shall fully cover the cost of application review and any needed technical assistance. Authorizers may approve policies that allow a portion of the fee to be returned to the applicant whose charter is approved.

DD. A charter school may choose to provide a preschool program for children with disabilities pursuant to section 15-771.

EE. Pursuant to the prescribed graduation requirements adopted by the state board of education, the governing body of a charter school operating a high school may approve a rigorous computer science course that would fulfill a mathematics course required for graduation from high school. The governing body may approve a rigorous computer science course only if the rigorous computer science course includes significant mathematics content and the governing body determines the high school where the rigorous computer science course is offered has sufficient capacity, infrastructure and qualified staff, including competent teachers of computer science.

FF. A charter school may permit the use of school property, including school buildings, grounds, buses and equipment, by any person, group or organization for any lawful purpose, including a recreational, educational, political, economic, artistic, moral, scientific, social, religious or other civic or governmental purpose. The charter school may charge a reasonable fee for the use of the school property.

GG. A charter school and its employees, including the governing body, or chief administrative officer, are immune from civil liability with respect to all decisions

made and actions taken to allow the use of school property, unless the charter school or its employees are guilty of gross negligence or intentional misconduct. This subsection does not limit any other immunity provisions that are prescribed by law.

HH. Sponsors authorized pursuant to this section shall submit an annual report to the auditor general on or before October 1 of each year. The report shall include:

1. The current number of charters authorized and the number of schools operated by authorized charter holders.
2. The academic and operational performance of the sponsor's charter portfolio as measured by the sponsor's adopted performance framework.
3. The number of new charters approved and the number of charter schools closed and reason for the closure in the prior year.
4. The sponsor's application, amendment, renewal and revocation processes, charter contract template and current performance framework as required by this section.

II. The auditor general shall prescribe the format for the annual report required by subsection HH of this section and may require that the annual report be submitted electronically. The auditor general shall review the submitted annual reports to ensure that the reports include the required items in subsection HH of this section and shall make the annual reports available upon request. If the auditor general finds significant noncompliance or a sponsor's failure to submit the annual report required by subsection HH of this section, on or before December 31 of each year the auditor general shall report to the governor, the president of the senate, the speaker of the house of representatives and the chairs of the senate and house education committees or their successor committees, and the legislature shall consider revoking the sponsor's authority to sponsor charter schools.

15-183.01. New charter application processing fund

The new charter application processing fund is established consisting of fees collected by the state board for charter schools. The state board for charter schools shall administer the fund. The state board for charter schools shall use monies in the fund only for the processing of applications submitted for new charters. Monies in the fund are continuously appropriated.

15-184. Charter schools; admissions requirements

- A. A charter school shall enroll all eligible pupils who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level or building.
- B. A charter school shall give enrollment preference to pupils returning to the charter school in the second or any subsequent year of its operation and to siblings of pupils already enrolled in the charter school.
- C. A charter school that is sponsored by a school district governing board shall give enrollment preference to eligible pupils who reside within the boundaries of the school district where the charter school is physically located.
- D. A charter school may give enrollment preference to and reserve capacity for pupils who either:

1. Are children, grandchildren or legal wards of any of the following:
 - (a) Employees of the school.
 - (b) Employees of the charter holder.
 - (c) Members of the governing body of the school.
 - (d) Directors, officers, partners or board members of the charter holder.
2. Attended another charter school or are the siblings of that pupil if the charter school previously attended by the pupil has the identical charter holder, board and governing board membership as the enrolling charter school or is managed by the same educational management organization, charter management organization or educational service provider as determined by the charter authorizer.
- E. If remaining capacity is insufficient to enroll all pupils who submit a timely application, the charter school shall select pupils through an equitable selection process such as a lottery except that preference shall be given to siblings of a pupil selected through an equitable selection process such as a lottery.
- F. Except as provided in subsections A through D of this section, a charter school shall not limit admission based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language or athletic ability.
- G. A charter school may limit admission to pupils within a given age group or grade level.
- H. A charter school may provide instruction to pupils of a single gender with the approval of the sponsor of the charter school. An existing charter school may amend its charter to provide instruction to pupils of a single gender, and if approved by the sponsor of the charter school, may provide instruction to pupils of a single gender at the beginning of the next school year.
- I. A charter school shall admit pupils who reside in the attendance area of a school or who reside in a school district that is under a court order of desegregation or that is a party to an agreement with the United States department of education office for civil rights directed toward remediating alleged or proven racial discrimination unless notice is received from the resident school that the admission would violate the court order or agreement. If a charter school admits a pupil after notice is received that the admission would constitute such a violation, the charter school is not allowed to include in its student count the pupils wrongfully admitted.
- J. A charter school may refuse to admit any pupil who has been expelled from another educational institution or who is in the process of being expelled from another educational institution.

15-185. Charter schools; financing; civil penalty; transportation; definitions

A. Financial provisions for a charter school that is sponsored by a school district governing board are as follows:

1. The charter school shall be included in the district's budget and financial assistance calculations pursuant to paragraph 3 of this subsection and chapter 9 of this title, except for chapter 9, article 4 of this title. The charter of the charter school shall include a description of the methods of funding the charter school by the school district. The school district shall send a copy of the charter and application, including a description of how the school district plans to fund the school, to the state board of education before the start of the first fiscal year of operation of the charter school. The charter or application shall include an estimate

of the student count for the charter school for its first fiscal year of operation. This estimate shall be computed pursuant to the requirements of paragraph 3 of this subsection.

2. A school district is not financially responsible for any charter school that is sponsored by the state board of education, the state board for charter schools, a university under the jurisdiction of the Arizona board of regents, a community college district or a group of community college districts.

3. A school district that sponsors a charter school may:

(a) Increase its student count as provided in subsection B, paragraph 2 of this section during the first year of the charter school's operation to include those charter school pupils who were not previously enrolled in the school district. A charter school sponsored by a school district governing board is eligible for the charter additional assistance prescribed in subsection B, paragraph 4 of this section. The district additional assistance allocation as provided in section 15-961 for the school district sponsoring the charter school shall be increased by the amount of the charter additional assistance. The school district shall include the full amount of the charter additional assistance in the funding provided to the charter school.

(b) Compute separate weighted student counts pursuant to section 15-943, paragraph 2, subdivision (a) for its noncharter school versus charter school pupils in order to maintain eligibility for small school district support level weights authorized in section 15-943, paragraph 1 for its noncharter school pupils only. The portion of a district's student count that is attributable to charter school pupils is not eligible for small school district support level weights.

4. If a school district uses the provisions of paragraph 3 of this subsection, the school district is not eligible to include those pupils in its student count for the purposes of computing an increase in its revenue control limit and district support level as provided in section 15-948.

5. A school district that sponsors a charter school is not eligible to include the charter school pupils in its student count for the purpose of computing an increase in its district additional assistance as provided in section 15-961, subsection B, except that if the charter school was previously a school in the district, the district may include in its student count any charter school pupils who were enrolled in the school district in the prior year.

6. A school district that sponsors a charter school is not eligible to include the charter school pupils in its student count for the purpose of computing the revenue control limit which is used to determine the maximum budget increase as provided in chapter 4, article 4 of this title unless the charter school is located within the boundaries of the school district.

7. If a school district converts one or more of its district public schools to a charter school and receives assistance as prescribed in subsection B, paragraph 4 of this section, and subsequently converts the charter school back to a district public school, the school district shall repay the state the total charter additional assistance received for the charter school for all years that the charter school was in operation. The repayment shall be in one lump sum and shall be reduced from the school district's current year equalization assistance. The school district's general budget limit shall be reduced by the same lump sum amount in the current year.

B. Financial provisions for a charter school that is sponsored by the state board of education, the state board for charter schools, a university, a community college district or a group of community college districts are as follows:

1. The charter school shall calculate a base support level as prescribed in section 15-943, except that:

(a) Section 15-941 does not apply to these charter schools.

(b) The small school weights prescribed in section 15-943, paragraph 1 apply if a charter holder, as defined in section 15-101, holds one charter for one or more school sites and the average daily membership for the school sites are combined for the calculation of the small school weight. The small school weight shall not be applied individually to a charter holder if one or more of the following conditions exists and the combined average daily membership derived from the following conditions is greater than six hundred:

(i) The organizational structure or management agreement of the charter holder requires the charter holder or charter school to contract with a specific management company.

(ii) The governing body of the charter holder has identical membership to another charter holder in this state.

(iii) The charter holder is a subsidiary of a corporation that has other subsidiaries that are charter holders in this state.

(iv) The charter holder holds more than one charter in this state.

(c) Notwithstanding subdivision (b) of this paragraph, for fiscal year 2015-2016 the department of education shall reduce by thirty-three percent the amount provided by the small school weight for charter schools prescribed in subdivision (b) of this paragraph.

(d) Notwithstanding subdivision (b) of this paragraph, for fiscal year 2016-2017 the department of education shall reduce by sixty-seven percent the amount provided by the small school weight for affiliated charter schools prescribed in subdivision (b) of this paragraph.

2. Notwithstanding paragraph 1 of this subsection, the student count shall be determined initially using an estimated student count based on actual registration of pupils before the beginning of the school year. Notwithstanding section 15-1042, subsection F, student level data submitted to the department may be used to determine estimated student counts. After the first forty days, one hundred days or two hundred days in session, as applicable, the charter school shall revise the student count to be equal to the actual average daily membership, as defined in section 15-901, of the charter school. Before the fortieth day, one hundredth day or two hundredth day in session, as applicable, the state board of education, the state board for charter schools, the sponsoring university, the sponsoring community college district or the sponsoring group of community college districts may require a charter school to report periodically regarding pupil enrollment and attendance, and the department of education may revise its computation of equalization assistance based on the report. A charter school shall revise its student count, base support level and charter additional assistance before May 15. A charter school that overestimated its student count shall revise its budget before May 15. A charter school that underestimated its student count may revise its budget before May 15.

3. A charter school may utilize section 15-855 for the purposes of this section. The charter school and the department of education shall prescribe procedures for determining average daily membership.

4. Equalization assistance for the charter school shall be determined by adding the amount of the base support level and charter additional assistance. The amount of the charter additional assistance is one thousand seven hundred thirty-four dollars ninety-two cents per student count in preschool programs for children with disabilities, kindergarten programs and grades one through eight and two thousand twenty-two dollars two cents per student count in grades nine through twelve.

5. The state board of education shall apportion state aid from the appropriations made for such purposes to the state treasurer for disbursement to the charter schools in each county in an amount as determined by this paragraph. The apportionments shall be made as prescribed in section 15-973, subsection B.

6. The charter school shall not charge tuition for pupils who reside in this state, levy taxes or issue bonds. A charter school may admit pupils who are not residents of this state and shall charge tuition for those pupils in the same manner prescribed in section 15-823.

7. Not later than noon on the day preceding each apportionment date established by paragraph 5 of this subsection, the superintendent of public instruction shall furnish to the state treasurer an abstract of the apportionment and shall certify the apportionment to the department of administration, which shall draw its warrant in favor of the charter schools for the amount apportioned.

C. If a pupil is enrolled in both a charter school and a public school that is not a charter school, the sum of the daily membership, which includes enrollment as prescribed in section 15-901, subsection A, paragraph 1, subdivisions (a) and (b) and daily attendance as prescribed in section 15-901, subsection A, paragraph 5, for that pupil in the school district and the charter school shall not exceed 1.0. If a pupil is enrolled in both a charter school and a public school that is not a charter school, the department of education shall direct the average daily membership to the school with the most recent enrollment date. On validation of actual enrollment in both a charter school and a public school that is not a charter school and if the sum of the daily membership or daily attendance for that pupil is greater than 1.0, the sum shall be reduced to 1.0 and shall be apportioned between the public school and the charter school based on the percentage of total time that the pupil is enrolled or in attendance in the public school and the charter school. The uniform system of financial records shall include guidelines for the apportionment of the pupil enrollment and attendance as provided in this section.

D. Charter schools are allowed to accept grants and gifts to supplement their state funding, but it is not the intent of the charter school law to require taxpayers to pay twice to educate the same pupils. The base support level for a charter school or for a school district sponsoring a charter school shall be reduced by an amount equal to the total amount of monies received by a charter school from a federal or state agency if the federal or state monies are intended for the basic maintenance and operations of the school. The superintendent of public instruction shall estimate the amount of the reduction for the budget year and shall revise the reduction to reflect the actual amount before May 15 of the current year. If the reduction results in a negative amount, the negative amount shall be used in computing all budget limits and equalization assistance, except that:

1. Equalization assistance shall not be less than zero.
 2. For a charter school sponsored by the state board of education, the state board for charter schools, a university, a community college district or a group of community college districts, the total of the base support level and the charter additional assistance shall not be less than zero.
 3. For a charter school sponsored by a school district, the base support level for the school district shall not be reduced by more than the amount that the charter school increased the district's base support level and district additional assistance allocation.
- E. If a charter school was a district public school in the prior year and is now being operated for or by the same school district and sponsored by the state board of education, the state board for charter schools, a university, a community college district, a group of community college districts or a school district governing board, the reduction in subsection D of this section applies. The reduction to the base support level of the charter school or the sponsoring district of the charter school shall equal the sum of the base support level and the charter additional assistance received in the current year for those pupils who were enrolled in the traditional public school in the prior year and are now enrolled in the charter school in the current year.
- F. Equalization assistance for charter schools shall be provided as a single amount based on average daily membership without categorical distinctions between maintenance and operations or capital.
- G. At the request of a charter school, the county school superintendent of the county where the charter school is located may provide the same educational services to the charter school as prescribed in section 15-308, subsection A. The county school superintendent may charge a fee to recover costs for providing educational services to charter schools.
- H. If the sponsor of the charter school determines at a public meeting that the charter school is not in compliance with federal law, with the laws of this state or with its charter, the sponsor of a charter school may submit a request to the department of education to withhold up to ten percent of the monthly apportionment of state aid that would otherwise be due the charter school. The department of education shall adjust the charter school's apportionment accordingly. The sponsor shall provide written notice to the charter school at least seventy-two hours before the meeting and shall allow the charter school to respond to the allegations of noncompliance at the meeting before the sponsor makes a final determination to notify the department of education of noncompliance. The charter school shall submit a corrective action plan to the sponsor on a date specified by the sponsor at the meeting. The corrective action plan shall be designed to correct deficiencies at the charter school and to ensure that the charter school promptly returns to compliance. When the sponsor determines that the charter school is in compliance, the department of education shall restore the full amount of state aid payments to the charter school.
- I. In addition to the withholding of state aid payments pursuant to subsection H of this section, the sponsor of a charter school may impose a civil penalty of one thousand dollars per occurrence if a charter school fails to comply with the fingerprinting requirements prescribed in section 15-183, subsection C or section 15-512. The sponsor of a charter school shall not impose a civil penalty if it is the

first time that a charter school is out of compliance with the fingerprinting requirements and if the charter school provides proof within forty-eight hours of written notification that an application for the appropriate fingerprint check has been received by the department of public safety. The sponsor of the charter school shall obtain proof that the charter school has been notified, and the notification shall identify the date of the deadline and shall be signed by both parties. The sponsor of a charter school shall automatically impose a civil penalty of one thousand dollars per occurrence if the sponsor determines that the charter school subsequently violates the fingerprinting requirements. Civil penalties pursuant to this subsection shall be assessed by requesting the department of education to reduce the amount of state aid that the charter school would otherwise receive by an amount equal to the civil penalty. The amount of state aid withheld shall revert to the state general fund at the end of the fiscal year.

J. A charter school may receive and spend monies distributed by the department of education pursuant to section 42-5029, subsection E and section 37-521, subsection B.

K. If a school district transports or contracts to transport pupils to the Arizona state schools for the deaf and the blind during any fiscal year, the school district may transport or contract with a charter school to transport sensory impaired pupils during that same fiscal year to a charter school if requested by the parent of the pupil and if the distance from the pupil's place of actual residence within the school district to the charter school is less than the distance from the pupil's place of actual residence within the school district to the campus of the Arizona state schools for the deaf and the blind.

L. Notwithstanding any other law, a university under the jurisdiction of the Arizona board of regents, a community college district or a group of community college districts shall not include any student in the student count of the university, community college district or group of community college districts for state funding purposes if that student is enrolled in and attending a charter school sponsored by the university, community college district or group of community college districts.

M. The governing body of a charter school shall transmit a copy of its proposed budget or the summary of the proposed budget and a notice of the public hearing to the department of education for posting on the department of education's website no later than ten days before the hearing and meeting. If the charter school maintains a website, the charter school governing body shall post on its website a copy of its proposed budget or the summary of the proposed budget and a notice of the public hearing.

N. The governing body of a charter school shall collaborate with the private organization that is approved by the state board of education pursuant to section 15-792.02 to provide approved board examination systems for the charter school.

O. If permitted by federal law, a charter school may opt out of federal grant opportunities if the charter holder or the appropriate governing body of the charter school determines that the federal requirements impose unduly burdensome reporting requirements.

P. For the purposes of this section:

1. "Monies intended for the basic maintenance and operations of the school" means monies intended to provide support for the educational program of the school, except that it does not include supplemental assistance for a specific purpose or

title VIII of the elementary and secondary education act of 1965 monies. The auditor general shall determine which federal or state monies meet the definition in this paragraph.

2. "Operated for or by the same school district" means the charter school is either governed by the same district governing board or operated by the district in the same manner as other traditional schools in the district or is operated by an independent party that has a contract with the school district. The auditor general and the department of education shall determine which charter schools meet the definition in this subsection.

15-185.01. Charter school pupils attending joint technical education districts; average daily membership calculation

Notwithstanding section 15-185, subsection C, if a pupil is enrolled in both a charter school and a joint technical education district and resides within the boundaries of a school district participating in the joint technical education district, the average daily membership for that pupil shall be calculated in the same manner prescribed for a pupil who is enrolled in both the member school district and a joint technological education district pursuant to section 15-393.

15-187. Charter schools; teachers; employment benefits

A. A teacher who is employed by or teaching at a charter school and who was previously employed as a teacher at a school district shall not lose any right of certification, retirement or salary status or any other benefit provided by law, by the rules of the governing board of the school district or by the rules of the board of directors of the charter school due to teaching at a charter school on the teacher's return to the school district.

B. A teacher who is employed by or teaching at a charter school and who submits an employment application to the school district where the teacher was employed immediately before employment by or at a charter school shall be given employment preference by the school district if both of the following conditions are met:

1. The teacher submits an employment application to the school district no later than three years after ceasing employment with the school district.

2. A suitable position is available at the school district.

C. A charter school that is sponsored by a school district governing board, a university, a community college district, a group of community college districts, the state board of education or the state board for charter schools is eligible to participate in the Arizona state retirement system pursuant to title 38, chapter 5, article 2. The charter school is a political subdivision of this state for purposes of title 38, chapter 5, article 2.

D. Notwithstanding any other law, a charter school shall not adopt policies that provide employment retention priority for teachers based on tenure or seniority.

15-187.01. Optional inclusion of charter school employees in state health and accident coverage; payment of premiums; advance notice; minimum period of participation; definition

A. If a governing body of a charter school determines that state health and accident insurance coverage is necessary or desirable and in the best interest of the charter school, it may provide for inclusion of the charter school's employees and spouses and dependents of the charter school's employees in state health and accident insurance coverage pursuant to section 38-651.

B. If the charter school elects to participate in the state health and accident insurance coverage, it shall be the only health and accident insurance coverage offered to charter school employees.

C. A charter school governing body that elects to include its employees in the state health and accident insurance coverage shall notify the department of administration of its intention to do so by January 15 of the calendar year prior to the school year starting after June 30 in which the charter school's employees would be eligible to receive state health and accident insurance coverage.

D. A charter school governing body that elects to include its employees in the state health and accident insurance coverage shall participate in state health and accident insurance coverage for at least two years.

E. Charter schools that opt to participate in the state health and accident insurance coverage shall agree to accept the benefit level, plan design, insurance providers, premium level and other terms and conditions determined by the department of administration and shall accept such other contractual arrangements made by the department of administration with health and accident insurance providers.

F. Charter schools shall reimburse the department of administration for administrative and operational costs associated with charter schools participating in the state health and accident insurance coverage determined pursuant to section 38-651, subsection K.

G. As used in this section, "state health and accident insurance coverage" means the health and accident coverage procured by the department of administration under section 38-651.

15-188. Charter schools stimulus fund

A. The charter schools stimulus fund is established for the purpose of providing financial support to charter school applicants and charter schools for start-up costs and costs associated with renovating or remodeling existing buildings and structures. The fund consists of monies appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education shall administer the fund.

B. The state board of education shall adopt rules to implement the provisions of this section, including application and notification requirements. If sufficient monies are appropriated for this purpose, monies from the charter schools stimulus fund shall be distributed to qualifying charter school applicants and charter schools in the following manner:

1. Each qualifying charter school applicant or charter school shall be awarded an initial grant of up to one hundred thousand dollars during or before the first year of the charter school's operation. If an applicant for a charter school receives an initial

grant pursuant to this paragraph and fails to begin operating a charter school within the next eighteen months, the applicant shall reimburse the department of education for the amount of the initial grant plus interest calculated at a rate of ten per cent a year.

2. Applicants for charter schools and charter schools that received initial grants pursuant to paragraph 1 may apply to the department of education for an additional grant of up to one hundred thousand dollars. If an applicant for a charter school receives an additional grant pursuant to this paragraph and fails to begin operating a charter school within the next eighteen months, the applicant shall reimburse the department of education for the amount of the additional grant plus interest calculated at a rate of ten per cent a year. A reimbursement required by this paragraph is in addition to any reimbursement required by paragraph 1.

C. Monies in the charter schools stimulus fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

15-189. Charter schools; vacant buildings; list; used equipment

A. The school facilities board, in conjunction with the department of administration, shall annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by this state or by school districts in this state and that may be suitable for the operation of a charter school. The school facilities board shall make the list available to applicants for charter schools and to existing charter schools. The list shall include the address of each building, a short description of the building, the name of the owner of the building and any other pertinent information related to the vacancy of the building. The school facilities board shall annually submit the list to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of the list to the secretary of state. If a school district decides to sell or lease a vacant and unused building or a vacant and unused portion of a building, the school district may not prohibit a charter school from negotiating to buy or lease the property in the same manner as other potential buyers or lessees. A school district shall attempt to obtain the highest possible value under current market conditions for the sale or lease of the vacant and unused building or the vacant and unused portion of a building. Nothing in this section requires the owner of a building on the list to sell or lease the building or a portion of the building to a charter school or to any other school or to any other prospective buyer or tenant.

B. A school district may sell used equipment to a charter school before the school district attempts to sell or dispose of the equipment by other means.

15-189.01. Charter schools; zoning; development fees

A. Charter schools shall be classified the same as public schools that are operated by a school district for the purposes of zoning and the assessment of zoning fees, site plan fees and development fees, including any required hearings or applications. Municipalities and counties shall allow a charter school to be established and operate at a location or in a facility for which the zoning regulations of the county or municipality cannot legally prohibit schools operated by school districts, except that a county or municipality may adopt zoning regulations that

prohibit a charter school from operating on property that is less than an acre in size and that is located within an existing single family residence zoning district.

B. Except as provided in subsection D of this section, a charter school is subject to the same level of oversight and the same rules, hearing requirements, application requirements, ordinances, limitations and other requirements, if any, that would be applied to and enforced against a school that is operated by a school district. A municipality or county shall not enforce, or attempt to enforce, any ordinance, procedure or process against a charter school that cannot be legally enforced against a school district. Voluntary compliance of a school district in the zoning regulations of a municipality or a county does not result in the application of those zoning regulations to a charter school.

C. The construction and development of the charter school facility shall be subject to the building codes, including life and safety building codes, of the municipality, county or state in which the charter school facility is located.

D. Municipalities and counties shall adopt procedures to ensure that hearings and administrative reviews involving charter schools are scheduled and conducted on an expedited basis and that charter schools receive a final determination from the municipality or county within thirty days after the beginning of processes requiring only an administrative review and within ninety days after the beginning of processes requiring a public hearing and allowing an appeal to a board of adjustment, city or town governing body or board of supervisors.

E. Except as provided in subsection F of this section, no political subdivision of this state may enact or interpret any law, rule or ordinance in a manner that conflicts with this section.

F. Notwithstanding subsections A and B of this section, a charter school shall not be established or operated on commercial or residential property in an age restricted community that is located in unorganized territory.

G. A charter school may authorize a third party to apply to a municipality or county as the representative of that charter school for any application or action prescribed in subsections A through D of this section.

15-189.02. Charter schools; public bidding requirements

A. A charter school's procurement is exempt from public bidding requirements if the aggregate dollar amount of the procurement does not exceed the maximum amount of the exemption authorized by title 41, chapter 23 or pursuant to rules adopted by the director of the department of administration.

B. Notwithstanding subsection A, the state board for charter schools may authorize an exemption from public bidding requirements that exceeds the maximum exemption prescribed in subsection A of this section for any charter school sponsored by the state board for charter schools.

15-189.03. Academic credits; transfer

A. If a pupil who was previously enrolled in a charter school or school district enrolls in a charter school in this state, the charter school shall accept credits earned by the pupil in courses or instructional programs at the charter school or school district. A charter school governing board may adopt a policy concerning the

application of transfer credits for the purpose of determining whether a credit earned by a pupil who was previously enrolled in a school district or charter school will be assigned as an elective or core credit.

B. A pupil who transfers from a charter school or school district shall be provided with a list that indicates which credits have been accepted as an elective credit and which credits have been accepted as a core credit by the charter school. Within ten school days after receiving the list, a pupil may request to take an examination in each particular course in which core credit has been denied. The charter school shall accept the credit as a core credit for each particular course in which the pupil takes an examination and receives a passing score on a test designed and evaluated by a teacher in the charter school who teaches the subject matter on which the examination is based.

15-189.04. Policies and procedures for the emergency administration of epinephrine

The governing body of each charter school shall prescribe and enforce policies and procedures for the emergency administration of auto-injectable epinephrine by a trained employee of the charter school pursuant to section 15-157.

Laws 1999, 1st SS, Chapter 4, Sec. 15. Charter school financial and compliance audits; financial statement audits; oversight responsibility

A. Notwithstanding section 15-271, subsection D, Arizona Revised Statutes, or any other law, the state board of education and the state board for charter schools, rather than the auditor general, are responsible for notifying a charter school under the board's jurisdiction if the school has failed to establish and maintain the uniform system of financial records.

B. Notwithstanding section 15-271, subsection E, Arizona Revised Statutes, or any other law, the state board of education and the state board for charter schools, rather than the auditor general, are responsible for reporting to the department of education any charter school under the board's jurisdiction that either fails to establish and maintain the uniform system of financial records that is prescribed by the auditor general or fails to correct deficiencies in the system within ninety days after receiving notice of the deficiencies.

C. Notwithstanding section 15-914, subsection D, Arizona Revised Statutes, or any other law, an independent certified public accountant who conducts an audit pursuant to section 15-914, subsections A, B and C, Arizona Revised Statutes, shall submit a uniform system of financial records compliance questionnaire to the state board that sponsors the audited charter school, rather than to the auditor general.

D. Notwithstanding section 15-914, subsection E, Arizona Revised Statutes, or any other law, contracts for all financial and compliance audits and financial statement audits for charter schools that are sponsored by the state board of education or the state board for charter schools, and the completed audits for those schools, shall be approved by the state board that sponsors the charter school affected rather than by the auditor general.

E. The requirements in subsections A and B of this section do not pertain to exceptions to requirements of the uniform system of financial records that the state

board of education or the state board for charter schools include in the charter of a charter school pursuant to section 15-183, subsection E, paragraph 6, Arizona Revised Statutes.

15-808. [Arizona online instruction; reports; definitions](#)

A. Arizona online instruction shall be instituted to meet the needs of pupils in the information age. The state board of education shall select district public schools and state-approved charter authorizers shall sponsor charter schools to be online course providers or online schools. The state board of education and state-approved charter authorizers shall develop standards for the approval of online course providers and online schools based on the following criteria:

1. The depth and breadth of curriculum choices.
2. The variety of educational methodologies employed by the school and the means of addressing the unique needs and learning styles of targeted pupil populations, including computer-assisted learning systems, virtual classrooms, virtual laboratories, electronic field trips, electronic mail, virtual tutoring, online help desk, group chat sessions and noncomputer-based activities performed under the direction of a certificated teacher.
3. The availability of an intranet or private network to safeguard pupils against predatory and pornographic elements of the internet.
4. The availability of filtered research access to the internet.
5. The availability of private individual electronic mail between pupils, teachers, administrators and parents in order to protect the confidentiality of pupil records and information.
6. The availability of faculty members who are experienced with computer networks, the internet and computer animation.
7. The extent to which the school intends to develop partnerships with universities, community colleges and private businesses.
8. The services offered to populations with developmental disabilities.
9. The grade levels that will be served.

B. Each new school that provides online instruction shall provide online instruction on a probationary status. After a new school that provides online instruction has clearly demonstrated the academic integrity of its instruction through the actual improvement of the academic performance of its students, the school may apply to be removed from probationary status. The state board of education or the state-approved charter authorizer that sponsored the charter school shall remove from Arizona online instruction any probationary school that fails to clearly demonstrate improvement in academic performance within three years measured against goals in the approved application and the state's accountability system. All pupils who participate in Arizona online instruction shall reside in this state. Pupils who participate in Arizona online instruction are subject to the testing requirements prescribed in chapter 7, article 3 of this title. On enrollment, the school shall notify the parents or guardians of the pupil of the state testing requirements. If a pupil fails to comply with the testing requirements and the school administers the tests pursuant to this subsection to less than ninety-five percent of the pupils in Arizona online instruction, the pupil shall not be allowed to participate in Arizona online instruction.

C. The state board of education and state-approved charter authorizers shall develop annual reporting mechanisms for schools that participate in Arizona online instruction.

D. The department of education shall compile the information submitted in the annual reports by schools participating in Arizona online instruction. The department of education shall submit the compiled report to the governor, the speaker of the house of representatives and the president of the senate by November 15 of each year.

E. Each school selected for Arizona online instruction shall ensure that a daily log is maintained for each pupil who participates in Arizona online instruction. The daily log shall describe the amount of time spent by each pupil participating in Arizona online instruction pursuant to this section on academic tasks. The daily log shall be used by the school district or charter school to qualify the pupils who participate in Arizona online instruction in the school's average daily attendance calculations pursuant to subsection F of this section.

F. If a pupil is enrolled in a school district or charter school and also participates in Arizona online instruction, the sum of the average daily membership, which includes enrollment as prescribed in section 15-901, subsection A, paragraph 1, subdivisions (a) and (b) and daily attendance as prescribed in section 15-901, subsection A, paragraph 5, for that pupil in the school district or charter school and in Arizona online instruction shall not exceed 1.0. If the pupil is enrolled in a school district or a charter school and also participates in Arizona online instruction and the sum of the daily membership or daily attendance for that pupil is greater than 1.0, the sum shall be reduced to 1.0 and shall be apportioned between the school district, unless the school district is a joint technical education district subject to the apportionment requirements of section 15-393, or charter school and Arizona online instruction based on the percentage of total time that the pupil is enrolled or in attendance in the school district or charter school and Arizona online instruction.

The uniform system of financial records shall include guidelines for the apportionment of the pupil enrollment and attendance as provided in this subsection. Pupils in Arizona online instruction do not incur absences for purposes of this subsection and may generate an average daily attendance of 1.0 for attendance hours during any hour of the day, during any day of the week and at any time between July 1 and June 30 of each fiscal year. For kindergarten programs and grades one through eight, average daily membership shall be calculated by dividing the instructional hours as reported in the daily log required in subsection E of this section by the applicable hourly requirements prescribed in section 15-901. For grades nine through twelve, average daily membership shall be calculated by dividing the instructional hours as reported in the daily log required in subsection E of this section by nine hundred. The average daily membership of a pupil who participates in online instruction shall not exceed 1.0. Average daily membership shall not be calculated on the one hundredth day of instruction for the purposes of this section. Funding shall be determined as follows:

1. A pupil who is enrolled full-time in Arizona online instruction shall be funded for online instruction at ninety-five percent of the base support level that would be calculated for that pupil if that pupil were enrolled as a full-time student in a school district or charter school that does not participate in Arizona online instruction.

Charter additional assistance and district additional assistance shall be calculated in

the same manner they would be calculated if the student were enrolled in a district or charter school that does not participate in Arizona online instruction.

2. A pupil who is enrolled part-time in Arizona online instruction shall be funded for online instruction at eighty-five percent of the base support level that would be calculated for that pupil if that pupil were enrolled as a part-time student in a school district or charter school that does not participate in Arizona online instruction. Charter additional assistance and district additional assistance shall be calculated in the same manner they would be calculated if the student were enrolled in a district or charter school that does not participate in Arizona online instruction.

G. If the academic achievement of a pupil declines while the pupil is participating in Arizona online instruction, the pupil's parents, the pupil's teachers and the principal or head teacher of the school shall confer to evaluate whether the pupil should be allowed to continue to participate in Arizona online instruction.

H. To ensure the academic integrity of pupils who participate in online instruction, Arizona online instruction shall include multiple diverse assessment measures and the proctored administration of required state standardized tests.

I. A school district or charter school may not charge a fee to a pupil who takes an examination in a particular course to obtain academic credit, pursuant to section 15-701.01, subsection I, from the school district or charter school if the academic credit for a course was previously earned in an Arizona online instruction course or at any public school in this state. Any test administered pursuant to this subsection shall be an assessment that is aligned to the course relevant state academic standards.

J. For the purposes of this section:

1. "Full-time student" means:

(a) A student who is at least five years of age before September 1 of a school year and who is enrolled in a school kindergarten program that meets at least three hundred forty-six hours during the school year.

(b) A student who is at least six years of age before September 1 of a school year, who has not graduated from the highest grade taught in the school and who is regularly enrolled in a course of study required by the state board of education. For first, second and third grade students, the instructional program shall meet at least seven hundred twelve hours. For fourth, fifth and sixth grade students, the instructional program shall meet at least eight hundred ninety hours during the school year.

(c) Seventh and eighth grade students or ungraded students who are at least twelve, but under fourteen, years of age on or before September 1 and who are enrolled in an instructional program of courses that meets at least one thousand sixty-eight hours during the school year.

(d) For high schools, a student not graduated from the highest grade taught in the school district, or an ungraded student at least fourteen years of age on or before September 1, and who is enrolled in at least four courses throughout the year that meet at least nine hundred hours during the school year. A full-time student shall not be counted more than once for computation of average daily membership.

2. "Online course provider" means a school other than an online school that is selected by the state board of education or a state-approved charter authorizer to

participate in Arizona online instruction pursuant to this section and that provides at least one online academic course that is approved by the state board of education.

3. "Online school" means a school that provides at least four online academic courses or one or more online courses for the equivalent of at least five hours each day for one hundred eighty school days and that is a charter school that is sponsored by a state-approved charter authorizer or a district public school that is selected by the state board of education to participate in Arizona online instruction.

4. "Part-time student" means:

(a) Any student who is enrolled in a program that does not meet the definition in paragraph 1 of this subsection shall be funded at eighty-five percent of the base support level that would be calculated for that pupil if that pupil were enrolled as a part-time student in a school district or charter school that does not participate in Arizona online instruction.

(b) A part-time student of seventy-five percent average daily membership shall be enrolled in at least three subjects throughout the year that offer for first, second and third grade students at least five hundred thirty-four instructional hours in a school year and for fourth, fifth and sixth grade students at least six hundred sixty-eight instructional hours in a school year. A part-time student of fifty percent average daily membership shall be enrolled in at least two subjects throughout the year that offer for first, second and third grade students at least three hundred fifty-six instructional hours in a school year and for fourth, fifth and sixth grade students at least four hundred forty-five instructional hours in a school year. A part-time student of twenty-five percent average daily membership shall be enrolled in at least one subject throughout the year that offers for first, second and third grade students at least one hundred seventy-eight instructional hours in a school year and for fourth, fifth and sixth grade students at least two hundred twenty-three instructional hours in a school year.

(c) For seventh and eighth grade students, a part-time student of seventy-five percent average daily membership shall be enrolled in at least three subjects throughout the year that offer at least eight hundred one instructional hours in a school year. A part-time student of fifty percent average daily membership shall be enrolled in at least two subjects throughout the year that offer at least five hundred thirty-four instructional hours in a school year. A part-time student of twenty-five percent average daily membership shall be enrolled in at least one subject throughout the year that offers at least two hundred sixty-seven instructional hours in a school year.

(d) For high school students, a part-time student of seventy-five percent average daily membership shall be enrolled in at least three subjects throughout the year that offer at least six hundred seventy-five instructional hours in a school year. A part-time student of fifty percent average daily membership shall be enrolled in at least two subjects throughout the year that offer at least four hundred fifty instructional hours in a school year. A part-time student of twenty-five percent average daily membership shall be enrolled in at least one subject throughout the year that offers at least two hundred twenty-five instructional hours in a school year.

5. "State-approved charter authorizer" means any charter school sponsor authorized pursuant to section 15-183.

DEPARTMENT OF ENVIRONMENTAL QUALITY (R-17-0303)

Title 18, Chapter 2, Article 7, Existing Stationary Source Performance Standards

Amend: R18-2-715; R18-2-715.01; R18-2-715.02

New Article: Article 13

New Section: R18-2-B1301; R18-2-B1301.01; R18-2-B1302; R18-2-C1302; Appendix 14;
Appendix 15



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

MEETING DATE: March 7, 2017

AGENDA ITEM: D-3

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

FROM: Shama Thathi, Staff Attorney

DATE: February 21, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R-17-0303)
Title 18, Chapter 2, Article 7, Existing Stationary Source Performance Standards

Amend: R18-2-715; R18-2-715.01; R18-2-715.02

New Article: Article 13

New Section: R18-2-B1301; R18-2-B1301.01; R18-2-B1302; R18-2-C1302;
Appendix 14; Appendix 15

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

This rulemaking, from the Arizona Department of Environmental Quality (Department) seeks to amend three rules and add one article with five new rules and two new appendices. The new article will be applicable to two copper smelters in Gila County: one located in Hayden and the other located in Miami. The Department states that this rulemaking is necessary to control lead and sulfur dioxide air pollution in Hayden and sulfur dioxide pollution in Miami as part of the State Implementation Plan (SIP) program under the federal Clean Air Act (CAA).

The promulgation of the 2008 lead National Ambient Air Quality Standards (NAAQS) requires states to submit boundary designations to U.S. Environmental Protection Agency (EPA) of areas that meet the standards ("attainment"), do not meet the standards ("nonattainment"), and cannot be classified. These designation recommendations are required to be submitted to EPA within one year after promulgation of a new NAAQS, and EPA must complete designations within two years of promulgation.

In 2009, the Department recommended to EPA that most of Arizona be designated unclassified/attainment for the 2008 lead NAAQS. However, at that time, a violation of the

NAAQS was recorded at the Hayden smelter, owned and operated by ASARCO LLC (Asarco). After years of back and forth between the Department and EPA, EPA designated the Hayden area as nonattainment in 2014. The Department concluded that the Hayden smelter was the primary source of lead emissions within the Hayden lead nonattainment area. Additionally, in 2013, EPA designated both the Hayden and Miami areas as nonattainment for 2010 sulfur dioxide NAAQS.

The Department's rulemaking efforts aim to improve air quality in the Hayden and Miami nonattainment area to protect human health and the environment. As part of the SIP revision, the Department will submit these rules to EPA to provide a strategy that will bring Hayden and Miami areas into attainment. The rules set emission limits, control requirements, and compliance methods for the Asarco copper smelter in the Hayden lead and sulfur dioxide nonattainment areas and the Freeport-McMoran Miami Inc. copper smelter in the Miami sulfur dioxide nonattainment area.

Year that Each Rule was Last Amended or Newly Made

R18-2-715, R18-2-715.01, and R18-2-715.02 were last amended by final rulemaking in 2009, 2002, and 1993, respectively.

Proposed Action

The following is a non-exhaustive summary of the Department's proposed actions:

- Section 715: Subsection (I) is being added to clarify the applicability of the rule to the appropriate planning area.
- Section 715.01: The rule is being amended to revise incorrect references and add subsection (V), which clarifies the applicability of the rule to the appropriate planning area.
- Section 715.02: Subsection (F) is being added to clarify the applicability of the rule to the appropriate planning area.
- Article 13: The new article incorporates specific rules for the Hayden and Miami nonattainment areas.
- Section B1301: The new section sets emission limit for the Hayden smelter. The new emission limit will ensure that the smelter's lead emission will not cause or contribute to the violations of the 2008 lead NAAQS. In addition, operational standards, monitoring requirements, compliance demonstration procedures, and recordkeeping/reporting requirements are outlined within the rule with an aim to reduce lead emissions.
- Section B1301.01: The new section sets control requirements for lead-bearing fugitive dust sources within the Hayden smelter. The smelter must develop a fugitive dust plan to address control and compliance requirements for sources like paved and unpaved roads, concentrate storage, and reverts crushing to comply with the rule.
- Section B1302: The new section sets control requirements and emission limits for sulfur dioxide for the Hayden copper smelter.
- Section C1301: The section is being reserved.

- Section C1302: The new section sets control requirements and emission limits for sulfur dioxide for the Miami smelter.
- Appendix 14: The appendix establishes the procedures for sulfur dioxide and lead fugitive emissions studies for the Hayden smelter.
- Appendix 15: The appendix establishes the test methods for determining opacity and stabilization of unpaved roads.

Exemption or Request and Approval for Exception from the Moratorium

The Department received exemptions from the moratorium on June 1, 2015 and December 22, 2015.

Substantive or Procedural Concerns

None.

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

Yes. The Department cites to A.R.S. §§ 49-104(A)(10), 49-404(A), and 49-425(A) as statutory authority for the rules. A.R.S. § 49-425(A) provides, in part, that the Department must adopt rules that 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.”

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

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

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

Yes. The Department indicates that it received written comments from Asarco and Freeport-McMoRan, as well as the EPA. The Department provides a summary of the public comments, along with its responses, on pages 19-41 of the Notice of Final Rulemaking.¹ Council staff believes that the Department has adequately addressed the public comments.

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

No. The final rules, when considered as a whole, do not constitute a substantial change from the proposed rules. The Department indicates that only minor and clarifying changes were

¹ Copies of the written comments have been included as an attachment to the Notice of Final Rulemaking.

made in response to public comments. In addition, the Department made technical corrections at the request of Council staff.

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. The Department discloses a reference to the following three studies:

- Arizona Department of Environmental Quality. (2016). "Modeling Technical Support Document for the Hayden Lead (lead) Nonattainment Area."
- Arizona Department of Environmental Quality and Asarco LLC. (2016). "Modeling Technical Support Document for the Hayden Sulfur Dioxide (SO₂) Nonattainment Area."
- Arizona Department of Environmental Quality and Freeport-McMoRan Copper and Gold Inc. (2016). "Miami Sulfur Dioxide Nonattainment Area SIP Revision Attainment Demonstration Technical Support Document."

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 Department indicates that the CAA and related EPA regulations apply to the subject of this rulemaking, and that the rules will be no more stringent than required by federal law.

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 Department indicates that the rules do not inherently require a permit or license.

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.

Conclusion

The Department requests effective dates that are later than the usual 60 day delayed effective date. The Department indicates that a later effective date is necessary to allow Asarco and Freeport-McMoran to complete construction to comply with the new 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: March 7, 2017

AGENDA ITEM: D-3

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

FROM: GRRC Economic Team

DATE : February 21, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R-17-0303)
Title 18, Chapter 2, Article 7, Existing Stationary Source Performance Standards

Amend: R18-2-715; R18-2-715.01; R18-2-715.02

New Article: Article 13

New Section: R18-2-B1301; R18-2-B1301.01; R18-2-B1302;
R18-2-C1302; Appendix 14; Appendix 15

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 Department of Environmental Quality (Department) is proposing to amend rules in Article 7 and add Article 13. The rules in Article 7 establish air pollution standards for copper smelters. Article 13 will establish lead and sulfur dioxide emission limits for copper smelters in Hayden, Arizona and Miami, Arizona. Copper smelting is a form of extractive metallurgy that changes copper ore into copper metal. Lead and sulfur dioxide are two pollutants that are emitted during the smelting process, and these pollutants can have negative health impacts on human health when inhaled. Sulfur dioxide causes respiratory distress, and lead can cause numerous health problems including central nervous system disorders.

The area around Hayden, Arizona is designated by the Environmental Protection Agency (EPA) as not meeting the standards (nonattainment) for lead and sulfur dioxide emissions. The area around Miami, Arizona is designated as nonattainment for sulfur dioxide by the EPA. These rules amend Arizona's State Implementation Plan (SIP) to comply with the federal Clean Air Act (CAA). Failure to reach attainment in these areas will result in federal sanctions under the CAA.

The key stakeholders that will be impacted are the Department, Asarco, Freeport-McMoRan Miami Inc., and residents in the nonattainment areas.

1. **Costs and Benefits for:**

a. The implementing agency:

The Department anticipates that it will incur only minimal costs to enforce these rules. The Department is the only agency impacted by these rules.

b. Political subdivisions:

Political subdivisions will not be impacted by these rules because no political subdivision operates a copper smelter.

c. Businesses:

These rules will impose costs on two large mining firms: Asarco-Hayden Operations and Freeport-McMoRan Miami Inc.-Miami Operations. Asarco estimates that these rules will require ten contractors and 100 employees in order to bring the copper smelter into compliance. Freeport-McMoRan Miami Inc. estimates that it will require 500 contractors/individuals to bring its copper smelter into compliance with these rules.

d. Small businesses:

The Department notes that neither business impacted by these rules is a small business.

e. Consumers directly affected by the rulemaking:

Residents of the Hayden nonattainment area and the Miami nonattainment area will benefit from this rulemaking due to reducing the emissions of lead and sulfur dioxide.

2. **Do the probable benefits outweigh the probable costs?**

The probable costs of this rulemaking are roughly 610 full time employees and contractors imposed on two large mining firms. The probable benefits are better public health outcomes due to fewer emissions of lead and sulfur dioxide.

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

These rules will not impact small businesses.

4. **The probable effect on state revenues:**

The Department indicates that this rulemaking will not impact state revenues.

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

The Department was unable to identify any alternative methods of achieving the regulatory objective. Copper smelters are the primary source of lead and sulfur dioxide emissions. Proper pollution controls are the most effective method of achieving compliance with the CAA.

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 competitiveness 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 Department created an air quality model using emissions data from Asarco, Freeport-McMoRan Miami Inc., and air quality monitors. This model generated conservative emission limits that will bring the Hayden and Miami areas into compliance with the CAA.

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.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: New Rulemaking for Title 18. Environmental Quality, Chapter 2. Department of Environmental Quality-Air Pollution Control, Articles 7 and 13.

Dear Sir or Madam:

The Arizona Department of Environmental Quality (ADEQ) has approved amendments and developed new rules for consideration by the Council on March 7, 2017. ADEQ is amending R18-2-715, R18-2-715.01, and R18-2-715.02 regulating the emissions of sulfur dioxide from copper smelters in Arizona. ADEQ has also developed new rules for addition under Article 13 to reduce sulfur dioxide and lead emissions from two copper smelters in Arizona. The new rules to be established in Article 13 are R18-2-B1301, R18-2-B1301.01, R18-2-B1302, and R18-2-C1302.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by R1-6-201(A)(1)

- The public record closed for all rules on January 9, 2017 at 5:00 p.m.
- The rulemaking activity does not relate to a five-year review report.
- The rules do not contain a new fee.
- The rules do not contain a fee increase.
- The Department is not seeking an immediate effective date for these rules.
- I certify that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- A full-time employee will not be required to implement and enforce the rule.
- A list of all documents enclosed is provided in Sections II and III.

II. List of Documents Enclosed under R1-6-201(A)

- One paper copy and one electronic copy of the following is enclosed:
 1. This cover letter.
 2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of each rule.

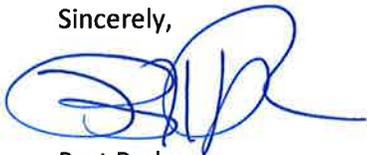
3. A complete economic, small business and consumer impact statement, which is included in the preamble of the NFRM.
 4. Written comments on the Notice of Proposed Rulemaking (NPRM) received by ADEQ.
- No testimony was received at the January 9, 2017 public hearing on the NPRM, therefore, no record or transcript of such testimony is included in this submittal.
 - ADEQ received no analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, therefore, no such analysis is included in this submittal.

III. List of Documents Enclosed under A.A.C. R1-6-201(B)

- There are no incorporations by reference added to the rules in this action.
- One paper copy and one electronic copy of each of the following is enclosed: The general and specific statutes authorizing the rule, including relevant statutory definitions; specifically: A.R.S. §§ 49-104(A)(10), 49-404(A), and 49-425(A).
- No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.
- One paper copy and one electronic copy of each of the following is enclosed: The existing rules being amended, specifically R18-2-715, R18-2-715.01, and R18-2-715.02.

Thank you for your timely review and approval. Please call Natalie Muilenberg, Planning Unit Supervisor, Air Quality Improvement Planning Section, Air Quality Division, 602-771-1089 or nm3@azdeq.gov, if you have any questions.

Sincerely,



Bret Parke
Deputy Director

Enclosures

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

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R18-2-715 | Amend |
| R18-2-715.01 | Amend |
| R18-2-715.02 | Amend |
| Article 13 | New Article |
| R18-2-B1301 | New Section |
| R18-2-B1301.01 | New Section |
| R18-2-B1302 | New Section |
| R18-2-C1301 | New Section (Reserved) |
| R18-2-C1302 | New Section |
| Appendix 14 | New Appendix |
| Appendix 15 | New Appendix |
- 2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. §§ 49-104(A)(10), 49-404(A)
- Implementing statute: A.R.S. § 49-425(A)
- 3. The effective date of the rule:**
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
- The effective date of R18-2-B1301 and –B1302 is on the earlier of July 1, 2018 or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647.
- The effective date of R18-2-B1301.01 is no later than December 1, 2018.

The effective date of R18-2-C1302 is on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

The Arizona Department of Environmental Quality is requesting effective dates that are later than the 60 day effective date as specified in A.R.S. § 41-1032(A). An effective date later than the 60 day effective date is necessary to allow the owners/operators of the facilities subject to the rules to complete construction to comply with the new rules

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

Notice of Rulemaking Docket Opening: 22 A.A.R. 3336

Notice of Proposed Rulemaking: 22 A.A.R. 3279

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

For the rules applicable to the Hayden Lead Nonattainment Area:

Name: Natalie Muilenberg
Address: Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-1089
Fax: (602) 771-2299
E-mail: nm3@azdeq.gov
Web site: www.azdeq.gov

For the Article 7 amendments and rules applicable to the Hayden and Miami Sulfur Dioxide Nonattainment Areas:

Name: Lisa Tomczak
Address: Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4450
Fax: (602) 771-2299
E-mail: lt5@azdeq.gov
Web site: www.azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to

include an explanation about the rulemaking:

Summary.

The Arizona Department of Environmental Quality (ADEQ) is amending R18-2-715, -715.01, and -715.02. ADEQ is also adding a new Article with new rules applicable to two copper smelters: one located in Hayden, Gila County, and one located in Miami, Gila County.

The purpose of this final rulemaking is to control lead and sulfur dioxide air pollution in Hayden and sulfur dioxide pollution in Miami as part of the State Implementation Plan (SIP) program under the federal Clean Air Act (CAA).

The rules will be submitted to the U.S. Environmental Protection Agency (EPA) with a revision to Arizona's SIP for the Hayden lead nonattainment area, the Hayden sulfur dioxide nonattainment area, and the Miami sulfur dioxide nonattainment area. A.R.S. § 41-1038 is not applicable to this rulemaking because the failure to take such rulemaking action would result in sanctions under CAA Section 179.

Background.

Hayden lead nonattainment area

In 2008, EPA revised the nearly 40-year-old air quality standards for lead, strengthening them by almost 90 percent. *73 Fed. Reg.* 66964 (2008). The maximum allowable level of lead in ambient air is a rolling three-month average of 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) evaluated over a three-year period. EPA reviewed and synthesized over 6,000 international studies that covered a broad range of human health and environmental impacts of lead air pollution. EPA tightened the standards to "provide increased protection for children and other at-risk populations against an array of adverse health effects, most notably including neurological effects in children." *73 Fed. Reg.* 66964, 66965 (2008).

The promulgation of the 2008 lead National Ambient Air Quality Standards (NAAQS) requires states to subsequently submit boundary designations to EPA of areas that meet the standards ("attainment"), do not meet the standards ("nonattainment"), and cannot be classified. These designation recommendations must be submitted to EPA no later than one year after the promulgation of a new NAAQS, and EPA is required to complete designations within two years of promulgation.

In December of 2009, ADEQ recommended to EPA that most of Arizona be designated unclassified/attainment for the 2008 lead NAAQS. At the time, a violation of the NAAQS was recorded at one of EPA's CERCLA/Superfund ambient air monitors near a copper smelter in Hayden currently owned and operated by ASARCO LLC (Asarco). ADEQ requested that EPA delay its designation of the Hayden area because Asarco committed to improve its control of lead emissions in the future. ADEQ recommended that if the Hayden area continued to violate the NAAQS in 2010, it should be designated nonattainment.

After receiving ADEQ's recommendation, EPA conducted a technical analysis on the Hayden area, investigating the sources of lead emissions, topography, meteorology, and data from the violating air quality monitor. In 2010, EPA proposed to designate the Hayden area as nonattainment using air quality data from the violating CERCLA/Superfund monitor. However, commenters challenged the designation because EPA used data from a monitor that was not part of the State and Local Air Monitoring Stations (SLAMS) network and not collected in accordance with quality control and quality assurance requirements. *79 Fed. Reg. 25077, 25079* (2014). In response, EPA designated the Hayden area as unclassifiable in 2011 until sufficient data could be collected by a SLAMS monitor in accordance with federal requirements. Later in 2012, Asarco installed a baghouse on the anode furnace to curb particulate and lead emissions from the smelter.

Finally, in 2014, EPA redesignated the Hayden area from unclassifiable to nonattainment after several violations were recorded at ADEQ's Globe Highway SLAMS monitor. *79 Fed. Reg. 52205* (2014). The boundaries of the nonattainment area matched those of the Hayden sulfur dioxide nonattainment area, located in both Gila and Pinal Counties. The area's nonattainment designation triggers planning and control requirements under the CAA to bring the area to attainment as expeditiously as practicable.

In 2015, Asarco entered into a consent decree with EPA (see Consent Decree No. CV-15-02206-PHX-DLR) to settle a civil enforcement action. The action alleged that that ASARCO had violated, and continued to violate, the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Primary Copper Smelting, 40 C.F.R. Part 63, Subpart QQQ. To comply with the consent decree, Asarco will spend over \$150 million to reduce emissions at its smelter and lead concentrations in the ambient air of the surrounding Town of Hayden. Control equipment installation and retrofit requirements in the consent decree are also part of the control strategy for the Hayden area's SIP revision and this rulemaking.

Asarco's copper smelter is one of three in the United States and has been operating since the early 1900s, around the same time the Town of Hayden was established. In general, Asarco's smelter produces copper anodes using an INCO flash furnace smelter, Peirce-Smith batch converters, and anode refining technologies. First, copper concentrate is produced from several of Asarco's mining and milling facilities and transported to the Asarco Hayden Smelter for further refining. Some concentrate may also be custom smelted on behalf of other companies. The concentrate is mixed with flux in the bedding plant and then routed to fluidized bed dryers for drying.

Once dried, the copper concentrate is next introduced into the INCO flash furnace with oxygen enriched air, where it is flash smelted and separates into a heavier copper-bearing matte layer and a lighter slag layer. The lighter slag layer is skimmed into a pot which is transported to the slag dump for deposition. The molten matte is tapped from the flash furnace and is poured into a ladle that transfers it to the converter furnace for further refining.

At the converter furnaces, each batch of matte goes through a series of blowing cycles that drive off the remaining sulfur and other impurities and produce blister copper. From the converters, the molten blister copper is transferred to the anode furnace where it is reduced with natural gas and poured into anode molds for shipment to Asarco's refinery in Amarillo, Texas.

Lead is an impurity that is naturally occurring in the copper ore that is mined and in the copper concentrate that is produced. Lead has the potential to be emitted from the smelting processes in gaseous and particulate form. Smelting process emissions can occur from the INCO flash furnace, the converters, and the anode furnaces. All process emissions are already controlled by either process gas cleaning systems, electrostatic precipitators, or baghouses. However, not all emissions are captured; some are emitted into the atmosphere as process fugitive emissions. Process fugitive emissions occur from matte tapping and slag skimming at the flash furnace, the converters, and anode furnace and anode casting operations. In addition to process fugitive emissions, lead, in the form of particulate matter, is emitted by dust-causing sources. At Asarco's Hayden operations, fugitive leaded dust is generated from sources like open-air concentrate storage and handling, slag pouring, reverbs storage and handling, and roadways.

ADEQ's analysis concluded that Asarco's Hayden Operations is the primary source of lead emissions within the Hayden lead nonattainment area, thus, planning and rulemaking efforts are focused on the facility.

Ultimately, ADEQ's planning and rulemaking efforts aim to improve air quality in the Hayden lead nonattainment area to protect human health and the environment. ADEQ also recognizes Asarco's role and contributions to Hayden's local economy, which is historically built on copper mining and smelting, and intends to provide enough flexibility for the facility's successful operation.

Hayden and Miami sulfur dioxide nonattainment areas

The Hayden and Miami areas were designated as nonattainment for sulfur dioxide in 1979 due to violations of the 1971 sulfur dioxide NAAQS. In 1979, Arizona adopted rules to lower sulfur dioxide emissions from the smelters. The State of Arizona submitted revisions to its SIP to EPA on September 20, 1979; January 10, 1980; and September 10, 1980. The revisions consisted of a demonstration of good engineering practice (GEP) stack height for the copper smelter in Hayden, Arizona, and the application of multi-point rollback (MPR) in establishing sulfur dioxide emissions limits. EPA published a notice of proposed rulemaking on November 30, 1981, conditionally approving Arizona's submittals. 46 *Fed. Reg.* 58098 (1981). On June 3, 1982, Arizona submitted a SIP revision to satisfy the conditional approval and Arizona's demonstration of MPR. The MPR rules, which established stack emission limits for the smelters, were approved by EPA on January 14, 1983. 48 *Fed. Reg.* 1717 (1983).

Following EPA's approval of the rule, the smelters began to implement improved process and control technology. In August 1991, the owner and operator of the Miami smelter submitted a study to ADEQ to partially fulfill outstanding SIP commitments for analysis of fugitive emissions. The study was implemented to describe sulfur dioxide fugitive emission units and provide an estimate of fugitive emissions during typical smelter operation. On April 11, 1996, Asarco submitted the results of a fugitive sulfur dioxide emissions study to ADEQ to fulfill outstanding SIP commitments for analysis of fugitive emissions.

To meet CAA requirements for redesignation and demonstrate continued attainment of air quality standards, air quality analyses were performed for the smelters during the time period 2001 – 2002. These analyses used maximum actual emissions (both stack and fugitive) in relation to resulting ambient concentrations and showed that the smelters were not expected to cause or contribute to a violation of the 1971 sulfur dioxide standards. In 2002, ADEQ conducted two rulemakings adopting new limits for the smelters. These rulemakings were finalized in R18-2-715(F), (G), and (H) along with corresponding changes to compliance and monitoring procedures in R18-2-715.01.

In 2004, ADEQ made several technical and administrative changes to A.A.C. Title 18, Chapter 2, Appendix 8 to clarify procedures for calculating material balance for sulfur applicable to three copper smelters: one located in Hayden, Gila County (currently owned by Asarco); one located in Miami, Gila County (currently owned by Freeport McMoRan-Miami Inc.); and one located in San Manuel, Pinal County. In 2006, ADEQ revised R18-2-715 to account for the shutdown of the smelter located in San Manuel and the March 2005 termination of its permit by deleting all references to the smelter from the rule.

On June 22, 2010, EPA replaced the existing annual and 24-hour primary sulfur dioxide NAAQS with a new 1-hour sulfur dioxide standard set at a level of 75 parts per billion (ppb) to better protect public health by reducing public exposure to elevated short-term concentrations of sulfur dioxide. *75 Fed. Reg.* 35520 (2010). The EPA revoked both the annual and 24-hour primary sulfur dioxide NAAQS. On August 5, 2013, EPA published the final designation of both the Hayden and Miami planning area as nonattainment for the 2010 sulfur dioxide NAAQS. *78 Fed. Reg.* 47191 (2013).

Regulatory requirements

To satisfy CAA requirements under Section 110 and Part D, ADEQ must develop and submit to EPA revisions to Arizona's SIP for the Hayden lead nonattainment area, Hayden sulfur dioxide nonattainment area, and Miami sulfur dioxide nonattainment area within 18 months of designation. The SIP revision must provide for the attainment of the 2008 lead NAAQS and 2010 sulfur dioxide NAAQS by containing, among other requirements:

1. Provisions to assure that reasonably available control measures are implemented;

2. A demonstration through air quality modeling that the plan will provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years after the area's designation as nonattainment;
3. Provisions that result in reasonable further progress toward timely attainment through adherence to an ambitious compliance schedule;
4. Contingency measures that are to be implemented if the area fails to meet attainment or its reasonable further progress milestones; and
5. A permit program meeting the requirements of CAA Section 173 governing the construction and operation of new lead sources in the area.

As part of the SIP revision and in order to provide a successful strategy that will bring the Hayden and Miami areas into attainment, ADEQ will be submitting these rules to EPA, making them federally enforceable under Arizona's SIP. The rules set emission limits, control requirements, and compliance methods for the Asarco copper smelter in the Hayden lead and Hayden sulfur dioxide nonattainment areas and the Freeport-McMoRan Miami Inc. copper smelter in the Miami sulfur dioxide nonattainment area.

Section by Section Explanation of Proposed Rules:

Arizona is revising its rules for sulfur dioxide (R18-2-715 and -715.01) and adding a new Article to incorporate specific rules for the Hayden and Miami nonattainment areas. The current rules for sulfur dioxide (R18-2-715, -715.01, and -715.02) are being amended to clarify the applicability of the rules to the appropriate planning area and to revise incorrect references. The new rules will be included in Article 13, which contained the rules for the state's terminated diesel conversion grant program, expired under A.R.S. § 41-1056(J) on April 30, 2013.

Hayden lead nonattainment area

Rule R18-2-B1301 primarily sets an emission limit and control requirements for Asarco's copper smelter. The new emission limit will ensure that the smelter's lead emissions will not cause or contribute to violations of the 2008 lead NAAQS. Within the rule, operational standards, monitoring requirements, compliance demonstration procedures, and recordkeeping/reporting requirements are tailored specifically for the smelter with the aim to reduce lead emissions. ADEQ conducted modeling to demonstrate future attainment of the 2008 lead NAAQS using the emission limits required by this rule.

Rule R18-2-B1301.01 sets control requirements for lead-bearing fugitive dust sources within Asarco's Hayden operations. To comply with the rule, Asarco must develop a fugitive dust plan that addresses controls and compliance requirements for sources like paved and unpaved roads, concentrate storage, and reverts crushing. The rule also sets specific housekeeping requirements for such sources to control lead-

bearing fugitive dust. The rule includes other requirements like recordkeeping, reporting, and a contingency measure should the area fail to attain.

Hayden and Miami sulfur dioxide nonattainment areas

Rule R18-2-B1302 sets control requirements and emission limits for sulfur dioxide for Asarco's Hayden operations. Rule R18-2-C1302 sets control requirements and emission limits for sulfur dioxide for Freeport-McMoRan Miami Inc. Miami operations.

The sulfur dioxide NAAQS promulgated by EPA in 2010 adopted a new level, averaging time, and form of the primary standard. To comply with the new standard, control measures must be implemented that will lower emissions of sulfur dioxide sufficient for an area to attain the NAAQS. On April 23, 2014 EPA issued final guidance to assist agencies with the development of SIPs to comply with the new standard and CAA requirements. The guidance provided an approach whereby emission limits based on averaging times longer than one hour could be imposed as long as the limits reflect comparable stringency to a 1-hour critical emissions value (CEV). The CEV is the hourly emission rate that the model predicts would result in the five-year average of the annual 99th percentile of the daily maximum hourly sulfur dioxide concentrations at the level of the NAAQS. The approach requires that the source's hourly emissions are effectively measured and that adequate assurance of attainment is evaluated through performance of a dispersion modeling analysis. The attainment modeling performed for the Hayden and Miami smelters evaluates emission limits with averaging times that are longer than one hour and demonstrates comparable stringency to a 1-hour CEV.

Due to differences in operations, Asarco and Freeport-McMoRan Miami Inc. are implementing control measures unique to each facility. The varied nature of the operations at the Hayden and Miami smelters require rules tailored to their specific operations in order for each area to meet the 2010 sulfur dioxide NAAQS. The new limits for both smelters also require minor changes to the compliance and monitoring provisions.

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:

Hayden lead nonattainment area

Arizona Department of Environmental Quality. (2016). "Modeling Technical Support Document for the Hayden lead (lead) Nonattainment Area."

Hayden sulfur dioxide nonattainment area

Arizona Department of Environmental Quality and Asarco LLC. (2016). "Modeling Technical Support Document for the Hayden Sulfur Dioxide (SO₂) Nonattainment Area."

Miami sulfur dioxide nonattainment area

Arizona Department of Environmental Quality and Freeport-McMoRan Copper and Gold Inc. (2016). “Miami Sulfur Dioxide Nonattainment Area SIP Revision Attainment Demonstration Technical Support Document.”

All documents are available for the public to review, Monday through Friday, 8:30 a.m. – 4:30 p.m., at the ADEQ Records Center located at:
1110 W Washington St
Phoenix, AZ 85007

For more information, contact the Records Center at (602) 771-4380 or recordscenter@azdeq.gov.

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

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

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

The following discussion addresses each of the elements required for an economic, small business, and consumer impact statement (EIS) under A.R.S. § 41-1055.

An identification of the rule making.

The rulemaking addressed by this EIS consists of new rules added to the new Article 13 (R18-2-B1301; R18-2-B1301.01; R18-2-B1302; R18-2-C1301 (Reserved), and R18-2-C1302). The purpose of the amendments and new rulemaking is to bring nonattainment areas in the State of Arizona into compliance with new air quality standards for lead and sulfur dioxide pollution.

This EIS addresses the impact of the 2008 lead NAAQS and the 2010 sulfur dioxide NAAQS that requires the owner and operators of copper smelters, Asarco and Freeport-McMoRan Miami Inc., to install new and improved air pollution control equipment, apply for a new permit, and comply with new emission limits. The new NAAQS may result in increased compliance costs for Asarco and Freeport-McMoRan Miami Inc. and minor increased administrative costs for ADEQ.

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

The persons who will be directly affected by and bear the costs of this rulemaking are the owners and operators of the Miami and Hayden Smelters, which are Freeport-McMoRan Miami Inc. and Asarco, respectively. There are no other smelting facilities in the state of Arizona affected by this rulemaking.

The persons who will benefit from this rulemaking are the residents of Hayden and Miami, as well as the employees of Asarco and Freeport-McMoRan Miami Inc., due to the improved air quality that will result

from this rulemaking and the corresponding control technology Asarco and Freeport-McMoRan Miami Inc. will be implementing to control lead and sulfur dioxide pollution.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rule making.

ADEQ estimates that the current number of full-time employees assigned in the Permits and Compliance Sections of the Air Quality Division at ADEQ are adequate to implement and enforce the 2008 lead NAAQS in the Hayden nonattainment area and the 2010 sulfur dioxide NAAQS in the Hayden and Miami nonattainment areas. The costs of the rules to the implementing agency will therefore be minimal. Furthermore, permits for sources in the nonattainment areas are revised every five years, with minor revisions occurring periodically. Under A.A.C. R18-2-301(2) and R18-2-326(B)(1)(a), the permit applicant—in this case, Asarco and Freeport-McMoRan Miami Inc.—will ultimately be required to reimburse ADEQ for the cost of revisions as part of permit fees.

ADEQ has permitting, enforcement, and compliance jurisdiction in the Hayden and Miami nonattainment areas, and therefore, no other state agencies will be affected by this rulemaking.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making.

No political subdivision of the state operates a smelter of metal ore like copper. Under A.R.S. § 49-402(A)(2), ADEQ has original jurisdiction over all “sources, permits, and violations which pertain to...smelting of metal ore.” The costs of enforcing these new rules applicable to the Asarco and Freeport-McMoRan Miami Inc. copper smelters are likely to be minimal and will be recoverable through permit fees acquired from Asarco and Freeport-McMoRan Miami Inc.

(c) The probable costs and benefits to businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rule making.

The rules that are the subject of this preamble and EIS are necessary to comply with federal requirements for the SIP program under the CAA. If ADEQ fails to adopt these rules, the federal requirements will apply to the copper smelters through the adoption of a Federal Implementation Plan (FIP) issued by EPA under Section 110(c) of the CAA. However, the issuance of a FIP would likely require more strict emission limits and controls for the copper smelters, and further delay the areas’ attainment of the lead and sulfur dioxide NAAQS as expeditiously as practicable, as required by the CAA.

If ADEQ fails to submit approvable SIPs, the nonattainment areas would be subject to sanctions under CAA Section 179(b), which can include a prohibition of highway funds and emission offsets

requirements for other facilities. Therefore this rulemaking is an effort to not only curb air pollution in Arizona, but to also avoid federal consequences.

Lead and sulfur dioxide pollution cause extreme health risks and burdensome healthcare costs. Such related costs and benefits obtained from controlling lead and sulfur dioxide pollution are discussed further below.

The effects of lead air pollution

According to EPA, lead is emitted into the air from a wide variety of source types. *73 Fed. Reg.* 29184, 29190 (2008). Source types include aviation fuel, industrial boilers, iron and steel foundries, and metal ore smelters. Once deposited out of the air, lead can be disturbed and re-suspended into the air. For example, if dust containing particles of lead settles on a road, the lead can become airborne when a truck drives on the road. Lead pollution in the air can be exceptionally troublesome due to its ease of transport in smaller particle sizes. Lead also subsists in the environment for a very long time, making full remediation difficult.

Lead can enter the human body through many routes, but it is primarily inhaled when it is a component of air pollution. In its review of scientific literature for the 2008 lead NAAQS, EPA examined air-related lead exposure through:

1. Inhalation of airborne lead, including re-suspended lead particles
2. Ingestion of lead deposited as indoor or outdoor dust or soil, dietary items (like crops and livestock), and drinking water

EPA recognizes that “lead has been demonstrated to exert ‘a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action.’” *73 Fed. Reg.* 29184, 29197 (2008). Furthermore, a “safe” level of lead in the human body that causes little to no harm has yet to be determined. In promulgating the 2008 lead NAAQS, EPA focused primarily on neurological effects in children and cardiovascular effects in adults that “are currently clearly of greatest public health concern.”

Health experts agree that the developing nervous system of a child is the most sensitive to lead exposure. EPA states, “Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive, and behavioral impacts.” *73 Fed. Reg.* 29184, 29198 (2008). Studies have observed lower IQ, reduced academic achievement, and decreased graduation rates in adolescents exposed to lead. Lead exposure is associated with more negative ratings by teachers and/or parents for children exhibiting inattentiveness, impulsivity, distractibility, and lack of concentration. Higher

concentrations of lead in the blood are also linked to impaired memory and visual-spatial skills. Additional studies show early exposure to lead in adolescents may result in an increased likelihood of antisocial and criminal behavior later in life. Since children are exposed to lead early, it has more time to accumulate in the blood supply and bones, hindering overall development and growth.

Lead exposure in adults can cause coronary heart disease, strokes, premature death, and hypertension. Furthermore, lead bioaccumulates in the body, causing persistent, long-term health problems. Lead exposure can also cause kidney disease, anemia, decreased sperm count, increased blood pressure, and interference with vitamin D metabolism. In the body of a pregnant woman, lead can easily cross the placenta, resulting in continued fetal exposure during pregnancy with lasting neurological impacts after birth. Pregnant women who are exposed to even low levels of lead are at high risk for premature birth.

Other symptoms caused by lead exposure include: irritability; shortened attention span; fatigue; impaired growth; loss of appetite; learning disabilities; headaches; seizures; nausea and vomiting; and severe abdominal pain.

A discussion of the monetary costs and health-based benefits of the proposed rulemaking for lead follows.

Lead emissions controls and costs

The CAA prohibits the EPA from considering costs in setting or revising the NAAQS for any pollutant. However, in promulgating the 2008 lead NAAQS, EPA analyzed the associated costs for pollution control equipment and benefits associated with improved public health. EPA estimates that full implementation of the lead NAAQS by sources across the U.S. in 2016 alone would cost approximately \$150 million to \$2.8 billion. The health benefits far outweigh these costs, estimated between \$3.8 billion to \$6.9 billion. *73 Fed. Reg. 66964 (2008)*.

As part of the consent decree, Asarco will implement the Converter Retrofit Project at its Hayden copper smelter to reduce lead and sulfur dioxide emissions. The project will replace the existing five 13-foot diameter copper converters with three 15-foot diameter converters that operate more efficiently. Improved primary and secondary hooded ventilation systems will also be installed above the smelting equipment to capture process off-gases. A new tertiary hooding system will further prevent emissions from escaping the smelting building. An upgraded vent gas baghouse will collect particulate and gaseous emissions coming from the converter dryers and flash furnace.

In addition to the Converter Retrofit Project, Asarco will also be implementing additional control technology for leaded fugitive dust sources. For example, solids from the acid plant scrubbers that process emissions from the flash furnace and copper converters will be dried in a fully enclosed system

that is maintained under negative pressure instead of being dried in open piles outside. Materials like concentrate and reverbs will no longer be stored in open piles outside, but rather on concrete pads with fences to block the wind and water sprays to minimize fugitive emissions. Unpaved roads will also be sprayed with chemical dust suppressants and paved roads will be sprayed with water to control lead dust emissions. In addition to complying with the consent decree, these modifications will also contribute to the control strategy for the Hayden lead nonattainment area SIP.

In 2015, Asarco's Hayden operations emitted over three tons of lead emissions. In 2019, that amount is projected to decrease by half to roughly 1.5 tons. The cost of the retrofit project is estimated to be \$110 million.

Benefits of lead emissions controls

The primary benefit of installing the emissions control technologies is an overall reduction in lead in ambient air, which in turn, decreases health and welfare risks from exposure.

Health issues cause more hospital stays and sick time taken from work, putting more burden on health care systems and the economy. EPA estimated between \$3.8 billion to \$6.9 billion of benefits can be contributed to the new lead NAAQS, reflecting public health improvements and an expected increase in lifetime earnings as a result of avoiding IQ loss.

This rulemaking will also help the State of Arizona avoid federal sanctions implemented under the CAA. If the State fails in submitting the rules and SIP revision for the Hayden lead nonattainment area, EPA has the authority to prohibit highway funding and increase costly emission offset requirements for new or modified facilities.

This rulemaking is necessary because of the health benefits derived from the improved controls implemented at the copper smelter and to avoid federal consequences.

The effects of sulfur dioxide pollution

According to the Agency for Toxic Substances and Disease Registry (ATSDR), sulfur dioxide is a colorless gas with a pungent odor. Sulfur dioxide is a liquid when under pressure; it easily dissolves in water and cannot catch fire. Sulfur dioxide in the air results primarily from activities associated with the burning of fossil fuels (coal, oil) such as at power plants or from copper smelting. Once released into the environment, sulfur dioxide moves to the air where it can convert to sulfuric acid, sulfur trioxide, and sulfates.

Short-term exposures to high levels of sulfur dioxide can be life-threatening. Exposure to 100 parts per million parts of air (ppm) is considered immediately dangerous to life and health. Previously healthy

nonsmoking miners who breathed sulfur dioxide released as a result of an explosion in an underground copper mine developed burning of the nose and throat, breathing difficulties, and severe airway obstructions. Long-term exposure to persistent levels can also affect health. Lung function changes have been observed in some workers exposed to 0.4 - 3.0 ppm of sulfur dioxide for 20 years or more. However, these workers were also exposed to other chemicals, making it difficult to attribute their health effects to sulfur dioxide exposure alone. Additionally, exercising asthmatics are sensitive to the respiratory effects of low concentrations (0.25 ppm) of sulfur dioxide.

Typical outdoor concentrations of sulfur dioxide may range from 0 to 1 ppm. Occupational exposures to sulfur dioxide may lawfully range from 0 to 5 ppm under state OSHA (Occupational Safety and Health Administration) regulations. During any 8-hour work shift of a 40-hour work week, the average concentration of sulfur dioxide in the workplace may not exceed 5 ppm.

Most of the effects of sulfur dioxide exposure that occur in adults (i.e., difficulty breathing, changes in the ability to breathe as deeply or take in as much air per breath, and burning of the nose and throat) are also of potential concern in children, but it is unknown whether children are more vulnerable to exposure. Children may be exposed to more sulfur dioxide than adults because they breathe more air for their body weight than adults do. Children also exercise more frequently than adults. Exercise increases breathing rate. This increase results in both a greater amount of sulfur dioxide in the lungs and enhanced effects on the lungs. One study suggested that a person's respiratory health, and not his or her age, determines vulnerability to the effects of breathing sulfur dioxide.

Sulfur dioxide emissions controls and costs

Freeport-McMoRan Miami Inc.

The construction work being performed at the Freeport-McMoRan Miami Inc. Miami smelter includes process changes along with environmental upgrades to achieve sulfur dioxide emission reductions so that the Miami area will meet the new ambient air quality standards. The Miami Smelter emission control upgrades include new converter mouth covers, a new Aisle Scrubber, additional capture systems, and upgrades to the Acid Plant Tail Gas and Vent Fume Scrubbers to use caustic for sulfur dioxide removal to ensure attainment of EPA's more stringent sulfur dioxide NAAQS. At this time, the cost of the project is estimated to be \$250 million.

Asarco-Hayden

The Converter Retrofit Project and associated controls discussed above for lead pollution will also greatly mitigate sulfur dioxide emissions. As mentioned earlier, the project involves replacement of the existing five 13-foot diameter converters with three 15-foot diameter converters. Corresponding modifications will be made to the converter aisle in order to accommodate the larger converters. The

retrofit includes installation of a new converter primary gas system. New secondary hoods will also be installed and designed to fit the new, larger converters and new primary hoods. The new secondary hoods will direct sulfur dioxide ventilation gases during blowing operations to the acid plant instead of a baghouse, improving control. Other upgrades include installation of a new converter aisle tertiary gas collection system, enhanced lime injection at the secondary and new vent gas baghouse to further control sulfur dioxide emissions, and improvements to the acid plant. Overall, the retrofit is projected to reduce current sulfur dioxide emissions by 90 percent, with a total sulfur dioxide capture rate of 99.5 percent of the sulfur dioxide produced during the copper smelting process. The cost of the converter retrofit project is estimated to be \$110 million.

Benefits of sulfur dioxide emissions controls

One of the primary benefits of installing the emissions control technologies is an overall reduction in sulfur dioxide emissions. EPA first set health based standards for sulfur dioxide in 1971 at a 24-hour primary standard at 140 parts per billion (ppb) and an annual average standard at 30 ppb. In 1996, EPA reviewed the sulfur dioxide NAAQS and chose not to revise the standards. The 2010 revision to the sulfur dioxide NAAQS established a new one-hour standard at a level of 75 ppb. *75 Fed. Reg. 35520* (2010).

Lowering the standard will result in health benefits by lowering exposure to sulfur dioxide, specifically short-term exposure. Initial respiratory reactions to sulfur dioxide include narrowing of the airways in the lungs and difficulty breathing. Individuals with sensitive or comprised respiratory systems, such as children, the elderly, and individuals with respiratory related illnesses are more susceptible to these reactions. These negative reactions commonly result in increased emergency room and hospital visits. The revised NAAQS is designed to lower emissions and reduce exposure to high levels of sulfur dioxide by lowering the level of the standard and establishing new averaging time frame. EPA estimates that a level of 75 ppb for sulfur dioxide will result in cost benefits between \$13 billion and \$33 billion from reduced emergency room visits, hospitalizations, lost work days, and cases of aggravated asthma and bronchitis.

In addition to direct impacts, sulfur dioxide is also a precursor to particulate matter that is 2.5 micrometers in diameter, which can penetrate deep into the lungs and cause serious health effects including increases in cardiovascular illness and mortality.

Additional benefits of this rulemaking include continued oversight and control of air emissions by ADEQ. As stated earlier for lead pollution, without approval of this rulemaking and SIPs, the CAA specifies that EPA must develop a federal implementation plan (FIP) to regulate sources within the planning area. In addition to a FIP, the Hayden and Miami nonattainment areas would also be subject to highway sanctions and offsets. Highway sanctions are prohibitions on certain transportation projects

or grants within the planning area. Offset sanctions are requirements for new or modified sources to have a ratio of emissions reductions to increased emissions at a level of at least two to one. Both ADEQ and the business community will benefit from continued regulation at the state level as a result of avoiding federal sanctions.

A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rule making.

ADEQ anticipates that employment impacts will be minor. ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this rulemaking. Furthermore, no sources are expected to close from the implementation of this rulemaking.

Asarco-Hayden Operations

Asarco estimates that 10 contractors and 100 full-time employees will be needed in order to complete the retrofit project. Some of the contractors will be hired for planned maintenance outages during the construction period. Roughly 50 percent of the contractors will be hired from Arizona and the other 50 percent from the Southwest in general. Procurement of equipment for the retrofit project is scheduled to begin in 2015, with full completion of the project scheduled by the fourth quarter of 2018. Asarco is not planning to create any new full or part-time positions at the company as a result of this project.

Freeport-McMoRan Miami Inc. – Miami Operations

Through the various phases of the construction project described above, Freeport-McMoRan Miami Inc. expects to have over 500 contractors/individuals working on the construction; although this number will vary over the construction period. This estimate does not include contractors required for planned maintenance outages during the same time frame. While the number of contractors required for planned maintenance outages is contingent upon the work to be completed during the outage, it usually requires between 500 and 1,000 contractors.

Because of the increased demand for contractors, Freeport-McMoRan Miami Inc. anticipates a short-term increase in employment by the contractors throughout the project. Contractors will be selected on an as needed basis; some local and specialty contractors from outside the State may be necessary. No new positions will be created within the Freeport-McMoRan Miami Inc. Miami smelter for this project.

Construction will occur in two major phases. Phase 1 started with ADEQ's approval of the smelter's significant permit revision authorizing the proposed construction. Phase 2 will begin shortly after internal approval to move forward is received and Freeport-McMoRan Miami Inc. anticipates the project will be completed eight quarters after that approval is received.

A statement of the probable impact of the rule making on small businesses.

(a) An identification of the small businesses subject to the rule making.

Under A.R.S. § 41-1001(21):

“Small business” means a concern, including its affiliates, which is [1] *independently owned and operated*, which is [2] *not dominant in its field* and which [3] *employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.* (Emphasis added.)

The lead and sulfur dioxide-related rules will apply only to the companies that own and operate copper smelters in Hayden and Miami, which is currently Asarco and Freeport-McMoRan Miami Inc., respectively. These companies do not qualify as small businesses.

As of 2014, Asarco’s Hayden operations employed over 600 people. Asarco is a subsidiary of Grupo Mexico, a public company, and one of the major copper producers in the world. According to its 2014 annual report, Grupo Mexico’s net profit was \$1.7 billion. Grupo Mexico nor Asarco’s Hayden operations meet the definition of a “small business” under A.R.S. § 41-1001(21).

As of this rulemaking, Asarco currently contracts with Smithco Enterprises, LLC, an operation that processes smelter byproducts like reverts for Asarco. Smithco’s business relies heavily on Asarco’s copper smelter. Several control measures required by this rulemaking (and the consent decree) will apply to some of Smithco’s operations. However, Asarco is paying for the control measures as part of the consent decree with EPA. Therefore, this rulemaking will not have a direct impact on Smithco.

In 2015, Freeport-McMoRan Miami Inc., also a public company and top producer of copper in the world, reported a \$15.8 billion revenue. Also in 2015, its Miami mine and smelter produced 43 million pounds of copper. As of 2016, roughly 760 people are employed at Freeport’s Miami operations. Freeport-McMoRan Miami Inc. Miami operations do not meet the definition of a “small business” under A.R.S. § 41-1001(21).

(b) The administrative and other costs required for compliance with the rule making.

Not applicable.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the rule making.

Not applicable.

A statement of the probable effect on state revenues.

Since any costs associated with the rulemaking will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking—attainment of the 2008 lead NAAQS and 2010 sulfur dioxide NAAQS. The smelters owned by Asarco and Freeport-McMoRan Miami Inc. are the primary source of emissions and are responsible for installing adequate control technologies that will bring the areas into compliance.

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.

To support the emission limits and control requirements in both rules, ADEQ conducted air quality modeling using data obtained from Asarco, Freeport-McMoRan Miami Inc., and air quality monitors. ADEQ followed EPA Guidance in conducting the modeling.

Before conducting the air quality modeling, ADEQ identified lead and sulfur dioxide pollution sources in the Hayden nonattainment area and sulfur dioxide pollution sources in the Miami nonattainment area. To do this, ADEQ obtained emissions data from EPA's National Emission Inventory (NEI). After analyzing the emissions data, ADEQ determined that no other sources or combination of sources contributed as much as the Asarco smelter in the Hayden nonattainment area and the Freeport-McMoRan Miami Inc. smelter in the Miami nonattainment area.

ADEQ used the emissions data, in addition to meteorological and topographical data, to develop emissions limits that demonstrate attainment. Since the copper smelters in both areas were identified as the primary sources of emissions, the modeling efforts concentrated on the facilities' operations. The emission limits derived from the modeling are conservative and factor in the emission control

equipment efficiency as well as peak smelter production levels.

The modeling Technical Support Documents outline ADEQ's methods, approach, and empirical results. The documents for both nonattainment areas are available for review at ADEQ's Records Center. See section 7 of this preamble for more information.

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

No substantive changes have been made to the rules. Non-substantive grammatical, formatting, and consistency changes have been made throughout the rules.

As published in the Notice of Proposed Rulemaking, R18-2-715 and -715.01 are being amended. As a result of additional Agency review and stakeholder comments, R18-2-715.02 is also being amended. This amendment will clarify the applicability of the relevant effective dates of the rules to the appropriate planning area. This change is not substantive and only serves to clarify the applicability of the effective dates to ensure compliance.

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

On Monday, January 9, 2017, at 2:00 p.m. at ADEQ's Phoenix Offices, the Arizona Department of Environmental Quality conducted a public hearing on the NPRM. The public comment period for the rules began on Monday, December 5, 2016, and closed on Monday, January 9, 2017, at 5:00 p.m. No oral comments were received during the public hearing. The Arizona Department of Environmental Quality (ADEQ) received written comments from the current owner and operators of the copper smelters, ASARCO LLC and Freeport McMoRan, as well as the Environmental Protection Agency (EPA). These comments are summarized and addressed below.

Comments on only R18-2-B1301, Lead Rule

I. Revise the main stack emission limit to conform to the NAAQS averaging period

- 1) **Comment:** Under proposed R18-2-B1301(C), lead (Pb) emissions from the main stack cannot exceed 0.683 pound of lead per hour (pph). Asarco comments that "the limit is designed to ensure attainment of the lead NAAQS, which is set at 0.15 micrograms per cubic meter Pb in total suspended particles as a 3-month average," and asserts that "SIP limits should be tied to the averaging time of the corresponding NAAQS."

Asarco proposes that the emission limit in the rule be revised to 0.683 pound of Pb per hour, 3-month average, rolled each calendar month. Asarco asserts that the revised limit "is protective of the NAAQS and consistent with Asarco's modeling approach in the attainment demonstration." In a supplemental comment, Asarco included proposed language to be added to R18-2-B1301(F)(1). Essentially, the proposed rule language requires Asarco to calculate compliance with the proposed three-month rolling average limit

using data from a three-month averaging period. The language also implies that Asarco can conduct additional main stack tests within a three-month period and then average the results.

(Comment submitted by ASARCO LLC)

Response: In ADEQ's attainment demonstration, lead emissions from the main stack were modeled at a constant rate of 0.683 pph, which is consistent with the current emission limit in the rule. This approach was taken due to a lack of main stack emissions data. Specifically, no data exists showing how main stack emissions vary over time. Currently, the only emissions data available comes from the facility's annual stack test, which is a brief representation of main stack emissions.

Asarco requests an emissions limit structure that would average the main stack emission rate over a three month period if the 0.683 pph limit were to be violated during one or more tests. Thus, Asarco could experience main stack emission rates higher than 0.683 pph during some testing periods, and still comply, as long as over a three month period, the average of all test results were below the limit. This varying emission rate approach is inconsistent with the attainment demonstration, in that, there is no fluctuation of the main stack emission rate in the model. A main stack emission rate greater than 0.683 pph was not modeled, therefore, attainment of the NAAQS at an emission rate greater 0.683 pph has not been demonstrated. Given this lack of support, ADEQ is not comfortable with the proposed compliance demonstration.

Furthermore, the rule and modeled limit represent Asarco's Potential To Emit (PTE) for the main stack. This is consistent with EPA's modeling guidance for the lead NAAQS (see memo from Scott Mathias, *2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers*, July 8, 2011, EPA, Office of Air Quality Planning and Standards). This guidance states, "The emissions rate to input into AERMOD for attainment demonstrations is based on the maximum allowable or permit limit emissions, often 1-hour limits." Asarco's PTE limit is the maximum allowable or permit limit.

The guidance also states, "In general, the maximum hourly emission rate (PTE) should be used as the basis for establishing emission limits and for model input. This approach is appropriately conservative for emissions units that 1) could be operated at a relatively high capacity factor (% of available capacity) over the applicable averaging period, 2) are associated with *non-continuous compliance monitoring methods* (e.g. *periodic source testing*), and 3) have emissions that are not well correlated with production or other measurable surrogate monitoring parameters" (emphasis added). Under the rule, Asarco is required to conduct main stack testing once a year and is a source that conducts non-continuous compliance monitoring, as mentioned from the guidance above. PTE therefore should serve as the basis for the emissions limit. If Asarco would prefer to have an emission limit that conforms to the NAAQS, then additional emissions data is needed, which can only be achieved through more frequent stack testing or Continuous Emissions Monitoring Systems (CEMS).

ADEQ also notes Asarco's comments that draw a connection between a NAAQS violation and a violation of an emissions limit. While emission limits are designed to attain the NAAQS—and keep the area in attainment so as to avoid a NAAQS violation—they do not need to conform to the NAAQS averaging period so long as they protect the NAAQS. As mentioned earlier, ADEQ modeled the current 0.683 pph limit and the area demonstrates attainment, ensuring protection of the NAAQS.

Finally, under the regulatory approach proposed by Asarco, the facility could choose to conduct additional tests, beyond the required annual test, only when an annual test result exceeded the standard. If a single test result showed compliance with the 0.683 pph limit, Asarco could rely on that result to show compliance for an entire year. On the other hand, if a test result exceeded 0.683 pph, Asarco could continue to retest until it came back into compliance, and then rely on that result to show compliance for the next year. Such an approach, versus a requirement to test periodically regardless of prior results, would bias results downward and would not provide a reliable demonstration of compliance.

II. Removal of three operational limits in O&M plan that have no bearing on Pb emission control

- 2) Comment: Under proposed R18-2-B1301(D)(2)(b), Asarco must submit an operations and maintenance plan (O&M plan) that addresses initial operating limits that are representative and reliable indicators of the performance of the capture system and control device operations. Asarco maintains that three of these operating limits, or parameters, do not impact Pb emissions, but rather are used to reduce SO₂ emissions. These parameters are:

“Identification of those modes of operation when the double dampers between the flash furnace vessel and the vent gas system will be closed and the interstitial space evacuated to the acid plant.” R18-2-B1301(D)(2)(b)(i).

“The temperatures of the acid plant catalyst bed, which shall at minimum, meet the manufacturer's recommendations.” R18-2-B1301(D)(2)(b)(xi).

“The acid plant catalyst replenishment schedule, which shall at minimum, meet the manufacturer's recommendations.” R18-2-B1301(D)(2)(b)(xii).

(Comment submitted by ASARCO LLC)

Response: ADEQ agrees with Asarco and removed these parameters from the final version of R18-2-B1301(D)(2)(b), as they are reliable performance indicators for SO₂ emission control systems, not those used to control Pb emissions. As Asarco notes in its comments, the Pb emissions from the flash furnace are already routed to a vent gas baghouse that substantially reduces Pb emissions. The double damper position between the flash furnace vessel and the vent gas system and the evacuation of the interstitial space to the acid plant described in R18-2-B1301(D)(2)(b)(i) is used as a SO₂ control performance indicator.

Additionally, the acid plant catalyst bed temperature and schedule are parameters used to indicate the effectiveness of sulfuric acid production from the smelter's SO₂ emissions.

The parameters removed from the Pb rule are still required under the SO₂ rule, R18-2-B1302, and Asarco is still required to submit these parameters in its operations and maintenance plan to comply with R18-2-B1302.

III. Report harmonizing

- 3) Comment: Under the proposed R18-2-B1301(H)(5), Asarco must submit a quarterly report detailing any deviations from the smelting process and related control systems that are inconsistent with the operations and maintenance plan. Asarco proposes additional language for the rule so that reports can be submitted earlier than required to coordinate with SIP and permit reporting. The proposed rule states:

“Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a quarterly report to the Department for the preceding quarter that shall include dates, times, and descriptions of deviations when the owner or operator operated smelting processes and related control equipment in a manner inconsistent with the operations and maintenance plan required by subsection (D)(2).”

Asarco requests that the following language be added to the rule:

“The owner or operator may submit a report earlier than required for purposes of harmonizing reporting under this Section with air quality permit required reporting, so long as no report is delayed beyond the period required by this Section.”

(Comment submitted by ASARCO LLC)

Response: ADEQ understands Asarco's desire to consolidate and thus streamline reporting requirements, but does not believe the requested change is necessary to achieve that goal. The phrase “[w]ithin 30 days after the end of each calendar-year quarter” means the report can be submitted *at any time* within that period. Thus, Asarco already has the ability to submit reports earlier than required.

IV. Clarification of calculation method for the converter's primary hood exhaust rate and infiltration ratio

- 4) Comment: Under the proposed R18-2-B1301(D)(2)(b)(iv), Asarco must include in its operations and maintenance plan a parameter that determines the air infiltration ratio from the converter primary hooding systems. The proposed rule states: “A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.” Asarco understands this language requires it to track Blowing hours to determine the infiltration ratio on a 24-

Blowing hour basis, rolled each Blowing hour. Asarco notes that Blowing hours will rarely, if ever, correspond to calendar hours.

(Comment submitted by ASARCO LLC)

Response: ADEQ notes that the rule is consistent with Asarco's understanding, and states "24 converter *Blowing hours*, rolled hourly..." (emphasis added). The rule already implies that the Blowing hours be rolled each Blowing hour, as Asarco explains in its comment above.

- 5) Comment: Asarco asserts that the exhaust rate in the primary hood cannot be directly measured due to space and process constraints. Asarco says the primary hood gas flow rate will be calculated as follows: "by a differential pressure-based flow meter located in the common duct downstream of the converter spray chambers. Spray system air and water flow rates will be measured for the blowing converter. The exhaust flow rate of gas exiting the blowing converter's primary hood will be calculated based on the primary gas flow rate measured downstream of the spray chamber and subtracting the spray air flow rate and spray water flow rate. It will be assumed that all of the spray water flow will be evaporated to water vapor into the gas stream."

(Comment submitted by ASARCO LLC)

Response: ADEQ, EPA, and Asarco collaborated on this rule's development, most notably the list of operational parameters in R18-2-B1301(D)(2)(b). As the operator of the copper smelter, Asarco provided extensive knowledge and expertise on the technology and feasibility of such operational parameters. ADEQ appreciates Asarco's input on the rule, while in development and as proposed, and its insight in the space and process constraints for the primary hood exhaust rate measurement. ADEQ commits to work with Asarco to ensure compliance with the rule.

- 6) Comment: Asarco maintains there will be technical issues in tracking the start and finish of Blowing and tying together all the necessary measurements, such as differential pressure-based flow meter, spray flow rate, spray water flow rate, delta T, to determine the air infiltration ratio. Asarco requests that EPA and ADEQ recognize these issues and allow "some latitude in the development and implementation of the necessary measurement systems."

(Comment submitted by ASARCO LLC)

Response: ADEQ commits to work with Asarco and EPA on ensuring the development and implementation of the necessary measurement systems to meet requirements of the rule. Asarco is also required to maintain the minimum air infiltration ratio of 1:1 under the Consent Decree.

Comments on only R18-2-B1301.01, Fugitive Lead Dust Rule

V. Confirmation that concrete pad designs are approved for SIP/rule purposes

- 7) Comment: Under R18-2-B1301.01(C)(2)(e), Asarco must develop and comply with a fugitive dust plan that includes, among other things, design plans for concrete pads for leaded materials piles specified in subsections (D)(11) and (D)(13). Under the rule, the concrete pads must be designed to “capture, store, and control stormwater or sprayed water to minimize emissions to the greatest extent practicable, including curbing around the outer edges of the concrete pad where feasible.” Like other requirements in R18-2-B1301.01, the concrete pad design requirements are the same as those in the Consent Decree. Asarco has already constructed the concrete pads used to store the revert crushing system. EPA has already approved the design for these pads for Consent Decree purposes and that the approved designs do not include a water pump system. Asarco requests that ADEQ confirms that the concrete pads for the revert crushing system will be approved under the rule since they are approved by EPA.

(Comment submitted by ASARCO LLC)

Response: ADEQ notes that the rule does not explicitly require that the concrete pad designs include a water pump system, but rather must be designed to “capture, store, and control stormwater or sprayed water,” which can be done in other ways such as curbing. While ADEQ has yet to review the concrete pad design plans and fugitive dust plan, ADEQ commits to work with Asarco on the implementation of the concrete pads, so long as the designs fulfill the requirements of the rule.

VI. Removal of chemical dust suppressant requirements for certain unpaved roads

- 8) Comment: Under R18-2-B1301.01(D)(10), Asarco is required to apply chemical dust suppressants on three identified unpaved roads according to the application intensity and schedule in the rule. Asarco refers to ADEQ’s “Unpaved Roads De Minimis Analysis” that compares the levels of Pb on unpaved roads using samples taken during EPA’s Remediation Investigation and Feasibility Study (RI/FS). These roads are the slag hauler road, smelter support area road, and concentrator access road (See SIP, Modeling TSD, Appendix G). ADEQ compared the road samples to the Arizona residential soil remediation level (SRL) of 400 parts per million (ppm) to evaluate whether the roads were significant for modeling purposes. ADEQ subsequently included the slag hauler road in the modeling demonstration and determined the smelter support area and concentrator access roads were de minimis and did not require modeling.

Asarco thus asserts that the inclusion of the chemical dust suppressant requirement for the smelter support and concentrator access unpaved roads is therefore not justified and requests that the requirements be removed from the rule.

Asarco believes that striking the requirements from the rule for the smelter support area and concentrator access roads would not be a significant change because Asarco is otherwise required to control dust from its operations, including unpaved roads, under the particulate matter requirements of its permit.

Asarco believes that including the requirements in the rule and SIP would render changes to the control regime difficult should different or more effective measures be identified.

(Comment submitted by ASARCO LLC)

Response: ADEQ considered Asarco's comment and concludes that the chemical dust suppressant application should continue to be required for all of the unpaved roads identified in the rule. The rule's requirements match those developed by Asarco in its Fugitive Dust Plan submitted to EPA pursuant to the Consent Decree. Thus, Asarco will be applying the rule-related dust suppressants also to meet Consent Decree requirements. While the concentrator access and smelter support area roads were found to contain de minimis Pb levels for the SIPs' modeling purposes, ADEQ does not believe it appropriate to remove them from the rule for the following reasons:

ADEQ's modeling demonstration did not include the concentrator access and smelter support area roads because of finding that the samples taken near the roads contained a de minimis amount of Pb. However, should operations and processes change in the future, the chemical dust suppressant requirements supply assurance that emissions will still be adequately mitigated. For example, the reverts crushing operation will be re-located near the smelter support area road as part of the Consent Decree. Since this operation is a source of Pb emissions, chemical dust suppressants on the smelter support area road will provide adequate control.

Additionally, striking the requirements from the rule would be a significant change. Asarco's permit and current particulate matter regulations do not contain the level of specificity in R18-2-B1301.01(D)(10)(a)(i)-(iii) that assists in enforcement and compliance determinations (see Asarco's Operating Permit No. 1000042, issued Oct. 9, 2001, at section X, "Non-Point Sources"). In order to bridge the gap between the current PM regulations that are not specific, R18-2-B1301.01 provides a suppressant application schedule, of which compliance is determined through the silt loading test and opacity observations required under Appendix 15.

Asarco asserts that the specific schedule and intensity in the rule and SIP makes future adjustments to the control regime difficult. The rule, however, already allows considerable flexibility in the control regime. The rule includes a provision that allows Asarco to increase the application of the suppressants if needed to control emissions, as well as maintaining backup watering trucks should emissions be observed. In the

future, Asarco could potentially pave these roads, in which case, the roads would then be regulated under R18-2-B1301(D)(9). ADEQ encourages Asarco to find more effective measures should the current control measures be found insufficient. If, in fact, Asarco's control measures for the roads need to be altered, ADEQ commits to work with Asarco to maintain effective control of emissions and reflect changes of the controls in the rule and SIP where appropriate.

- 9) Comment: Asarco disagrees with ADEQ's use of RI/FS samples taken from the slag dump to characterize the Pb levels of the entire slag hauler road. Asarco asserts that most of the samples are slag and not road-based material and are therefore, not characteristic of the slag hauler road. Additionally, Asarco maintains that the slag dump material represents less than half of the length of the slag hauler road (see SIP, Modeling TSD, Appendix G, Figure 15). Asarco maintains that the slag hauler road is not comprised of significant levels of slag until the unpaved road enters the actual slag dump, where the slag dump becomes part of the road substrate.

Asarco asserts that for the portion of the road that extends farther from the slag dump, the RI/FS samples from the smelter support area would be more representative. Asarco notes that ADEQ's analysis found that this smelter support area road contained de minimis Pb levels. Thus, Asarco believes there is no basis for believing that the portion of the slag hauler road outside of the actual slag dump is a significant source of Pb emissions.

(Comment submitted by ASARCO LLC)

Response: ADEQ considered Asarco's comment and concludes that the chemical dust suppressant application should continue to be required for all of the unpaved roads identified in the rule, including the slag hauler road and any roads to be used by slag hauler, for the following reasons:

First, Asarco asserts that ADEQ used samples of slag instead of road-based material to characterize the Pb content of the slag hauler road. This suggests that there's no mixing of the road-based material and the slag. However, the occurrence of surface creep, saltation, and resuspension of slag from the dump onto the road is likely occurring.

With regards to Asarco's assertion that the smelter support area samples may be more representative for the slag hauler road, ADEQ notes that the samples used in the De Minimis Analysis to characterize the smelter support unpaved roads were taken at a minimum of 600 feet (sample SMS 11 in Sub-Area B) and at a maximum well over 800 feet (samples SMS 23 and 24, sample SMS 39 in Sub-Area H) from the slag hauler road (See SIP, Modeling TSD, Appendix G, Figure 18 "Smelter Support Area"). These samples ranged from a minimum of 25 ppm to a maximum of 350 ppm of Pb.

However, there are samples closer to the slag hauler road that are much higher in Pb than the de minimis samples adjacent to the smelter support area road, particularly in the Sub-Area C identified in Figure 18 of Appendix G. Sub-Area C, while located in the smelter support area, is adjacent to the portion of the slag hauler road that is not near the actual slag dump. In Sub-Area C, samples SMS 08, 09, and 10 had Pb levels of 1,500, 500, and 2,100 ppm, respectively. These levels are significantly higher than levels found in the smelter support area samples considered in the De Minimis Analysis. Therefore, comparing the Pb levels on the smelter support area road to the slag hauler road is inaccurate.

Furthermore, there is evidence showing that Pb levels on the slag hauler road outside of the slag dump are significant, contrary to what Asarco's comment suggests. Another RI/FS sample, SP09.2, was taken from a road roughly 50 yards southwest of the slag hauler road. The Pb results from this sample, in the PM₁₀ fraction, are equivalent to a sample taken of crushed slag from the slag dump (sample SP05). Specifically, the crushed slag sample (SP05) resulted in a percent PM₁₀ mass of 1.456 percent, while the road sample (SP09.2) resulted in a percent PM₁₀ mass of 1.5247 percent. This is not to suggest there is crushed slag on the slag hauler road outside of the slag dump, but that in the PM₁₀ particle size fraction, Pb concentrations are similar between the two materials. Given this, ADEQ does not agree with Asarco's assertion that Pb levels on the slag hauler road outside of the slag dump are negligible.

VII. Typographical correction for cross references in R18-2-B1301.01.

- 10) Comment: Asarco notes that the proposed version of R18-2-B1301.01(D)(10) refers to subsections (D)(10)(a)(i) through (D)(10)(a)(v). However, there are no subsections (D)(10)(a)(iv) through (v) in the proposed rule. Asarco also notes that it has presented substantial reasons as to why chemical dust suppressant requirements in (D)(10)(a)(ii)-(iii) should not apply and be eliminated (see Section VI above).

(Comment submitted by ASARCO LLC)

- 11) EPA also suggests correcting the typographical error.

Response: Because ADEQ is keeping the unpaved road requirements in the final version, the cross references in (D)(10) have been corrected to "(D)(10)(a)(i) through (iii)." ADEQ thanks Asarco and EPA for bringing this typographical correction to its attention.

VIII. Clarifying silt content language in R18-2-B1301.01.

- 12) Comment: Asarco proposes clarifying what is meant by 6 percent in R18-2-B1301.01(D)(10)(c) for silt content on unpaved roads, and requests that language from Appendix 15 be incorporated into R18-2-B1301.01(D)(10)(c) as follows:

“However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner or operator shall not allow the average percent silt content to exceed 6 percent of the total sample taken pursuant to Appendix 15 procedures.”

(Comment submitted by ASARCO LLC)

Response: ADEQ concludes that the rule is already clear, and further clarification is provided in Appendix 15 language (starting at subsection A15.3). In Appendix 15, section A15.3.10, the language “average percent silt content” is used to determine the silt content. To provide some additional clarity and consistency among the subsection and Appendix 15, ADEQ added Asarco’s suggestion of “average percent” to R18-2-B1301.01(D)(10)(c) as it does not change the requirement.

ADEQ did not, however, add Asarco’s additional suggested language because the meaning of “total sample” is unclear. This language is not used in Appendix 15, which requires that three samples be collected and averaged together. Asarco’s proposed language of “total sample taken pursuant to Appendix 15 procedures” does not clarify what is meant by 6 percent, as requested, but rather introduces new terminology that is not consistent with the rule or Appendix 15.

IX. Requiring additional contingency measure(s)

- 13) Comment: EPA requests additional measures be added considering that the Ninth Circuit court (*Bahr vs. EPA*, 836 F.3d 1218, 9th Cir. 2016, “*Bahr*”) rejected EPA’s approval of contingency measures implemented “early” as inconsistent with the plain language of CAA section 172(c)(9). Subsection (E) of R18-2-B1301.01 establishes a single contingency measure (doubling the paved roads cleaning frequency from once to twice per day) that could be triggered by certain specified events, whichever happens first. One of the triggering events is a notification from EPA that the area failed to attain by its statutory attainment date which is October 3, 2019. EPA asserts that a number of other specific triggering events pre-date the area’s attainment date, and as a result, the SIP’s one contingency measure could be implemented “early,” i.e. prior to EPA’s determination of failure to attain, potentially leaving no measure to be undertaken if the area, in fact, fails to attain the standard. In light of the *Bahr* decision, and to meet requirements under CAA § 179(c)(9), EPA requests a measure or measures be set aside specifically for when the area fails to attain by October 3, 2019.

(Comment submitted by U.S. EPA, Region IX)

Response: Subsection (E) of the rule contains a compliance schedule that details the dates of when Asarco must have attainment-related control measures implemented. This compliance schedule is the area’s Reasonable Further Progress (RFP) schedule. The compliance schedule, or “certain specified events” as EPA’s comment suggests, is one of the trigger mechanisms that will be used to implement the contingency measure. Thus, the compliance schedule in R18-2-B1301.01(E) will be implemented only when a statutory

trigger for a contingency measure under CAA section 172(c)(9) occurs, i.e. failure to meet RFP. The other statutorily required trigger mechanism is a finding of failure to attain issued by EPA.

ADEQ disagrees with EPA's use of *Bahr*, in that the case was regarding already-implemented control measures being credited as a SIP's contingency measure, whereas the use of the compliance schedule in R18-2-B1301.01(E) is to meet the statutory trigger requirement in § 172(c)(9). While the control measures in the compliance schedule will be implemented prior to the attainment date, they are the control measures that will bring the area into attainment. Therefore, these control measures are not being used for contingency purposes and cannot be applied to the *Bahr* case. As mentioned earlier, the compliance schedule in R18-2-B1301.01(E) is the area's RFP schedule.

Furthermore, ADEQ believes that the rule and SIP meet the requirements of § 172(c)(9), which states:

“Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, *or* to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.” (emphasis added)

As the Act states, contingency measures must be undertaken if the area fails to make reasonable further progress **or** fails to attain by the attainment date. The Act does not imply that separate measures be set aside for each trigger, as EPA interpreted in its comments. A contingency measure, or group of measures, can be used to comply with an RFP schedule or bring an area into attainment, so long as the measure(s) provide the correct amount of emissions reductions. ADEQ's analysis of reductions contributable to the paved road cleaning contingency measure is in the SIP submittal, Section 4.0 “Control Measures.” The contingency measure in R18-2-B1301.01(E) will either bring the area back into compliance with its RFP schedule or back into attainment, whichever occurs first. Therefore, ADEQ did not revise R18-2-B1301.01(E) to include additional contingency measures.

X. Clarifying report submittal timeframes.

- 14) Comment: EPA suggests editing the following language to R18-2-B1301.01(I) “Reporting” to be consistent with the reporting timeframe in R18-2-B1301(H)(5):

~~“On a quarterly basis,~~ *Within 30 days after the end of each calendar-year quarter,* the owner or operator shall submit a report to the Department covering the prior quarter that includes the following...”

(Comment submitted by EPA, Region IX)

Response: ADEQ has added this language to the rule in order to stay consistent with reporting requirements in R18-2-B1301.

Comments on both R18-2-B1301 and R18-2-C1301

The following comments and responses pertain to Section (D), “Operational Standards” within the Hayden SO₂ and Pb rules, R18-2-B1301 and R18-2-B1302.

XI. Operating in accordance with O&M plan’s operational limits

- 15) Comment: Under both rules, subsection (D)(2)(b), Asarco must establish several operational limits for control devices in the operations and maintenance plan (O&M plan). EPA notes that “subparagraph (D)(2)(b) merely states that these limits must be established, and does not include more explicit language indicating that the owner/operator must operate in accordance with those operating limits.” EPA suggests the following edits to subsection (D)(2)(b):

“Operational limits. The owner or operator shall establish *and operate in accordance with* operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations...”

(Comment submitted by EPA, Region IX)

Response: While subsection (D)(2)(b) does not explicitly state such requirement, subsection (D)(2) does, per the following:

“Capture system and control device operations and maintenance plan. The owner or operator shall develop *and implement* an operations and maintenance plan for each capture system and/or control device...The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.” (emphasis added)

Subsection (D)(2) already requires such implementation of the entire operations and maintenance plan, covering those operational limits in subsection (D)(2)(b), in addition to monitoring requirements in (D)(2)(a), preventative maintenance procedures in (D)(2)(c), and inspection requirements in (D)(2)(d). The operations and maintenance plan must include the operational limits required under (D)(2)(b), and the owner/operator must operate (or implement) according to such limits in the plan, per the language in (D)(2).

XII. Qualifying conditions for acid plant catalyst bed temperature for O&M plan.

- 16) Comment: Subsection (D)(2)(b)(xi) is helpful in addressing preheater operation by establishing a temperature at the catalyst bed consistent with manufacturer’s recommendation. However, EPA feels that this language needs additional clarification and specificity to ensure that future acid plant emissions are of a

magnitude consistent with the assumptions in the projected emissions profile, i.e. acid plant SO₂ emissions will not exceed 1,000 pph as assumed in Asarco's projected emissions profile. EPA suggests the following revision to (D)(2)(b)(xi):

“The operating temperatures of the acid plant catalyst bed, which shall at minimum, meet manufacturer’s catalyst vendor’s recommendations for minimum reaction temperature ranges. This operating temperature range shall be achieved in each of the acid plant catalyst beds prior to introduction of gases from hot metal process sources listed in subsection (B)(9).”

(Comment submitted by U.S. EPA, Region IX)

Response: ADEQ first notes that subsection (D)(2)(b)(xi) has been removed from the R18-2-B1301, per discussions with Asarco (see Section II).

ADEQ concludes that the current rule language provides operational flexibility and also helps in addressing the acid plant's catalyst bed operations by establishing a temperature that is consistent with manufacturer recommendations. The additional clarification language proposed by EPA would again limit operations for equipment that has yet to be installed. After the equipment is in operation, Asarco may submit such temperatures of the acid plant catalyst bed to ADEQ pursuant to subsection (D)(2)(e)(iv). Changes to the operational limits in subsection (D)(2)(b), including the acid plant catalyst bed temperature, must be approved by ADEQ prior to implementation. Furthermore, Asarco will be monitoring SO₂ emissions using CEMS, which can provide accurate emissions data to assess the acid plant's operation.

XIII. Providing additional criteria for acid plant catalyst replenishment in O&M plan.

- 17) Comment: The language in subsection (D)(2)(b)(xii) is helpful to address acid plant catalyst effectiveness; however, it may be overly restrictive. EPA asserts that the projected acid plant emissions profile is based on historical acid plant emission rates, which are in turn affected by the effectiveness and quality of acid plant catalyst over that historical period. As a result, acid plant catalyst management and replenishment is an important underlying assumption in the projected emissions profile. It is similarly important in ensuring that future acid plant emissions are of a magnitude consistent with the assumptions in the projected emissions profile. While EPA feels the current language in subsection (D)(2)(b)(xii) is helpful in this regard, it focuses only the schedule of acid plant catalyst replenishment. While the frequency/schedule of replenishment is important, there are other aspects governing catalyst replenishment, such as catalyst activity, catalyst structural integrity, and possibly catalyst type, which may be relevant and warrant inclusion in the O&M plan. EPA recommends the use of the broader term “criteria” which would provide for the inclusion of other factor besides schedule in the O&M plan. Such revision is:

“The acid plant catalyst replenishment ~~schedule~~ criteria, which shall at a minimum, meet the manufacturer’s recommendations of the catalyst vendor(s).”

(Comment submitted by U.S. EPA, Region IX)

Response: ADEQ first notes that subsection (D)(2)(b)(xii) has been removed from R18-2-B1301, per discussions with Asarco (see Section II).

ADEQ agrees with EPA, and replaced “schedule” with “criteria” in the final rule. However, ADEQ concludes that the use of “vendor” may be inaccurate, as sometimes the vendor is a third party and can be different from the manufacturer, who builds the equipment and would have appropriate recommendations for operations. Therefore, ADEQ kept the use of “manufacturer’s recommendations.”

XIV. Additional recordkeeping requirements to demonstrate compliance with operational limits in O&M plan.

- 18) Comment: EPA recommends that both rules be revised in subsection (G) to include more recordkeeping requirements that are sufficient to demonstrate that the facility is operating within the O&M plan established under (D)(2), including the operational limits in (D)(2)(b).

(Comment submitted by U.S. EPA, Region IX)

Response: ADEQ concludes that the rules already supply sufficient recordkeeping requirements, including those O&M plans and plan revisions, as well as related manufacturer/engineer/operator recommendations or instructions that are used (see subsections (G) and (D)(2)(e)(i)). Additionally, subsection (G) requires recordkeeping for maintenance activities and inspections, which can be used to confirm compliance with the operational limits. Furthermore, reporting requirements in subsection (H) require the owner/operator to submit such notifications and reports of excess SO₂ emissions and exceedances of Pb emissions limits. This supplies a mechanism to either identify the cause of excess emissions or to confirm, via the absence of excess emissions, that the O&M plan is being implemented accordingly.

Comments on only R18-2-B1302, Hayden SO₂ Rule

XV. Proposed Dual SO₂ Emissions Limit

- 19) Comment: The rule states “Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period.” Asarco asserts this dual limit satisfies all Clean Air Act requirements and agency guidance as well as providing necessary flexibility. The Supreme Court has explained “so long as the ultimate effect of a State’s choice of emission limitations is compliance with the national standard for ambient air, the State is at liberty to adopt whatever mix of emission limitation it deems best suited to its particular situation.” *Train v. Nat. Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975). Moreover, in *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions* (April 2014), the U.S. Environmental Protection Agency (EPA) approved the use of the critical emission value (CEV) as well as averaging periods to meet the NAAQS. States may “develop control strategies that account for variability in 1-hour emissions rates through

emission limits with averaging times that are longer than 1 hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO₂ NAAQS.” EPA Guidance at 24.

Asarco’s proposed limit requires it to meet the 14-operating day limit (which assures attainment of the NAAQS). If that is not feasible (i.e. due to malfunction), it still is not a violation if emission in every hour of that same period never exceed the CEV, which EPA agrees is protective of the NAAQS. EPA Guidance at 23. Thus during all periods Asarco is complying with a limit that is protective of the NAAQS. If Asarco has an exceedance of the 14-operating day limit and any hour in that period exceeds 1,518 pound per hour, then Asarco is in violation.

Comment submitted by ASARCO LLC

- 20) Comment: The proposed emissions limit in R18-2-B1302(C)(1) is inconsistent with the criteria for setting long-term emissions limit outlined in EPA’s Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, April 23, 2014 (2014 Guidance), section V.D.2.b. (p. 27). In order to assure that the SIP includes a limit that provides for attainment of the 1-hour SO₂ NAAQS, revise this language to require continuous compliance with the 1-hour emission limit set at the CEV, or else continuous compliance with the 14-day limit set consistent with the 2014 Guidance, rather than allowing an exceedance of either of these limits at different times. After this revision is made, revise recordkeeping and monitoring requirement to be consistent with the final rule limit.

Comment submitted by U.S. EPA, Region IX

Response: ADEQ’s technical support documents demonstrate that the proposed rules and controls for the Hayden smelter will provide for attainment of the NAAQS with a high degree of certainty. While the dual limit is not specifically prescribed in EPA guidance, ADEQ has found no reason to believe this dual limit will not provide for attainment of the NAAQS. The 14-day limit was derived following EPA guidance methodology and the rule requires Asarco to meet this 14-day limit. The dual limit is triggered if Asarco exceeds the 14-day limit and ensures that no single hour during that 14-day period exceeds the critical emissions value, which is the one-hour modeled emission rate that ensures NAAQS compliance. This approach gives Asarco operational flexibility while providing for attainment of the SO₂ NAAQS.

XVI. Stack Testing Alternative Provision

- 21) Comment: Under R18-2-1302(E)(6), Asarco may petition the department to substitute annual stack testing in lieu of operating the CEMS for the tertiary ventilation or the anode furnace baghouse stack under certain conditions. Based on the current language of this provision, it is unclear if the five-percent SO₂ contribution must be met individually or collectively by the tertiary ventilation system emissions and anode furnace

baghouse stack emissions before substitution is permitted. We propose that the rule language be modified to clarify that contribution is evaluated individually.

Comment submitted by ASARCO LLC

Response: It is ADEQ's interpretation of the rule language as written that the tertiary ventilation or anode furnace baghouse stack CEMS can be substituted by annual stack testing provided that either source individually contributes less than 5% of total facility-wide SO₂. ADEQ has revised the rule language to further clarify this interpretation.

- 22) Comment: Asarco believes that the criteria governing approval of the request identified in R18-2-B1302(E)(6) regarding the substitution of annual stack testing in lieu of operating the CEMS for the tertiary ventilation or the anode furnace baghouse stack if either is found to contribute less than five percent of the total sulfur dioxide emissions. Asarco suggests adding language to clarify that if the owner or operator makes the demonstration required by the provisions, the department shall approved the request to substitute annual stack testing for the respective CEMS.

Comment submitted by ASARCO LLC

Response: As noted in the response to comment 24, ADEQ interprets the rule language as such that the contribution from the tertiary ventilation and anode furnace baghouse stack would be evaluated individually, not collectively. If the Agency determines that the evaluation submitted by the owner or operator is adequate, it will approve the request to substitute annual stack testing for the respective CEMS. ADEQ has revised the rule language to clarify that it will approve the request if the demonstration is adequate.

- 23) Comment: In subsection (E)(6), the underlined text in the following paragraph should be added.

...Annual stack testing shall use EPA Methods 1, 4, 6C in 40 C.F.R. 60 Appendix A or an approved alternative method by the Department and EPA Region IX. Annual stack testing shall commence no later than ~~the~~ one year after the date the continuous emission monitoring system was removed.

Comment submitted by U.S. EPA, Region IX

Response: ADEQ agrees with the inclusion of "EPA" and "40 C.F.R. 60 Appendix A" to clarify the references to the appropriate test methods. To be consistent with R18-2-B1301, Section E, Performance

Test Requirements, ADEQ will add the Department and EPA Region IX as approving alternative test methods.

XVII. Clarification of Primary Hood Measurement/Infiltration Ratio Monitoring

- 24) Comment: Under R18-2-B1302(D)(2)(b)(iv), Asarco must maintain a “minimum air infiltration ratio for the converter primary hoods of 1:1 average over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.” Asarco understands this language to require it to track Blowing hours and determine the infiltration ration on a 24-Blowing hour basis, rolled each Blowing hour. Blowing hours will rarely, if ever, correspond to calendar hours.

Comment submitted by ASARCO LLC; same comment was submitted for R18-2B1301

Response: ADEQ notes that the rule is consistent with Asarco’s understanding, and states “24 converter *Blowing hours*, rolled hourly...” (emphasis added). The rule already implies that the Blowing hours be rolled each Blowing hour, as Asarco explains in its comment above.

- 25) Comment: Asarco asserts that the exhaust rate in the primary hood cannot be directly measured due to space and process constraints. Asarco says the primary hood gas flow rate will be calculated as follows: “by a differential pressure-based flow meter located in the common duct downstream of the converter spray chambers. Spray system air and water flow rates will be measured for the blowing converter. The exhaust flow rate of gas exiting the blowing converter’s primary hood will be calculated based on the primary gas flow rate measured downstream of the spray chamber and subtracting the spray air flow rate and spray water flow rate. It will be assumed that all of the spray water flow will be evaporated to water vapor into the gas stream.”

(Comment submitted by ASARCO LLC)

Response: ADEQ, EPA, and Asarco collaborated on this rule’s development, most notably the list of operational parameters in R18-2-B1302(D)(2)(b). As the operator of the copper smelter, Asarco provided extensive knowledge and expertise on the technology and feasibility of such operational parameters. ADEQ appreciates Asarco’s input on the rule, while in development and as proposed, and its insight in the space and process constraints for the primary hood exhaust rate measurement. ADEQ commits to work with Asarco to ensure compliance with the rule.

- 26) Comment: Asarco maintains there will be technical issues in tracking the start and finish of Blowing and tying together all the necessary measurements, such as differential pressure-based flow meter, spray flow rate, spray water flow rate, delta T, to determine the air infiltration ratio. Asarco requests that EPA and

ADEQ recognize these issues and allow “some latitude in the development and implementation of the necessary measurement systems.”

(Comment submitted by ASARCO LLC)

Response: ADEQ commits to work with Asarco and EPA on ensuring the development and implementation of the necessary measurement systems to meet requirements of the rule. Asarco is also required to maintain the minimum air infiltration ratio of 1:1 under the Consent Decree.

XVIII. Ambient Air Boundary for the Hayden SO₂ Nonattainment Area

- 27) Comment: Asarco has made an agreement to purchase 40 acres at the SE ¼, SW ¼, S12, T5S R15E G&SR meridian, which is land immediately north of the slag dump at the Hayden Smelter. As with other areas on the each side of the Smelter, Asarco has the practical ability to exclude intruders from the 40 acres due to a combination of fencing, patrols, and physical barriers as set forth in its prior submittal. Asarco requests that the SIP change the ambient air boundary/process area boundary to reflect this property purchase. While there is no impact on the proposed regulatory language, the anode furnace fugitive emission rate in the SIP modeling demonstration can increase to 40.1 pounds per hour (from 32.2 pounds per hour in the current demonstration) without causing an exceedance of the NAAQS using the ADEQ modeling protocol.

Comment submitted by ASARCO LLC

Response: As noted by Asarco, the extension of the ambient air boundary does not affect the SO₂ rule language. Once the land purchase has been finalized, ADEQ is willing to submit a supplemental demonstration to the EPA showing that the anode furnace fugitive SO₂ emission rate in the SIP modeling demonstration can increase to 40.1 pounds per hour without causing a NAAQS exceedance.

XIX. General Comments

- 28) Comment: The CFR reference in Subsection (C)(2) is incorrect. The correct reference is to 40 C.F.R. 60 Subpart P.

Comment submitted by U.S. EPA, Region IX

Response: ADEQ agrees with the comment and has made the correction in the final rulemaking.

XX. Justification for no CEMS on shutdown ventilation flue

- 29) Comment: Based on the rule language in subsection (E)(1) a CEMS does not exist on the shutdown ventilation flue. Per subsection (G)(2)(e), emission from shutdown ventilation flue utilization events will be calculated rather than directly monitored. Our understanding of the shutdown ventilation flue is that it is

activated during periods of smelting and converting cessation, and serves isolate certain segments of process equipment from strong residual process gas, protecting personnel to exposure as they perform maintenance activities and other duties on process equipment. It instead directs these strong residual process gasses from source such as the INCO flash furnace into the atmosphere. While we would not necessarily consider this a bypass duct. It has the end effect of allowing strong SO₂ process gas to migrate into the atmosphere without control.

We note that the rule language for the Freeport McMoRan Miami Smelter requires a SO₂ CEMS on a process stream that serves a similar, although not identical function (i.e., the Miami Smelter's bypass duct.) please discuss why it is appropriate for the rule text to not require a SO₂ CEMS on the shutdown ventilation flue for the Hayden Smelter, noting any particular technical or economic challenges associated with monitoring emission from the flue, as well as process differences between the two smelters.

(Comment submitted by U.S. EPA, Region IX)

Response: ADEQ notes that EPA's comment was submitted in reference to the SO₂ and Pb rules. ADEQ notes that there are no CEMS for monitoring Pb emissions and this comment pertains to R18-2-B1302 only.

The primary process difference is that Asarco's shutdown ventilation flue does not see process gas as the damper only opens upon process shutdown. Unlike the Miami bypass stack, the shutdown ventilation flue at the Hayden facility is used to allow ventilation of the furnace during off-line maintenance work. During planned outages, the duct work system is ventilated to the gas plant until cleared of significant sulfur dioxide before the shutdown ventilation flue is opened. In an unplanned shutdown, the most sulfur dioxide it would see is the volume of gas that may have been in the ductwork after the interlock activates, which is one volume and was previously submitted to EPA and ADEQ. In this situation, applying a CEMS to monitor the shutdown ventilation flue is a meaningless exercise. The shutdown ventilation duct does not see any sulfur dioxide during normal operation. It does not see any process sulfur dioxide during ventilation when the unit is off-line. The only sulfur dioxide it would see is the small residual amount of sulfur dioxide in ductwork in the event of an unplanned shutdown. This can be estimated by engineering principles with as much or more precision than a CEMS. Further, there is no effective way to RATA the CEMS when there is no anticipated sulfur dioxide during normal operations. Asarco is strongly opposed to intentionally adding any sulfur dioxide to this system for the sole purpose of monitoring. *(Justification provided by Asarco LLC.)*

XXI. The SIP is protective of the NAAQS and should be approved

- 30) Comment: The purpose of a state implementation plan is to "provide for implementation, maintenance, and enforcement" of the NAAQS. 42 U.S.C. § 7410(a)(1). So long as the plan achieves this result, the state has

wide latitude to select the measures and form of limits that go into it. In this case, Asarco believes that the measures that the State has proposed amply achieve the goal of the Clean Air Act, which is to assure that the NAAQS is attained.

(Comment submitted by ASARCO LLC)

Response: ADEQ's technical support documents demonstrate that the proposed rules and controls for the Hayden smelter will provide for attainment of the NAAQS with a high degree of certainty. ADEQ's technical support documents demonstrate that with rules and controls fully implemented there is a 0.40 percent probability of a SO₂ NAAQS violation in the Hayden area.

Comments on only R18-2-C1302, Miami SO2 Rule

XXII. Revision of FMMI references

- 31) Comment: References to "Freeport McRoRan" and "Freeport McMoRan-Miami" throughout the Notice of Proposed Rulemaking should be revised to "Freeport-McMoRan Miami Inc."

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees with the comment and has made the appropriate edits throughout the rulemaking.

XXIII. Edit description of control measures in preamble

- 32) Comment: On page 3287 of the Notice of Proposed Rulemaking, the description of sulfur dioxide emission control measures in the second sentence of the third paragraph would be more accurately described as "The Miami Smelter emission control upgrades include new converter mouth cover, a new Aisle Scrubber, additional capture systems, and upgrades to the Acid Plant Tail Gas and Vent Fume Scrubbers to use caustic for SO₂ removal to ensure attainment of EPA's more stringent SO₂ NAAQS."

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees with the comment and has revised the description in the rulemaking to accurately reflect the emission control measures.

XXIV. Addition of "or"

- 33) Comment: In subsection R18-2-C1302(B)(6)(f), the word "or" should be added after the text and semicolon.

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees with the comment and had revised the rule language.

XXV. Edit cross references

- 34) Comment: In subsection R18-2-C1302(F)(2)(a) and (d), the reference to "subsection (F)(3)(c)" should be "subsection (F)(2)(c).

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees with the comment and has revised the rule language.

Comments on R18-2-715, R18-2-715.01, and R18-2-715.02

XXVI. Language to Differentiate the Copper Smelters

- 35) Comment: In subsection R18-2-715(I), the language should be revised to differentiate between the Hayden and Miami areas and to clarify applicability based on the relevant effect date of R18-2-B1302 and R18-2-C1302 and the respect SIP revision for the Hayden and Miami SO₂ nonattainment areas. For example, the R18-2-715 provisions related to SO₂ emissions (i.e., those that are part of the current Miami area maintenance SIP addressing the 1971 SO₂ standard) should no longer apply once R18-2-C1302 and the SIP revision for the Miami SO₂ Nonattainment Area (addressing the 2010 SO₂ standard) become effective. The status of R18-2-B1302 and the Hayden SO₂ Nonattainment Area is not relevant to the applicability of the R18-2-715 SO₂ provisions to the owner or operator of the primary copper smelter once R18-2-C1302 and SIP revision for the Miami SO₂ Nonattainment Area become effective.

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees that it is appropriate to revise the rule language to clarify the applicability according to the relevant effective date. ADEQ has made the appropriate revisions in the rule language.

- 36) Comment: In subsection R18-2-715.01(V), the rule language should be revised as explained in Comment 38.

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees that it is appropriate to revise the rule language to clarify the applicability according to the relevant effective date. ADEQ has made the appropriate revisions in the rule language.

- 37) Comment: In subsection R18-2-715.02, the rule language should be revised as explained in Comment #13.

(Comment submitted by Freeport-McMoRan Miami Inc.)

Response: ADEQ agrees that it is appropriate to revise the rule language to clarify the applicability according to the relevant effective date. ADEQ has made the appropriate revisions in the rule language.

- 38) Comment: The version of R18-2-715 being revised by ADEQ is not the same as the version EPA has approved into the Arizona SIP. The SIP-approved version was last amended with an effective date of July 18, 2002. Please ensure the analysis includes any changes in the intervening time, and please provide a

version of this draft rule with markup indicating differences between the SIP-approved version and this draft version.

(Comment submitted by U.S. EPA, Region IX)

Response: U.S. EPA Region IX stated that this comment was included in an internal agency draft and was inadvertently left in the final comments. Region IX indicated that ADEQ may disregard the comment. ADEQ agrees with Region IX and will disregard the comment.

Comments on Appendix 15, Soil Stabilization Methods for Unpaved Roads

XXVII. Changing opacity observation interval for unpaved roads from five seconds to 15 seconds

- 39) Comment: Appendix 15 details specific opacity observation methods to be used to determine compliance with the unpaved road requirements in R18-2-B1301.01(D)(10). The opacity method requires a certified individual to observe emissions from an unpaved road in five-second intervals. Two observations per vehicle must be made, beginning with the first reading at zero seconds and the second reading at five seconds. The observer must not look continuously at the dust plume, but rather observe the plume briefly at zero seconds and then again at five seconds.

Rather than doing five seconds, Asarco requests that the requirements be changed to 15 seconds to be consistent with EPA Methods 9 and 203A. (Method 203A is virtually identical to Method 9, except for data reduction procedures, which provide for averaging times other than six minutes.) Asarco personnel are already trained for Methods 9 and 203A, and these are the methods that have traditionally been used to observe processes throughout the plant. Asarco asserts, “Requiring a different interval for the observations required by this rule will cause confusion and is not otherwise necessary.”

(Comment submitted by ASARCO LLC)

Response: ADEQ maintains that the five-second observation is, on the contrary, necessary, as it is the only method to determine compliance with the opacity limit for unpaved roads in R18-2-B1301.01(D)(10)(c). As noted earlier, ADEQ is keeping the chemical dust suppressant requirements for unpaved roads. In order to ensure the dust suppressants are being applied according to schedule and intensity, opacity readings must be conducted accordingly.

The opacity observation requirements in Appendix 15 are virtually identical to EPA Methods 9 and 203A, however the five-second interval is unique for *unpaved roads*, whereas the 15-second interval is used for stacks or open baghouses. Furthermore, the requirements in Appendix 15 and R18-2-B1301.01(D)(10)(c) are consistent with EPA-approved methods in other jurisdictions, including Maricopa County, AZ (*Phoenix PM₁₀ Nonattainment Area FIP*, codified at 40 CFR Part 52, particularly § 52.128, Appendix A, Subsection I.A.); Imperial County, CA (See *Rule 800*, Appendix A, Section A, “Test Method for Unpaved Roads and Unpaved Traffic Areas.” Approved at 40 CFR § 52.220); San Joaquin Valley, CA (See *Rule 8011*,

Appendix A, “Visual Determination of Opacity, Section 1, “Test Method for Unpaved Roads and Unpaved Traffic Areas.” Approved at 40 CFR § 52.220); and Clark County, NV (See *Section 91*, “Fugitive Dust from Unpaved Roads, Unpaved Alleys, and Unpaved Easement Roads,” at section 91.4.1, “Stabilization Test Methods for Unpaved Roads and Unpaved Alleys.” Approved at 40 CFR § 52.1470).

XXVIII. Changing opacity observation certification requirements to match Method 9

- 40) Comment: Asarco asserts that the certification process and procedures at A15.4 are equivalent to Method 9 training requirements and that “Asarco is not in the business of conducting Method 9 or smoke school training.” Asarco already sends personnel to a certified third party to receive such training. Therefore, Asarco deems these requirements unnecessary. Asarco proposes that the language at A15.4 is amended to say “Individuals who perform opacity observations must be certified according to EPA Reference Method 9.”

(Comment submitted by ASARCO LLC)

Response: ADEQ notes that because Asarco already sends personnel to receive Method 9 training, and because those training requirements are the same as those in A15.4 (as noted in Section XXVII above), then personnel who is trained in Method 9 can conduct the opacity observations in A15.2. ADEQ notes however, that the opacity observations must be conducted in five-second intervals as opposed to the 15-second intervals in Method 9, due to the fact that the source is unpaved roads. Appendix 15 of the rule requires that “this method can only be conducted by an individual who has received certification as a qualified observer. Qualifications and testing requirements can be found in Section A15.4 of this appendix” (see section A15.2). Appendix 15 does not required Asarco to conduct the actual training, so therefore, a certified third party can remain the continued approach. The certification process and procedures in A15.4 are included in Appendix 15 for ease of use.

ADEQ thanks Asarco, Freeport McMoRan, and EPA for participating in the public comment process, and additionally for their contributions to the development of the rules.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

The rules subject of this rulemaking do not inherently require a permit. As Class I Major Sources pursuant to A.A.C. R18-2-101.61, Asarco and Freeport-McMoRan Miami Inc. are permitted in accordance with Title V of the CAA and Title 49, Chapter 3 of the Arizona Revised Statutes. Therefore, the rules will be incorporated into a revision of Asarco and Freeport-McMoRan Miami Inc. Title V 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 federal Clean Air Act and implementing regulations adopted by EPA apply to the subject of this rulemaking. The rules are designed to bring the nonattainment areas (as designated by EPA) into attainment of the federal National Ambient Air Quality Standards (NAAQS) for lead and sulfur dioxide. This rulemaking is no more stringent than required by federal law.

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

No such analysis was submitted.

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

There are no incorporations by reference added to the rules in this action.

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

Not applicable.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

- | | |
|---------------|---|
| R18-2-715. | Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements |
| R18-2-715.01. | Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring |
| R18-2-715.02. | Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions |

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS

PART A. RESERVED

PART B. HAYDEN, ARIZONA, PLANNING AREA

- R18-2-B1301. Limits on Lead Emissions from the Hayden Smelter
R18-2-B1301.01. Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter
R18-2-B1302. Limits on SO₂ Emissions from the Hayden Smelter

PART C. MIAMI, ARIZONA, PLANNING AREA

- R18-2-C1301. Reserved
R18-2-C1302. Limits on SO₂ Emissions from the Miami Smelter

- A14. Appendix 14. Procedures for Sulfur Dioxide and Lead Fugitive Emissions Studies for the Hayden Smelter
A15. Appendix 15. Test Methods for Determining Opacity and Stabilization of Unpaved Roads

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements

- A.** No change
 - 1. No change
 - 2. No change
- B.** No change
- C.** No change
- D.** No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- F.** No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - a. No change
 - b. No change
- G.** No change
- H.** No change

I. The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715(F)(1) and R18-2-715(G) until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715(F)(2) and R18-2-715(H) until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

- A.** No change
- B.** No change
- C.** No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
- D.** No change
 - 1. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(1) and R18-2-715(G)~~(4)~~ is January 15, 2002, and
 - 2. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(2), (F)(3), (G)~~(2)~~, and (H) is the effective date of this rule.
- E.** No change
 - 1. No change
 - 2. No change
- F.** No change
- G.** No change
- H.** No change
- I.** No change
- J.** No change
- K.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change

- c. No change
 - d. No change
 - e. No change
- L.** No change
- M.** No change
- N.** No change
- O.** No change
- P.** No change
- 1. No change
 - 2. No change
 - 3. The number of three-hour emissions averages that exceeded each of the applicable emissions levels listed in R18-2-715(F) and (G)(1)(b) for the compliance periods ending on each day of the month being reported;
 - 4. The date on which a cumulative occurrence limit listed in R18-2-715(F) or (G)(1)(b) was exceeded if the exceedance occurred during the month being reported; and
 - 5. No change
- Q.** No change
- R.** The owner or operator shall determine compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G)(4) as follows:
- 1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (R)(8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(G)(1)(a) if either:
 - a. No change
 - b. No change
 - 2. No change
 - 3. For purposes of subsection (R)(2), a three-hour emissions average in excess of an emission level E_f violates the associated cumulative occurrence limit n listed in R18-2-715(G)(1)(b) if:
 - a. No change
 - b. No change
 - 4. No change
 - 5. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(G)(1)(b).
 - 6. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(G)(4).

7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(G)(1)(b).
 8. No change
- S.** To determine compliance with R18-2-715(G)(1), the owner or operator of the smelter subject to R18-2-715(G)(1) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
1. No change
 2. No change
- T.** The emission limit in R18-2-715(G)(2) applies to the total of uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(G)(2) as follows:
1. No change
 2. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(G)(2) if the fugitive annual average computed at the end of each month exceeds the allowable annual average emission limit.
- U.** No change
1. No change
 2. No change
 3. No change
- V.** The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715.01 until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715.01 until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

R18-2-715.02. Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions

- A.** No change
- B.** No change
1. No change
 2. No change
 3. No change
 4. No change
- C.** No change
- D.** No change
1. No change
 2. No change

- E. No change
 - 1. No change
 - 2. No change
- F. The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715.02 until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715.02 until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS

PART A. RESERVED

PART B. HAYDEN, ARIZONA, PLANNING AREA

R18-2-B1301. Limits on Lead Emissions from the Hayden Smelter

- A. Applicability.
 - 1. This Section applies to the owner or operator of the Hayden Smelter.
 - 2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.
- B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this Section:
 - 1. “ACFM” means actual cubic feet per minute.
 - 2. “Anode furnace baghouse stack” means the dedicated stack that vents controlled off-gases from the anode furnaces to the Main Stack.
 - 3. “Blowing” shall mean the introduction of air or oxygen-enriched air into the converter furnace molten bath through tuyeres that are submerged below the level of the molten bath. The flow of air through the tuyeres above the level of the molten bath or into an empty converter shall not constitute blowing.
 - 4. “Capture system” means the collection of components used to capture gases and fumes released from one or more emission units, and to convey the captured gases and fumes to one or more control devices or a stack. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
 - 5. “Control device” means a piece of equipment used to clean and remove pollutants from gases and fumes released from one or more emission units that would otherwise be released to the

atmosphere. Control devices may include, but are not limited to, baghouses, Electrostatic Precipitators (ESPs), and sulfuric acid plants.

6. “Hayden Smelter” means the primary copper smelter located in Hayden, Gila County, Arizona at latitude 33°0’15”N and longitude 110°46’31”W.
7. “Main Stack” means the center and annular portions of the 1,000-foot stack, which vents controlled off-gases from the INCO flash furnace, the converters, and anode furnaces and also vents exhaust from the tertiary hoods.
8. “SCFM” means standard cubic feet per minute.
9. “SLAMS monitor” means an ambient air monitor part of the State and Local Air Monitoring Stations network operated by State or local agencies for the purpose of demonstrating compliance with the National Ambient Air Quality Standards.
10. “Smelting process-related fugitive lead emissions” means uncaptured and/or uncontrolled lead emissions that are released into the atmosphere from smelting copper in the INCO flash furnace, converters, and anode furnaces.

C. Emission limit. Main Stack lead emissions shall not exceed 0.683 pound of lead per hour.

D. Operational Standards.

1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission capture and/or control equipment in a manner consistent with good air pollution control practices for minimizing lead emissions to the level required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used shall be based on all information available to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace, including matte tapping, slag skimming and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system; and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
 - a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating, except during periods of monitor calibration, repair, and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system,

and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10 percent and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.

- b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. Initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:
- i. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
 - ii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
 - iii. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
 - iv. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
 - v. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
 - vi. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
 - vii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.
 - viii. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the

- anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
- ix. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
- c. Preventative maintenance. The owner or operator shall perform preventative maintenance on each capture system and control device according to written procedures specified in the operations and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with the equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.
- d. Inspections. The owner or operator shall perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's, or operator's instructions for each system and device.
- e. Plan development and revisions.
- i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's, engineer's or operator's recommendations and/or instructions used for capture system and control device operations and maintenance.
- ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
- iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department shall submit the approved changes to the volumetric flow monitoring provisions and operational

limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.

iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.

E. Performance Test Requirements.

1. Main stack performance tests. No later than 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647, the owner or operator shall conduct initial performance tests on the following:

- a. the gas stream exiting the anode furnaces baghouse prior to mixing with other gas streams routed to the Main Stack.
- b. the gas stream exiting the acid plant at a location prior to mixing with other gas streams routed to the Main Stack.
- c. the gas stream exiting the secondary baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
- d. the gas stream collected by the tertiary hooding at a location prior to mixing with other gas streams routed to the Main Stack.
- e. the gas stream exiting the vent gas baghouse at a location prior to mixing with other gas streams routed to the Main Stack.

2. Subsequent performance tests on the gas streams specified in subsection (E)(1) shall be conducted at least annually.

3. Performance tests shall be conducted under such conditions as the Department specifies to the owner or operator based on representative performance of the affected sources and in accordance with 40 CFR 60, Appendix A, Reference Method 29.

4. At least 30 calendar days prior to conducting a performance test pursuant to subsection (E)(1), the owner or operator shall submit a test plan, in accordance with R18-2-312(B) and the Arizona Testing Manual, to the Department for approval. The test plan must include the following:

- a. Test duration;
- b. Test location(s);

- c. Test method(s), including those for test method performance audits conducted in accordance with subsection (E)(6); and
- d. Source operation and other parameters that may affect the test result.
- 5. The owner or operator may use alternative or equivalent performance test methods as defined in 40 CFR § 60.2 when approved by the Department and EPA Region IX, as applicable, prior to the test.
- 6. The owner or operator shall include a test method performance audit during every performance test in accordance with 40 CFR § 60.8(g).

F. Compliance Demonstration Requirements.

- 1. For purposes of determining compliance with the Main Stack emission limit in subsection (C), the owner or operator shall calculate the combined lead emissions in pounds per hour from the gas streams identified in subsection (E)(1) based on the most recent performance tests conducted in accordance with subsection (E).
- 2. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
 - a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
 - b. Conducting a fugitive emissions study in accordance with Appendix 14 starting not later than 6 months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive emissions study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP.
- 3. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).

G. Recordkeeping. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:

- 1. All records as specified in the operations and maintenance plan required under subsection (D)(2).
- 2. All records of major maintenance activities and inspections conducted on emission units, capture systems, monitoring devices, and air pollution control equipment, including those set forth in the operations and maintenance plan required by subsection (D)(2).
- 3. All records of performance tests, test plans, and audits required by subsection (E).
- 4. All records of compliance calculations required by subsection (F).
- 5. All records of fugitive emission studies and study protocols conducted in accordance with Appendix 14.

6. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining, and casting emission units; and any malfunction of the associated air pollution control equipment that is inoperative or not operating correctly.
7. All records of reports and notifications required by subsection (H).

H. Reporting. The owner or operator shall provide the following to the Department:

1. Notification of commencement of construction of any equipment necessary to comply with the operational or emission limits.
2. Semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
3. Notification of initial startup of any such equipment within 15 business days of such startup.
4. Whenever the owner or operator becomes aware of any exceedance of the emission limit set forth in subsection (C), the owner or operator shall notify the Department orally or by electronic or facsimile transmission as soon as practicable, but no later than two business days after the owner or operator first knew of the exceedance.
5. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a quarterly report to the Department for the preceding quarter that shall include dates, times, and descriptions of deviations when the owner or operator operated smelting processes and related control equipment in a manner inconsistent with the operations and maintenance plan required by subsection (D)(2).
6. Reports from performance testing conducted pursuant to subsection (E) shall be submitted to the Department within 60 calendar days of completion of the performance test. The reports shall be submitted in accordance with the Arizona Testing Manual and A.A.C. R18-2-312(A).

R18-2-B1301.01. Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter

A. Applicability.

1. This Section applies to the owner or operator of the Hayden Smelter.
2. Effective Date. Except as otherwise provided, no later than December 1, 2018, the owner or operator shall comply with all requirements of this Section.

B. Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this Section:

1. “Acid plant scrubber blowdown drying system” means the process in which Venturi scrubber blowdown solids are dried and packaged via a thickener, filter press, electric dryer, and supersack filling stations.
2. “Control measure” means a piece of equipment used, or actions taken, to minimize lead-bearing fugitive dust emissions that would otherwise be released to the atmosphere. Control equipment may include, but are not limited to, wind fences, chemical dust suppressants, and water sprayers.

Actions may include, but are not limited to, relocating sources, curtailing operations, or ceasing operations.

3. “Hayden Lead Nonattainment Area” means the townships in Gila and Pinal Counties, as identified and codified in 40 CFR § 81.303, that are designated nonattainment for the 2008 Lead National Ambient Air Quality Standards.
4. “High wind event” means any period of time beginning when the average wind speed, as measured at a meteorological station maintained by the owner or operator that is approved by the Department, is greater than or equal to 15 miles per hour over a 15 minute period, and ending when the average wind speed, as measured at the approved meteorological station maintained by the owner or operator, falls below 15 miles per hour over a 15 minute period.
5. “Lead-bearing fugitive dust” means uncaptured and/or uncontrolled particulate matter containing lead that is entrained in the ambient air and is caused by activities, including, but not limited to, the movement of soil, vehicles, equipment, and wind.
6. “Material pile” means material, including concentrate, uncrushed reverts, crushed reverts, and bedding material, that is stored in a pile outside a building or warehouse and is capable of producing lead-bearing fugitive dust.
7. “Non-smelting process sources” means sources of lead-bearing fugitive dust that are not part of the hot metal process, which includes smelting in the INCO flash furnace, converting, and anode refining and casting. Non-smelting process sources include storage, handling, and unloading of concentrate, uncrushed reverts, crushed reverts, and bedding material; acid plant scrubber blowdown solids; and paved and unpaved roads.
8. “Ongoing visible emissions” means observed emissions to the outside air that are not brief in duration.
9. “Road” means any surface on which vehicles pass for the purpose of carrying people or materials from one place to another in the normal course of business at the Hayden Smelter.
10. “Slag” means the inorganic molten material that is formed during the smelting process and has a lower specific gravity than copper-bearing matte.
11. “Slag hauler” means any vehicle used to transport molten slag.
12. “Storage and handling” means all activities associated with the handling and storage of materials that take place at the Hayden Smelter, including, but not limited to, stockpiling, transport on conveyor belts, transport or storage in rail cars, crushing and milling, arrival and handling of offsite concentrate, bedding, and handling of reverts.
13. “Trackout/carry-out” means any materials that adhere to and agglomerate on the surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that may then fall onto the road.

C. Operational Standards.

1. Equipment operations. At all times, the owner or operator shall operate and maintain all non-smelting process sources, including all associated air pollution control equipment, control

measures, and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing lead-bearing fugitive dust, and in accordance with the fugitive dust plan required by subsection (C)(2) and performance and housekeeping requirements in subsection (D). A determination of whether acceptable operating and maintenance procedures are being used shall be based on all available information to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, review of fugitive dust plans, and inspection of the relevant equipment.

2. Fugitive dust plan. The owner or operator shall develop, implement, and follow a fugitive dust plan that is designed to minimize lead-bearing fugitive dust from non-smelting process sources. At minimum, the fugitive dust plan shall contain the following:

- a. Performance and housekeeping requirements in subsection (D).
- b. Design plans and specifications for each wind fence to be installed to control lead-bearing fugitive dust from non-smelting process sources identified in subsections (D)(11) through (D)(14). The dust plan shall contain height limits for the materials being stored in each wind fence, consistent with the design plans and specifications for that particular wind fence. Wind fence design and specifications shall:
 - i. Require full encircling of the source to be controlled, with reasonable and sufficient openings for ingress and egress;
 - ii. Consider the orientation of the wind fence to the prevailing winds;
 - iii. Consider the strength of the winds in the area where the fence will be located;
 - iv. Consider the porosity of the material to be used, which shall not exceed 50 percent; and
 - v. Consider the height of the fence relative to the height of the material being stored. At minimum, wind fence height shall be greater than or equal to the material pile height.
- c. Design plans and specifications for each new or modified water sprayer system used to control lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14). The number, type, location, watering intensity, flow rates, and other operational parameters of the water sprayers must meet moisture content objectives for sources specified in subsections (D)(11) through (D)(14). The owner or operator may include in the dust plan an exemption to the water requirements at times when the materials are sufficiently moist or it is raining and thus there is no need for additional wetting until the next scheduled watering to meet moisture content objectives. The dust plan shall include the following for each water sprayer:
 - i. watering schedule;
 - ii. watering intensity;
 - iii. minimum flow rate or pressure drop;

- iv. appropriate and/or continuous monitoring;
- v. schedule for calibration based on the manufacturer's recommended calibration schedule;
- vi. preventative maintenance schedule; and
- vii. other applicable operational parameters.
- d. Necessary improvements and/or modifications to material conveyor systems, along with a schedule for implementing improvements or modifications, targeted to minimize lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14), as applicable, to the greatest extent practicable. The improvements or modifications may include, but is not limited to, hooding of transfer points, utilizing water sprayers, and employing scrapers, brushes, or cleaning systems at all points where belts loop around themselves to catch and contain material before it falls to the ground.
- e. Design plans for the concrete pads for the non-smelting process sources specified in subsections (D)(11) and (D)(13). The concrete pads shall be designed to capture, store, and control stormwater or sprayed water to minimize emissions to the greatest extent practicable, including curbing around the outer edges of the concrete pad where feasible.
- f. Additional controls and measures for sources specified in subsections (D)(11) through (D)(14) to be implemented during high wind events. These additional controls or measures, which must include curtailment or other alteration of activity when appropriate, must be implemented at these sources during all periods of high wind.
- g. Sample inspection sheets, checklists, or logsheets for each of the inspections identified in subsection (D)(6), and in accordance with the following:
 - i. The inspection sheets or checklists shall include:
 - (1) Specific descriptions of the equipment being inspected and the specific functions being evaluated;
 - (2) The findings of the inspection;
 - (3) The date, time, and location of inspections; and
 - (4) An identification of who performed the inspection or logged the results.
 - ii. The logsheets for high wind events shall include:
 - (1) High wind event start time;
 - (2) High wind event end time;
 - (3) Description of area or activity inspected; and
 - (4) Description of corrective action taken if necessary.
- h. Design plans of the new acid plant scrubber blowdown drying system specified in subsection (D)(15).
- i. The name and location of the meteorological station, which must be approved by the Department, that is to be used by the owner or operator for determining high wind events

pursuant to subsection (B)(4) and for implementing control requirements pursuant to subsection (D)(5).

3. Plan development and revisions. The owner or operator shall develop and keep current the fugitive dust plan required by subsection (C)(2). Any plan or plan revision shall be consistent with this Section and shall be submitted to the Department for review. The initial plan shall be submitted to the Department for review no later than May 1, 2017. Plans and plan revisions shall be consistent with good air pollution control practice for fugitive dust. Except for the meteorological station to be used for high wind events pursuant to subsection (D)(5), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

D. Performance and Housekeeping Requirements. The owner or operator shall comply with these requirements at all times regardless of a fugitive dust plan.

1. Water sprayers. The owner or operator shall implement a recordkeeping system to capture sprayer operations, including identification of the particular operation, lead-bearing fugitive dust source, timing and intensity of watering, and data regarding the quantity of water used at each water sprayer.
2. Wind fences. The owner or operator shall ensure that wind fences used to control lead-bearing fugitive dust from the non-smelting process sources specified in subsections (D)(11) through (D)(14) meet the following requirements:
 - a. Wind fence height shall be greater than or equal to the material pile height. The allowed material pile height shall be posted in a readily visible location at each wind fence.
 - b. Wind fence porosity shall not exceed 50 percent.
3. Material conveyor systems. For sources specified in subsections (D)(11) through (D)(14), as applicable, the owner or operator shall:
 - a. Minimize conveyor drop heights to the greatest extent practicable.
 - b. Clean any spills from conveyors within 30 minutes of discovery. The material collected must be handled in such a way so as to minimize lead-bearing fugitive dust to the maximum extent practicable.
4. Vehicle transport of materials. The owner or operator shall maintain vehicle cargo compartments used to transport materials capable of producing lead-bearing fugitive dust so that the cargo compartment is free of holes or other openings and is covered by a tarp.
5. High wind event requirements.
 - a. During high wind events, the owner or operator shall evaluate the non-smelting process sources specified in subsections (D)(11) through (D)(14) for ongoing visible emissions using the appropriate logsheet for each source.

- b. If ongoing visible emissions are observed, the owner or operator shall promptly wet the source of emissions with the objective of mitigating further emissions.
 - c. If wetting does not appear to mitigate the ongoing visible emissions to 20 percent opacity or less, the owner or operator shall postpone associated handling of the source until the high wind event has ceased.
6. Physical inspections. The owner or operator shall conduct physical inspections as follows:
- a. Daily inspections of all water sprayers to make sure they are functioning and are in accordance with the dust plan;
 - b. Daily visual inspections of all material piles to make sure they are maintained within areas protected by a wind fence, that they are not higher than allowed for the wind fence, and to verify that moisture content requirements are met;
 - c. Daily inspections of all material handling areas to identify and clean up track out or spills of materials;
 - d. Daily inspections of conveyor systems to identify and clean up material spills;
 - e. Daily inspections of rumble grates sump levels;
 - f. Daily spot inspections of vehicles carrying lead-bearing fugitive dust-producing materials when vehicles are in use to ensure that material is not overloaded, is properly covered, and cargo compartments are intact;
 - g. Weekly inspections of wind fences for material integrity and structural stability;
 - h. Daily inspections of all paved roads to identify and clean up track out or spills of materials;
 - i. Daily inspections of unpaved roads in subsection (D)(10)(a) to identify areas where chemical dust suppressant coverage has broken down; and
 - j. Bi-weekly inspections of the acid plant scrubber blowdown drying system enclosure.
7. Opacity limit and Method 9 readings.
- a. Opacity from lead-bearing fugitive dust emissions shall not exceed 20 percent from any part of the facility at any time. Opacity shall be determined by using 40 CFR 60, Appendix A, Reference Method 9, except for unpaved roads, in which opacity shall be determined pursuant to subsection (D)(10)(c).
 - b. In the event that an employee observes ongoing visible emissions at a non-smelting process source covered by this Section, that employee shall promptly contact a Reference Method 9-certified observer, who shall promptly evaluate the emissions and conduct a Reference Method 9 reading, if possible.
 - c. A Reference Method 9-certified observer shall conduct a weekly visible emissions survey of all non-smelting process sources covered by this Section and perform a Reference Method 9 reading for any plumes that on an instantaneous basis appear to exceed 15 percent opacity.

8. Corrective actions.
- a. At any time that visible emissions from the non-smelting process sources covered by this Section appear to exceed 15 percent opacity, the owner or operator shall take prompt corrective action to identify the source of the emissions and abate such emissions, with the corrective action starting within 30 minutes after discovery.
- i. For any non-smelting process source that produces visible emissions that appear to exceed 15 percent opacity, the owner or operator shall perform an analysis of the root cause, and implement a strategy designed to prevent, to the extent feasible, the ongoing recurrence of the source of visible emissions. Within 14 days of completion of its analysis, if appropriate, the owner or operator shall modify the fugitive dust plan in subsection (C)(2) for any changes identified from the analysis differing from the current provisions of the fugitive dust plan.
- b. At any time that the owner or operator becomes aware that provisions of the fugitive dust plan and/or performance and housekeeping provisions required by this Section are not being met, the owner or operator shall take prompt action to return to compliance, which may include modifications to monitoring, recordkeeping, and reporting requirements in the fugitive dust plan. This includes, but is not limited to, the following actions:
- i. Return water sprayers to full operational status;
- ii. Repair damaged conveyor hoodings or other enclosures;
- iii. Apply additional water to ensure that sources are meeting moisture content requirements;
- iv. Clean any trackout or spillage of dust-producing material, including dropoff of dust producing material from conveyors, using a street sweeper, vacuum, or wet broom with sufficient water and at the speed recommended by the manufacturer;
- v. Reapplication of chemical dust suppressants in areas where the coating has broken down on unpaved roads; and
- vi. Revisions to the fugitive dust plan to undertake improved monitoring, recordkeeping, and reporting requirements necessary to ensure that the controls contained in the fugitive dust plan are being implemented as contemplated by the fugitive dust plan.
9. Paved Roads. These requirements apply to all roads at the facility currently paved and roads to be paved in the future. The owner or operator shall:
- a. Clean roads at least once daily with a sweeper, vacuum, or wet broom in accordance with applicable manufacturer recommendations.
- b. Maintain the integrity of the road surface.
- c. Clean up trackout and carry-out of material on the following schedule:

- h. Comply with a speed limit not to exceed 15 miles per hour for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
- 11. Concentrate Storage, Handling, and Unloading. The owner or operator shall:
 - a. Consolidate and manage all concentrate storage piles in one or more concrete storage pads.
 - b. Store concentrate in an area with a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of concentrate piles are wetted to maintain a nominal 10 percent surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - d. Minimize the footprint of the concentrate storage piles by pushing into the stockpile with a front end loader and sweeping open areas of the pads with a self-powered vacuum sweeper at least daily during use.
- 12. Uncrushed Reverts Handling and Storage. The owner or operator shall:
 - a. Manage uncrushed revert material only in areas protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surface of uncrushed revert material is wetted with the objective to minimize lead-bearing fugitive dust emissions to the greatest extent practicable.
- 13. Reverts Crushing Operations and Crushed Reverts Storage. The owner or operator shall:
 - a. Crush revert and store crushed revert only on one or more concrete pads.
 - b. Crush revert and store crushed revert only within an area protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of all crushed revert material, including revert managed after it is crushed, is wetted to maintain a nominal 10 percent surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - d. By October 2017, relocate all revert crushing operations to 33° 00' 25.84" N, 110° 46' 26.55" W and shall crush revert only at this new location.
- 14. Bedding Operations, Including Handling, Storage, and Unloading. The owner or operator shall:
 - a. Perform all bedding activities, including loading and unloading of materials to be blended, only within an area protected by a wind fence in accordance with requirements

set forth in the fugitive dust plan and pursuant to subsection (D)(2). These activities include the storage and handling areas for potentially lead-bearing fugitive dust-producing material within the bedding plant area.

- b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of material in the bedding area is wetted to maintain a nominal 10 percent surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
- c. Maintain rumble grates at all of the bedding plant's entrances and exits to shake off material on the loader tires as they enter and exit the area. Material that is tracked out of the bedding area must be cleaned up at the end of the workday.
- d. Operate its bedding activities in a manner designed to avoid any trackout outside an area protected by a wind fence. Areas of material spillage or trackout, whether inside or outside of an area protected by a wind fence, shall be rinsed or cleaned daily.

15. Acid Plant Scrubber Blowdown Drying System.

- a. The owner or operator shall dry acid plant scrubber blowdown solids only in an enclosed system that uses a venturi scrubber, thickener, filter press, and electric dryer that is maintained under negative pressure at all times that materials are being dried.
- b. The owner or operator shall maintain the negative pressure of the electric dryer using a 2,500 ACFM dryer ventilation fan that must run at all times the electric dryer is operational. Monitoring of the negative pressure shall be demonstrated through the run and stop states of the ventilation fan and electric dryer.
- c. The acid plant scrubber blowdown drying system shall include the following elements:
 - i. Venturi scrubber slurry that reports to a new thickener.
 - ii. Underflow from the thickener that goes to a filter press for further liquid removal, with the resulting filter cake sent to two electric dryers operating in parallel to provide final drying of the dust cake.
 - iii. Exhaust from the dryers sent to the packed gas cooling tower inlet duct.
 - iv. Dried cake discharged directly into bags.
- d. The owner or operator shall clean all areas previously used for scrubber blowdown drying and no longer use previous areas for scrubber blowdown drying.

E. Contingency Requirements.

- 1. If the owner or operator does not meet the compliance schedule below in subsection (E)(3), or if the Hayden Lead Nonattainment Area does not attain the 2008 Lead National Ambient Air Quality Standards by the attainment date established in the Act, whichever occurs first, then the owner or operator shall increase the paved road cleaning frequency specified in subsection (D)(9) to twice per day.

2. The owner or operator shall implement the contingency measure in subsection (E)(1) within 60 days of notification by EPA Region IX of either a failure to meet the compliance schedule in subsection (E)(3) or a failure to attain by the attainment date established in the Act, whichever occurs first.
3. The compliance schedule is as follows. The Fugitive Dust Plan referred to in the compliance schedule shall mean the Fugitive Dust Plan submitted to the Administrator by the owner or operator to comply with requirements set forth in Consent Decree No. CV-15-02206-PHX-DLR, which became effective on December 30, 2015 in the United States District Court for the District of Arizona, as that plan may be later revised pursuant to subsection (C)(3):

<u>Control Measure</u>	<u>Date of Implementation</u>
<u>Implementation of chemical dust suppression for unpaved roads.</u>	<u>Within 30 days of Administrator approval of application intensity and schedules in Fugitive Dust Plan.</u>
<u>Implementation of wind fences for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).</u>	<u>Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.</u>
<u>Implementation of water sprays for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).</u>	<u>Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.</u>
<u>Implementation of new acid plant scrubber blowdown drying system.</u>	<u>November 30, 2016</u>
<u>Implementation of new primary, secondary, and tertiary hooding systems for converter aisle for purposes of complying with requirements in R18-2-B1301.</u>	<u>July 1, 2018</u>
<u>Implementation of new ventilation system for matte tapping and slag skimming for flash furnace for purposes of complying with requirements in R18-2-B1301.</u>	<u>July 1, 2018</u>

F. Ambient Air and Meteorological Monitoring Requirements.

1. The owner or operator shall conduct ambient air monitoring and sampling for lead as follows:
 - a. At minimum, the owner or operator shall continue to maintain and operate the ambient lead monitors located at ST-14 (the smelter parking lot), ST-23 (Hillcrest area), ST-26 (post office), and ST-18 (next to the concentrate handling area).
 - b. Samples must be collected continuously at all monitor sites specified in subsection (F)(1)(a). For the purposes of this requirement, “continuously” means that 24-hour filters are placed and collected at minimum, every six calendar days at all sites consistent with 40 CFR § 58.12.
 - c. The owner or operator shall follow the Hayden Smelter’s Quality Assurance Project Plan (QAPP) applicable to these monitors.
 - d. The monitors must be operated and maintained in accordance with 40 CFR 58, Appendix A.
 - e. The owner or operator shall submit each filter removed from each monitor to a certified laboratory for analysis no later than 18 calendar days after the filter’s removal. The owner or operator shall ensure that the laboratory performs its analysis and submits the results to the owner or operator no later than 21 calendar days from the lab’s receipt of the filter.
 - f. The owner or operator shall calculate, update, and maintain as a record the following data within 14 calendar days of receipt of any results pertaining to the monitor filters received from a certified lab:
 - i. The total pollutants on the filters collected and analyzed; and
 - ii. Calculations of 30-day rolling average ambient air levels of lead for the ST-23, ST-26, and ST-18 monitors, and 60-day rolling average ambient air levels of lead for the ST-14 monitor, expressed as $\mu\text{g}/\text{m}^3$.
 - g. The owner or operator shall retain lead samples collected pursuant to this Section for at least three years. The samples shall be stored in individually sealed containers and labeled with the applicable monitor and date. Upon request, the samples shall be provided to the Department within five business days.
2. The owner or operator shall conduct meteorological monitoring as follows:
 - a. Continuously monitor and record wind speed and direction data using equipment and a meteorological station approved by the Department.
 - b. The owner or operator shall calculate and record average wind speed in miles per hour over 15 minutes, rolled each minute.
 - c. Conduct wind speed and direction measurements using methods in accordance with EPA’s Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV, Meteorological Measurements, Version 2.0.

3. The ambient air and meteorological monitoring stations required by this Section may be discontinued at the end of three full calendar years after the Hayden Lead Nonattainment Area is redesignated attainment for the 2008 Lead National Ambient Air Quality Standards.

G. Compliance Demonstration Requirements. The owner or operator shall demonstrate compliance with this Section by complying with all requirements in the fugitive dust plan pursuant to subsection (C)(2) and implementing all housekeeping and performance requirements pursuant to subsection (D).

H. Recordkeeping.

1. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:

- a. Current and past fugitive dust plans required by subsection (C)(2).
- b. Physical inspection sheets, checklists, and logsheets for inspections conducted in accordance with subsection (D)(6).
- c. All records of opacity and stabilization tests, if any, conducted in accordance with subsection (D)(10)(c).
- d. All records of surface moisture content tests, if any, conducted in accordance with subsection (D)(11), subsection (D)(13), and subsection (D)(14).
- e. All records of major maintenance activities and inspections conducted on monitors required by subsection (F).
- f. All records of quality assurance and quality control activities for the monitors required by subsection (F).
- g. All air quality monitoring samples, rolling averages of ambient lead concentrations and necessary calculations, and data required by subsection (F).
- h. All records of wind data from the meteorological station required by subsection (F).
- i. All records of any periods during which a monitoring device required by subsection (F) is inoperative or not operating correctly.
- j. All records of reports and notifications required by subsection (I).

2. All of the following records maintained for the purposes of the fugitive dust plan required by subsection (C)(2) must be maintained in a recordkeeping log or recordkeeping system. As part of the records, the owner or operator shall include the dates and times for each of the following observations or activities, the name of the employee documenting each activity or observation, and the nature and location of each observation activity:

- a. Each instance of observed visible emissions of 15 percent opacity or greater, along with a description of any corrective action undertaken and its success.
- b. Water sprayer operations, including timing and intensity of watering to be captured in the water sprayer recordkeeping system.

- c. Timing, location, type, and amount of chemical suppressant and water applied to unpaved roads, and a description of the nature and timing of any additional corrective action taken, as necessary, to minimize emissions to the greatest extent practicable.
- d. Timing and location of all sweeping and cleaning of trackout or spillage material.
- e. Timing and location of all washdown of concrete areas.
- f. Timing and location of sump cleanouts.
- g. Results of all visible emissions surveys and Reference Method 9 readings.
- h. Appropriate records for operating conditions, including electric dryer ventilation fan start and stop times for the newly designed acid plant scrubber blowdown drying system.
- i. Calibration records for all measurement devices, including maintenance of manufacturer's manuals or other documentation for suggested calibration schedules and accuracy levels for each measurement device.
- j. Dates, times, and descriptions of deviations when the owner or operator's operations was carried out in a manner inconsistent with the fugitive dust plan required by subsection (C)(2).

I. Reporting. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a report to the Department covering the prior quarter that includes the following:

- 1. All instances where observed fugitive emissions coming from sources covered in this Section were 15 percent or greater.
- 2. The date of all high wind events, with an identification of the location of the reading, wind speed, and duration of the event, and a description of actions taken as a result of the event on a source-by-source basis.
- 3. All instances where corrective action was required with identification of the emission source involved, what triggered the corrective action, what action the owner or operator undertook to abate or mitigate the problem, and whether the corrective action achieved the intended results.
- 4. A summary of all times when the electronic recordkeeping system was not recording data, and a summary and indication of the period when recorded data was outside of established operating parameters.
- 5. A summary of progress of all new construction, installation, upgrades, or modifications to equipment or structures at the facility required by the fugitive dust plan and subsection (D), including dates of commencement and completion of construction, dates of operations of new or modified equipment or structures, and dates old or outdated equipment or structures were permanently retired.
- 6. Raw monitoring data and calculated ambient lead concentrations from the ambient air monitoring stations required by subsection (F).

R18-2-B1302. Limits on SO₂ Emissions from the Hayden Smelter

A. Applicability.

1. This Section applies to the owner or operator of the Hayden Smelter. It establishes limits on sulfur dioxide emissions from the Hayden Smelter and monitoring, recordkeeping and reporting requirements for those limits.
2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.

B. Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this rule.

1. “Continuous emissions monitoring system” or “CEMS” means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and to provide, on a continuous basis, a permanent record of emissions.
2. “Operating day” means any calendar day in which any of the following occurs:
 - a. Concentrate is smelted in the smelting furnace;
 - b. Copper or sulfur bearing materials are processed in the converters;
 - c. Blister or scrap copper is processed in the anode furnaces;
 - d. Molten metal, including slag, matte or blister copper, is transferred between vessels; or
 - e. Molten metal is cast into anodes or other intermediate or final products.
3. “Out of control period” means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.

C. Sulfur Dioxide Emissions Limitations.

1. Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period.
2. The owner and operator shall not cause to be discharged into the atmosphere from any affected unit subject to 40 CFR 60 subpart P any gases which contain sulfur dioxide in excess of the limit set forth in 40 CFR § 60.163(a) (as in effect on July 1, 2016 and no later editions).

D. Operational Standards.

1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control and/or control equipment in a manner consistent with good air pollution control practices for minimizing SO₂ emissions to the levels required by subsection (C). Determination of whether acceptable operating and maintenance

procedures are being used will be based on all information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.

2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace including matte tapping, slag skimming, and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system, and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
 - a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating, except during periods of monitor calibration, repair and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/-10 percent and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.
 - b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. The initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:
 - i. Identification of those modes of operation when the double dampers between the flash furnace vessel and the vent gas system will be closed and the interstitial space evacuated to the acid plant.
 - ii. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.

- iii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
- iv. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
- v. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
- vi. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
- vii. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
- viii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.
- ix. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
- x. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
- xi. The temperatures of the acid plant catalyst bed, which shall at minimum, meet the manufacturer's recommendations.
- xii. The acid plant catalyst replenishment criteria, which shall at minimum, meet the manufacturer's recommendations.
- c. Preventative maintenance. The owner or operator must perform preventative maintenance on each capture system and control device according to written procedures specified in the operation and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.
- d. Inspections. The owner or operator must perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control

device that are consistent with the manufacturer's, engineer's or operator's instructions for each system and device.

e. Plan development and revisions.

- i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's recommendations and/or instructions used for capture system and control device operations and maintenance.
- ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
- iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.
- iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.

E. Monitoring.

1. To determine compliance with subsection (C)(1) the owner or operator of the Hayden Smelter shall install, calibrate, maintain, and operate a CEMS for continuously monitoring and recording SO₂ concentrations and stack gas volumetric flow rates at the following locations.
 - a. The exit of the acid plant;
 - b. The exit of the secondary hood particulate control device after the High Surface Area (HSA) lime injection system;
 - c. The exit of the flash furnace particulate control device after the HSA lime injection system;
 - d. The tertiary ventilation system prior to mixing with any other exhaust streams; and
 - e. The anode furnace baghouse stack prior to mixing with any other exhaust streams.
2. Except during periods of systems breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO₂ concentrations and stack gas volumetric flow rates at each location in subsection (E)(1).
3. For purposes of this section, continuous monitoring means the taking and recording of at least one measurement of SO₂ concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All CEMS required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
4. If the owner or operator can demonstrate to the Director that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO₂ control equipment would yield inaccurate results or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
5. The owner or operator shall demonstrate that the CEMS required by subsection (E)(1) meet all of the following requirements:
 - a. The SO₂ CEMS installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 2 and Performance Specification 6. The CEMS on the anode furnace baghouse stack and tertiary ventilation system shall complete an initial Relative Accuracy Test Audit (RATA) in accordance with Performance Specification 2. The RATA runs shall be tied to when the anode furnace is in use and, for the tertiary system, when the converters are in operation and/or material is being transferred in the converter aisle. Asarco may petition the Department and EPA Region IX on the criteria for subsequent RATAs for the anode furnace baghouse stack or tertiary ventilation system CEMS. The petition shall include submittal of CEMS data during the year.

- b. The SO₂ CEMS installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the relative accuracy test audit (RATA) performed on the CEMS.
 - d. The Director shall approve the location of all sampling points for monitoring SO₂ concentration and stack gas volumetric flow rates and the appropriate span values for the monitoring systems. This approval shall be in writing before installation and operation of the measurement instruments.
 - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per operating day unless the manufacturer specifies or recommends calibration at shorter intervals, in which case the owner or operator shall follow those specifications or recommendations. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
 - f. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the CEMS required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
6. The owner or operator of the Hayden Smelter may petition the Department to substitute annual stack testing for the tertiary ventilation or the anode furnace baghouse stack CEMS if the owner or operator demonstrates, for a period of two years, that either CEMS contribute(s) less than five percent individually of the total sulfur dioxide emissions. The Department must determine the demonstration adequate to approve the petition. Annual stack testing shall use EPA Methods 1, 4, and 6C in 40 CFR 60 Appendix A or an alternate method approved by the Department and EPA Region IX. Annual stack testing shall commence no later than the one year after the date the continuous emission monitoring system was removed. The owner or operator shall submit a test protocol to the Department at least 30 days in advance of testing. The protocol shall provide for three or more 24-hour runs unless the owner or operator justifies a different period and the Department approves such different period. Reports of testing shall be submitted to the Department no later than 60 days after testing or 30 days after receipt, whichever is later. The report shall provide an emissions rate, in the form of a pound per hour or pound per unit of production factor, that shall be used in the compliance demonstration in subsection (F)(1). Except as provided herein, the owner or operator shall otherwise comply with section R18-2-312 in conducting such testing.

F. Compliance Demonstration Requirements.

1. For purposes of determining compliance with the emission limit in subsection (C)(1) the owner or operator shall calculate emissions for each operating day as follows:
 - a. Sum the hourly pounds of SO₂ vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for the current operating day and the preceding 13-operating days to calculate the total pounds of SO₂ emissions over the 14-operating day averaging period, as applicable.
 - b. Divide the total amount of SO₂ emissions calculated from subsection (F)(1)(a) by 336 to calculate the 14-operating day average SO₂ emissions.
 - c. If the calculation in subsection (F)(1)(b) exceeds 1069.1 pounds per hour, then the owner or operator shall sum the hourly pounds of SO₂ vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for each hour of the current operating day and each hour of the preceding 13-operating days to ascertain if any hour exceeded 1,518 pounds per hour.
2. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
 - a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 - b. For a missing data period greater than 24 hours, substitute the greater of:
 - i. The 90th percentile hourly SO₂ concentrations recorded by the system during the previous 720 quality-assured monitor operating hours.
 - ii. The average of the hourly SO₂ concentrations recorded by the system for the hour before and the four hours after the missing data period.
 - c. Notwithstanding subsections (F)(3)(a) and (F)(3)(b), the owner or operator may present any credible evidence as to the quantity or concentration of emissions during any period of missing data.
3. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
 - a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
 - b. Conducting a fugitive study in accordance with Appendix 14 starting not later than 6 months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used

in the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP.

4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limits in subsection (C).
5. The owner and operator shall demonstrate compliance with the limit in subsection (C)(2) in accordance with 40 CFR §§ 60.165 and 60.166 (as in effect on July 1, 2016 and not later editions).

G. Recordkeeping.

1. The owner or operator shall maintain a record of each operation and maintenance plan required under subsection (D)(2).
2. The owner or operator shall maintain the following records for at least five years:
 - a. All measurements from the continuous monitoring system required by subsection (E)(1), including the date, place, and time of sampling or measurement; parameters sampled or measured; and results. All measurements will be calculated daily.
 - b. All records of quality assurance and quality control activities for emissions measuring systems required by subsection (E)(1).
 - c. All records of calibration checks, adjustments, maintenance, and repairs conducted on the continuous monitoring systems required by subsection (E); including records of all compliance calculations required by subsection (F).
 - d. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining and casting emission units; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) is inoperative or not operating correctly.
 - e. All records of planned and unplanned shutdown ventilation flue utilization events and calculations used to determine emissions from shutdown ventilation flue utilization events if the owner or operator chooses to use the alternative compliance determination method.
 - f. All records of major maintenance activities and inspections conducted on emission units, capture system, air pollution control equipment, and CEMS, including those set forth in the operations and maintenance plan required by subsection (D)(2).
 - g. All records of operating days and production records required for calculations in subsection (F).
 - h. All records of fugitive emissions studies and study protocols conducted in accordance with Appendix 14.
 - i. All records of reports and notifications required by subsection (H).

H. Reporting.

1. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring systems required by subsection (E)(1).
 2. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F for the continuous monitoring systems required by subsection (E).
 3. The owner or operator shall submit an excess emissions and monitoring systems performance report or summary report form in accordance with 40 CFR § 60.7(c) to the Director quarterly for the continuous monitoring systems required by subsection (E)(1). Excess emissions means any 14-operating day average as calculated in subsection (F) in excess of the emission limit in subsection (C)(1), any period in which the capture and control system was operating outside of its parameters specified in the capture system and control device operation and maintenance plan in subsection (D)(2). For any 14-operating day period exceeding 1069.1 pounds per hour that the owner or operator claims does not exceed the limit in subsection (C)(1) because all hours in the operating period are below 1,518 pounds per hour, the owner or operator shall submit the CEMS data for each hour during that period. All reports shall be postmarked by the 30th day following the end of each calendar quarter time period.
 4. The owner or operator shall provide the following to the Director:
 - a. The owner or operator shall notify the Director of commencement of construction of any equipment necessary to comply with the operational or emission limits.
 - b. The owner or operator shall submit semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
 - c. The owner or operator shall submit notification of initial startup of any such equipment within 15 business days of such startup.
- I.** Preconstruction review. This Section is determined to be Reasonably Available Control Technology (RACT) for SO₂ emissions from the operations subject to subsection (C) for purposes of minor source NSR requirement addressed in R18-2-334.

PART C. MIAMI, ARIZONA, PLANNING AREA

R18-2-C1301. Reserved

R18-2-C1302. Limits on SO₂ Emissions from the Miami Smelter

A. Applicability.

1. This Section applies to the owner or operator of the Miami Smelter. It establishes limits on SO₂ emissions from the Miami Smelter and monitoring, recordkeeping and reporting requirements for those limits.

2. Effective date. Except as otherwise provided, the provisions of this Section shall take effect on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this rule.

1. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to one or more control devices. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
2. "Electric furnace" means a furnace in which copper matte and slag are heated by electrical resistance without the mechanical introduction of air or oxygen.
3. "IsaSmelt® furnace" means a furnace in which air, oxygen, and fuel are injected through a top-submerged lance into a molten slag bath to produce slag and copper matte.
4. "Miami Smelter" means the primary copper smelter located near Miami, Gila County, Arizona at latitude 33°24'50"N and longitude 110°51'25"W.
5. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.
6. "Operating day" means any calendar day in which any of the following occurs:
 - a. Concentrate is smelted in the Electric furnace or IsaSmelt® furnace;
 - b. Copper or sulfur bearing materials are processed in the converters;
 - c. Blister or scrap copper is processed in the anode furnaces or mold vessel;
 - d. Molten metal, including slag, matte or blister copper, is transferred between vessels;
 - e. Molten metal is cast into molds, anodes, or other intermediate or final products;
 - f. Power is provided to the electric furnace to make or maintain a molten bath; or
 - g. The anode furnace is heated to make or maintain a molten bath.

C. Sulfur Dioxide Emission Limitations. Combined SO₂ emissions from the tail gas stack, vent fume stack, aisle scrubber stack, bypass stack, and smelter roofline fugitives shall not exceed 142.45 pounds per hour on a 30-day rolling average basis.

D. Operational Standards.

1. Process Equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and

operate smelter processes and associated emission control devices in a manner consistent with good air pollution control practices for minimizing SO₂ emissions from the process gases associated with the IsaSmelt® furnace, electric furnace, and converters at least to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.

2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and control device used to ventilate or control process gas or emissions associated with the IsaSmelt® furnace, electric furnace, and converters. The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.

- a. The operations and maintenance plan must address the following requirements as applicable to each capture system and control device:
 - i. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit or range values at all times the required system is operating. Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements.
 - ii. Operational limits and ranges. The owner or operator shall establish operating limits and ranges in the plan for each capture system and control device that are representative and reliable indicators of capture system performance and control device operation. If selected as an operational limit or range, capture system damper position settings shall be specified in the plan.
 - iii. Preventative maintenance. The owner or operator must perform preventative maintenance for each capture system and control device according to written procedures in the plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions and specified frequency for routine and long-term maintenance.
 - iv. Inspections. The owner or operator must perform inspections in accordance with written procedures in the plan for each capture system and control device, including position verification of any manual damper settings specified in the plan, that are consistent with the manufacturer's or engineer's instructions for each system and device.
- b. The owner or operator shall operate and maintain each capture system and each control device in accordance with the plan required by subsection (D)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial

approval of the plan, the owner or operator shall operate and maintain each capture system and each control device in accordance with the plan as initially submitted pursuant to subsection (D)(2). The owner or operator shall submit plan revisions for review by the Department and EPA Region IX. At any time, the Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (D)(2)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency. The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request.

E. Monitoring.

1. To determine compliance with subsection (C), the owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems to monitor and record SO₂ concentrations and stack gas volumetric flow rates at the following locations.
 - a. The acid plant tail gas stack;
 - b. The vent fume stack;
 - c. The aisle scrubber stack; and
 - d. The bypass stack.
2. To determine compliance with the emission limit in subsection (C), the owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system to monitor and record fugitive SO₂ concentrations at the Miami Smelter roofline.
3. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO₂ concentrations and stack gas volumetric flow rates at each location specified in subsection (E)(1) and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO₂ emission limit in subsection (C) in accordance with subsection (F).
4. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks and zero and span adjustments, the owner or operator shall continuously monitor fugitive SO₂ emissions at the Miami Smelter roofline and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO₂ emission limit in subsection (C) in accordance with subsection (F).
5. For purposes of subsections (E)(3) and (E)(4), continuous monitoring means the taking and recording of at least one measurement of SO₂ concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All continuous monitoring systems required

by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

6. If the owner or operator can demonstrate to the Director and EPA Region IX that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO₂ control equipment would yield inaccurate results or would be technologically infeasible, then the Director and EPA Region IX may allow measurement of the flow rate at an alternative sampling point.
7. The owner or operator shall demonstrate that the continuous monitoring systems required by subsection (E)(1) meet all of the following requirements:
 - a. Each SO₂ continuous monitoring system shall meet the specifications under 40 CFR 60, Appendix B, Performance Specification 6.
 - b. Each SO₂ continuous monitoring system installed and operated under this Section shall also meet the quality assurance requirements of 40 CFR 60, Appendix F, Procedure 1.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the relative accuracy test audit (RATA) procedures performed on each continuous monitoring system.
 - d. The Director shall approve the location of all sampling points for monitoring SO₂ concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
 - e. The span of each continuous monitoring system for the acid plant tail stack, vent fume stack, and aisle scrubber stack shall be set at a SO₂ concentration of zero to 0.20 percent by volume.
 - f. The span of the continuous monitoring system for the bypass stack shall be set at a SO₂ concentration of zero to 20 percent by volume.
 - g. The zero (or low-level value between 0 and 20 percent of the span value) and span (50 to 100 percent of span value) calibration drifts shall be checked at least once each operating day in accordance with a written procedure. The zero and span must, at a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit in 40 CFR Part 60, Appendix B, Performance Specification 2. The system must allow the amount of the excess zero and span drift to be recorded and quantified.
 - h. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring system equipment required by this Section to allow for the replacement within six hours of any monitoring system equipment part that fails or malfunctions during operation.
8. The owner or operator shall develop and implement a roofline fugitive emissions monitoring plan for the continuous monitoring system required by subsection (E)(2). The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.

- a. The roofline fugitive emissions monitoring plan must address the following requirements:
- i. The continuous monitoring system required by subsection (E)(2) must include measurement of fugitive emissions from, at a minimum, the Converter, Electric Furnace, Anode Furnace, and IsaSmelt® systems that is representative of total fugitive emissions.
 - ii. Each measurement system shall include at least one SO₂ analyzer and sufficient sampling locations that ensure collection of a representative sample along the roof monitor for each monitor system. The number of sample probes and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.
 - iii. Each measurement system shall include validation of adequate velocity for flow measurements and sufficient flow and temperature sensors to ensure calculation of representative exhaust flows through each vent. The number of such sensors and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.
 - iv. Each measurement system shall include an on-site data collection system that continuously logs and stores the measured SO₂ concentration, the measured flow velocity, and the measured temperature.
 - v. An appropriate range for zero-span drift shall be established for all SO₂ analyzers to ensure proper calibration and operation. Unless otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8), the zero (or low-level) value determination shall be made using a gas containing between zero to 20 percent of the span value for SO₂ and the span (or high-level) value determination shall be made using a certified gas with a value between 50 and 100 percent of the span value for SO₂. For each SO₂ analyzer, a daily zero-span check shall be performed by introducing zero gas and a known concentration of span gas to the analyzer. If the zero or span drift for an analyzer is greater than five percent of the span gas concentration for five consecutive days or greater than 10 percent of the span gas concentration for one day, the analyzer shall be found to be operating improperly and appropriate measures shall be taken to return the analyzer to proper operation. The zero-span check shall be repeated after any such corrective action is taken.
 - vi. All SO₂ analyzers shall be inspected quarterly by the owner or operator and inspected annually by an independent auditor. The inspections shall be conducted in accordance with the data accuracy assessment requirements of 40

CFR 60, Appendix F, Procedure 1, Section 5 or as otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8). The quarterly inspections consist of two certified concentrations of SO₂ to each sample probe system and comparing the known concentrations to the concentrations logged by the corresponding on-site data collection system to generate a relative error for each system.

vii. The flow and temperature data shall be checked daily for proper operation of flow and temperature sensors in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow or temperature sensor is found to be operating improperly, appropriate measures shall be taken to return the sensor to proper operation.

viii. All temperature sensors shall be inspected annually. The inspection shall be conducted according to the manufacturer's specification. A temperature sensor tolerance range representative of proper sensor operation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a temperature sensor is found to measure outside of an established tolerance range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.

ix. All flow sensors shall be calibrated semi-annually with calibration tools according to the manufacturer's specifications. A calibration tool range representative of proper sensor operation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow sensor is found to measure outside of an established range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.

b. The owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the plan as initially submitted pursuant to subsection (E)(2). The owner or operator shall keep the plan current and consistent with subsection (E)(8)(a). The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request. The Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (E)(8)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or

operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency.

F. Compliance Demonstration Requirements.

1. Within 180 days of the effective date set forth in subsection (A)(2), the owner or operator shall demonstrate compliance with the emission limit in subsection (C) by calculating SO₂ emissions for each operating day as follows:
 - a. Sum the hourly pounds of SO₂ measured by the continuous monitoring systems required by subsection (E)(1) and (E)(2) for the current operating day and the preceding 29 operating days to calculate the total pounds of SO₂ emissions over the 30-operating day averaging period.
 - b. Multiply the operating days occurring during a 30-day averaging period by 24 to calculate the total operating hours over the most recent 30-operating day period.
 - c. Divide the total amount of SO₂ emissions calculated from subsection (F)(1)(a) by the total operating hours calculated from subsection (F)(1)(b) to calculate the 30-day rolling hourly average SO₂ emissions.
2. For the continuous monitoring systems required by subsections (E)(1) and (E)(2), hourly emissions shall be computed as follows:
 - a. Except as provided under subsection (F)(2)(c), for a full operating hour (any clock hour with 60 minutes of unit operation), at least four valid data points are required to calculate the hourly average, i.e., one data point in each of the 15-minute quadrants of the hour.
 - b. Except as provided under subsection (F)(2)(c), for a partial operating hour (any clock hour with less than 60 minutes of unit operation), at least one valid data point in each 15-minute quadrant of the hour in which the unit operates is required to calculate the hourly average.
 - c. For any operating hour in which required maintenance or quality-assurance activities are performed:
 - i. If the unit operates in two or more quadrants of the hour, a minimum of two valid data points, separated by at least 15 minutes, is required to calculate the hourly average; or
 - ii. If the unit operates in only one quadrant of the hour, at least one valid data point is required to calculate the hourly average.
 - d. If a daily calibration error check is failed during any operating hour, all data for that hour shall be invalidated, unless a subsequent calibration error test is passed in the same hour and the requirements of subsection (F)(2)(c) are met, based solely on valid data recorded after the successful calibration.
 - e. For each full or partial operating hour, all valid data points shall be used to calculate the hourly average.

- f. Data recorded during periods of continuous monitoring system breakdown, repair, maintenance, out of control periods, calibration checks, and zero and span adjustments shall not be included in the data averages computed under subsection (F)(3).
 - g. Either arithmetic or integrated averaging of all data may be used to calculate the hourly average. The data may be recorded in reduced or non-reduced form.
3. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
- a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 - b. For a missing data period greater than 24 hours, substitute the greater of:
 - i. The 90th percentile hourly SO₂ concentrations recorded by the system during the previous 720 quality-assured monitor operating hours; or
 - ii. The average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).

G. Recordkeeping.

- 1. The owner or operator shall maintain records as specified in the capture system and control device operations and maintenance plan required under subsection (D)(2) and the roofline fugitive emissions monitoring plan required under subsection (E)(8).
- 2. The owner or operator shall maintain the following records for at least five years:
 - a. All measurements from the continuous monitoring systems required by subsection (E)(1) and (E)(2); including the date, place, and time of sampling or measurement, parameters sampled or measured, and results.
 - b. All records of all compliance calculations required by subsection (F).
 - c. All records of quality assurance and quality control activities conducted on the continuous monitoring systems required by subsection (E)(1) and (E)(2).
 - d. All records of continuous monitoring system breakdowns, repairs, maintenance, out of control periods, calibration checks, and zero and span adjustments for the continuous monitoring systems required by subsection (E)(1) and (E)(2).
 - e. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of Smelter processes; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) and (E)(2) is inoperative.

- f. All records of all major maintenance activities conducted on emission units, capture system, air pollution control equipment, and continuous monitoring systems; including those set forth in the operations and maintenance plan required by subsection (D)(2).
- g. All records of reports and notifications required by subsection (H).

H. Reporting

- 1. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F, Procedure 1 for the continuous monitoring systems required by subsection (E).
- 2. The owner or operator shall submit an excess emissions and monitoring systems performance report and-or summary report form in accordance with 40 CFR § 60.7(c) to the Director semiannually for the continuous monitoring systems required by subsection (E)(1) and (E)(2). All reports shall be postmarked by the 30th day following the end of each six-month period.
- 3. The owner or operator shall provide the following to the Director:
 - a. Notification of commencement of construction of the project improvements and equipment authorized by Significant Permit Revision No. 53592 to comply with the operational or emission limits in this Section no later than 30 days after such date.
 - b. Semiannual progress reports on construction of any such improvements and equipment on January 1 and July 1 of each calendar year until construction is complete.
 - c. Notification of initial startup of any such improvements and equipment within 15 days after such date.

I. Preconstruction review. This Section is determined to be Reasonably Available Control Technology (RACT) for SO₂ emissions from the operations subject to subsection (C) for purposes of minor source NSR requirements addressed in R18-2-334.

A14. APPENDIX 14.

PROCEDURES FOR SULFUR DIOXIDE AND LEAD FUGITIVE EMISSIONS STUDIES FOR THE HAYDEN SMELTER

A14.1. Applicability

This appendix applies to the owner or operator of the primary copper smelter located in Hayden, Arizona at latitude 33°0'15"N and longitude 110°46'31"W.

A14.2. Study Objectives

The owner or operator shall conduct fugitive emissions studies to derive a measurement or accurate estimate of total fugitive sulfur dioxide and lead emissions from the Hayden smelter during operations, including planned and unplanned start-up and shutdown periods and malfunctions, for the processes identified in A14.3 below. The studies shall include uncaptured fugitive sulfur dioxide emissions from the smelter processing units, but not emissions due

solely to the use of fuel for space heating or steam generation, burners at anode casting, or slag pouring at the slag dump. The studies shall evaluate the extent to which correlations may exist between fugitive sulfur dioxide, lead, and particulate matter (PM/PM₁₀/PM_{2.5}) emissions, and shall develop such correlations as feasible.

The studies shall also be used to help validate that the operating conditions or ranges specified in the capture and control device maintenance and operations plans required in R18-2-B1301(D)(2) and R18-2-B1302(D)(2) are consistent with operating conditions demonstrating attainment of the 2008 Lead National Ambient Air Quality Standards (NAAQS) in the Hayden 2008 Lead NAAQS Nonattainment Area State Implementation Plan (SIP) and the 2010 Sulfur Dioxide NAAQS in the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP.

A14.3. Processes Evaluated

From the fugitive emissions studies, the owner or operator shall develop an emission factor or accurate estimate of fugitive emissions for sulfur dioxide and lead during operations, including planned and unplanned start-up and shutdown periods and malfunctions, produced by each of the following smelting processes:

- i. Flash furnace building, including flash furnace and dryer operations
- ii. Converter aisle, including converter and related operations
- iii. Anode furnace aisle, including oxidizing, poling and related operations

A14.4. Averaging Periods

The emission estimate shall include the average pounds per hour emission factor for the fugitive lead and sulfur dioxide emissions from each step in the smelting process identified in A14.3. The estimate shall include all time periods, including planned and unplanned start-up and shutdown periods and malfunctions.

A14.5. Methods and Study Protocols

The owner or operator shall submit to the Department and EPA Region IX for review and approval study protocols at least six months prior to conducting fugitive emission studies. Study protocols must be approved by the Department and EPA Region IX prior to commencement of fugitive emissions studies. Study protocols shall specify the method(s) used to meet the study objectives as described in A14.2, including during all recurring operating scenarios from all processes identified in A14.3.

Each fugitive emissions measurement system shall include validation of adequate velocity for flow measurements (i.e., the expected exhaust velocity is within the measurement range of the instrument), and have a sufficient number of flow and temperature sensors to ensure calculation of representative exhaust flows through each roof monitor vent. The number of such sensors and their locations for each monitoring system shall account for the physical configuration of the roof monitor vent, the locations of emitting activities relative to the roof monitor vent, and heat generated by the equipment served by the roof monitor vent.

The fugitive emissions studies shall include operation and process information to help understand the emission impacts of startup, shutdown, malfunctions, and significant changes in process operations. This shall include, for example, dates, times and duration of these events, cause of malfunctions, and descriptions of process changes.

After the completion of each fugitive emissions study, the owner or operator shall modify study methods based on data and lessons learned from previous studies, and submit such modified methods in the proceeding study protocols prior to conducting future emissions studies.

A14.6. Study Duration, Frequency, and Submission Schedule

The first fugitive emissions study must commence not later than six months after the completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The second study commencement date shall occur within the same calendar quarter, but five years later from the date of commencement of the first study. The owner or operator shall submit the results of each fugitive emissions study in a report to the Department and EPA Region IX for review and approval not later than six months after completing a study. The data collection portion of the first and second fugitive emissions studies shall be conducted for a period of 12 months to assess the content and quantity of fugitive sulfur dioxide and lead emissions.

A14.7. Study Reports and Subsequent Studies

At minimum, fugitive emission study reports submitted pursuant to A14.6 must include:

- i. Resultant emission factors used to determine fugitive emissions of sulfur dioxide and lead.
- ii. Resultant average fugitive lead emissions for each process identified in A14.3.
- iii. Resultant peak one-hour fugitive sulfur dioxide emissions for each process identified in A14.3.
- iv. Seasonal differences, if any.
- v. Comparisons of results from past studies, if any.
- vi. Descriptions and identification of volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) that are associated with fugitive emissions.
- vii. An analysis of whether the results from a study demonstrate that the volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and the operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) continuously ensure that actual fugitive sulfur dioxide and lead emissions are consistent with the modeled emission rates used in the attainment demonstrations in the Hayden 2008 Lead NAAQS Nonattainment Area SIP and the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP. The analysis must also identify subsequent fugitive emissions studies, if any, needed to remedy inaccurate operational limits and volumetric flow monitoring provisions and to ensure attainment of the 2008 Lead NAAQS and 2010 Sulfur Dioxide NAAQS. The scope, duration, and frequency of any subsequent fugitive emissions studies

must also be identified. This provision and the report's conclusion neither require nor prohibit future fugitive emission studies.

- viii. An analysis of whether supplemental modeling is needed to demonstrate that resultant fugitive emissions from a study provide attainment of the 2008 Lead NAAQS and 2010 Sulfur Dioxide NAAQS.
- ix. A summary of methods as followed per approved study protocols.

A14.8. Revisions to Operations and Maintenance Plan

If an analysis conducted in accordance with A14.7(vi) demonstrates that fugitive emissions associated with volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) may exceed the modeled emission rates used in the Hayden 2008 Lead NAAQS Nonattainment Area SIP attainment demonstration and/or the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP attainment demonstration, and result in an increased likelihood of a NAAQS exceedance based on modeling required under A14.9, then the owner or operator shall submit to the Department for approval, not later than six months after completing a study, recommended changes to operational limits and volumetric flow monitoring provisions as an operations and maintenance plan revision pursuant to R18-2-B1301(D)(2)(e) and R18-2-B1302(D)(2)(e) that would achieve necessary fugitive emissions levels to demonstrate attainment of the NAAQS at the same level of assurance as in the attainment demonstrations. Until receiving approval of the plan revision, the owner or operator shall operate and maintain the volumetric flow monitoring provisions and the operational limits in accordance with the plan as initially submitted pursuant to R18-2-B1301(D)(2)(e) and R18-2-B1302(D)(2)(e). Additionally, the owner and operator shall submit new attainment demonstrations pursuant to A14.9, making appropriate demonstrations of attainment at adjusted fugitive emissions levels.

Similarly, if an analysis conducted in accordance with A14.7(vi) demonstrates that fugitive emissions associated with the volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) may exceed the modeled emission rates used in the Hayden 2008 Lead NAAQS Nonattainment Area SIP attainment demonstration and/or the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP attainment demonstration, and result in an increased likelihood of a NAAQS exceedance based on modeling required under A14.9, then the Department shall submit appropriate changes to the operational limits and volumetric flow monitoring provisions, and any revised attainment demonstration pursuant to A14.9, if applicable, to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.

A14.9. Supplemental Modeling

If an analysis conducted in accordance with A14.7(vii) demonstrates that fugitive emissions associated with volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits

in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) are greater than the modeled emission rates used in the Hayden 2008 Lead NAAQS Nonattainment Area SIP attainment demonstration and/or the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP attainment demonstration, the owner or operator shall remodel to demonstrate whether the 2010 Sulfur Dioxide NAAQS and/or 2008 Lead NAAQS will be attained as such higher rates. The owner or operator shall submit such modeling to the Department and EPA Region IX for review and approval not later than six months after completing a fugitive emissions study.

If the revised modeling demonstrates that the 2010 Sulfur Dioxide NAAQS and/or 2008 Lead NAAQS will be attained, the Department shall submit such modeling demonstration and revised fugitive emissions assumptions as a SIP revision to EPA Region IX not later than 12 months after completion of a fugitive emissions study. Alternatively, the owner or operator shall propose additional emission control requirements to revise the SIP, or any combination of revised control measures and modeled attainment, to demonstrate attainment of the 2010 Sulfur Dioxide NAAQS and/or 2008 Lead NAAQS.

A15. APPENDIX 15.

TEST METHODS FOR DETERMINING OPACITY AND STABILIZATION OF UNPAVED ROADS

A15.1. Applicability

This appendix applies to unpaved roads at the primary copper smelter located in Hayden, Arizona at latitude 33°0'15"N and longitude 110°46'31"W.

A15.2. Opacity Test Method

The purpose of this test method is to estimate the percent opacity of fugitive dust plumes caused by vehicle movement on unpaved roads. This method can only be conducted by an individual who has received certification as a qualified observer. Qualification and testing requirements can be found in Section A15.4 of this appendix.

A15.2.1. Step 1

Stand at least 16.5 feet from the fugitive dust source in order to provide a clear view of the emissions with the sun oriented in the 140° sector to the back. Following the above requirements, make opacity observations so that the line of vision is approximately perpendicular to the dust plume and wind direction. If multiple plumes are involved, do not include more than one plume in the line of sight at one time.

A15.2.2. Step 2

Record the fugitive dust source location, source type, method of control used, if any, observer's name, certification data and affiliation, and a sketch of the observer's position relative to the fugitive dust source. Also record the time, estimated distance to the fugitive dust source location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), observer's position to the fugitive dust source, and

color of the plume and type of background on the visible emission observation from both when opacity readings are initiated and completed.

A15.2.3. Step 3

Make opacity observations, to the extent possible, using a contrasting background that is perpendicular to the line of vision. Make opacity observations approximately 1 meter above the surface from which the plume is generated. Note that the observation is to be made at only one visual point upon generation of a plume, as opposed to visually tracking the entire length of a dust plume as it is created along a surface. Make two observations per vehicle, beginning with the first reading at zero seconds and the second reading at five seconds. The zero-second observation should begin immediately after a plume has been created above the surface involved. Do not look continuously at the plume but, instead, observe the plume briefly at zero seconds and then again at five seconds.

A15.2.4. Step 4

Record the opacity observations to the nearest 5 percent on an observational record sheet. Each momentary observation recorded represents the average opacity of emissions for a 5-second period. While it is not required by the test method, EPA recommends that the observer estimate the size of vehicles which generate dust plumes for which readings are taken (e.g. midsize passenger car or heavy-duty truck) and the approximate speeds the vehicles are traveling when readings are taken.

A15.2.5. Step 5

Repeat Step 3 (Section A15.2.3 of this appendix) and Step 4 (Section A15.2.4 of this appendix) until you have recorded a total of 12 consecutive opacity readings. This will occur once six vehicles have driven on the source in your line of observation for which you are able to take proper readings. The 12 consecutive readings must be taken within the same period of observation but must not exceed 1 hour. Observations immediately preceding and following interrupted observations can be considered consecutive.

A15.2.6. Step 6

Average the 12 opacity readings together. If the average opacity reading equals 20 percent or lower, the source is in compliance.

A15.3. Silt Content Test Method

The purpose of this test method is to estimate the silt content of the trafficked parts of unpaved roads. The higher the silt content, the more fine dust particles that are released when cars and trucks drive on unpaved roads.

A15.3.1. Equipment

A15.3.1.1. A set of sieves with the following openings: 4 millimeters (mm), 2 mm, 1 mm, 0.5 mm and 0.25 mm (or a set of standard/commonly available sieves), a lid, and collector pan.

A15.3.1.2. A small whisk broom or paintbrush with stiff bristles and dustpan 1 ft. in width. (The broom/brush should preferably have one, thin row of bristles no longer than 1.5 inches in length).

A15.3.1.3. A spatula without holes.

A15.3.1.4. A small scale with half-ounce increments (e.g., postal/package scale).

A15.3.1.5. A shallow, lightweight container (e.g., plastic storage container).

A15.3.1.6. A sturdy cardboard box or other rigid object with a level surface.

A15.3.1.7. A basic calculator.

A15.3.1.8. Cloth gloves (optional for handling metal sieves on hot, sunny days).

A15.3.1.9. Sealable plastic bags (if sending samples to a laboratory).

A15.3.1.10. A pencil/pen and paper.

A15.3.2. Step 1

Look for a routinely traveled surface, as evidenced by tire tracks. (Only collect samples from surfaces that are not damp due to precipitation or dew. This statement is not meant to be a standard in itself for dampness where watering is being used as a control measure. It is only intended to ensure that surface testing is done in a representative manner.) Use caution when taking samples to ensure personal safety with respect to passing vehicles. Gently press the edge of a dustpan (1 foot in width) into the surface four times to mark an area that is 1 square foot. Collect a sample of loose surface material using a whiskbroom or brush and slowly sweep the material into the dustpan, minimizing escape of dust particles. Use a spatula to lift heavier elements such as gravel. Only collect dirt/gravel to an approximate depth of 3/8 inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is < 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface. In other words, you are only collecting a surface sample of loose material down to 1 cm. In order to confirm that samples are collected to 1 cm in depth, a wooden dowel or other similar narrow object at least one foot in length can be laid horizontally across the survey area while a metric ruler is held perpendicular to the dowel.

At this point, you can choose to place the sample collected into a plastic bag or container and take it to an independent laboratory for silt content analysis. A reference to the procedure the laboratory is required to follow is at the end of this section.

A15.3.3. Step 2

Place a scale on a level surface. Place a lightweight container on the scale. Zero the scale with the weight of the empty container on it. Transfer the entire sample collected in the dustpan to the container, minimizing escape of dust particles. Weigh the sample and record its weight.

A15.3.4. Step 3

Stack a set of sieves in order according to the size openings specified above, beginning with the largest size opening (4 mm) at the top. Place a collector pan underneath the bottom (0.25 mm) sieve.

A15.3.5. Step 4

Carefully pour the sample into the sieve stack, minimizing escape of dust particles by slowly brushing material into the stack with a whiskbroom or brush. (On windy days, use the trunk or door of a car as a wind barricade.) Cover the stack with a lid. Lift up the sieve stack and shake it vigorously up, down and sideways for at least 1 minute.

A15.3.6. Step 5

Remove the lid from the stack and disassemble each sieve separately, beginning with the top sieve. As you remove each sieve, examine it to make sure that all of the material has been sifted to the finest sieve through which it can pass (e.g., material in each sieve [besides the top sieve that captures a range of larger elements] should look the same size). If this is not the case, re-stack the sieves and collector pan, cover the stack with the lid, and shake it again for at least 1 minute. (You only need to reassemble the sieve(s) that contain material, which requires further sifting.)

A15.3.7. Step 6

After disassembling the sieves and collector pan, slowly sweep the material from the collector pan into the empty container originally used to collect and weigh the entire sample. Take care to minimize escape of dust particles. You do not need to do anything with material captured in the sieves; only the collector pan. Weigh the container with the material from the collector pan and record its weight.

A15.3.8. Step 7

If the source is an unpaved road, multiply the resulting weight by 0.38. The resulting number is the estimated silt loading. Then, divide by the total weight of the sample you recorded earlier in Step 2 (Section A15.3.3 of this appendix) and multiply by 100 to estimate the percent silt content.

A15.3.9. Step 8

Select another two routinely traveled portions of the unpaved road and repeat this test method. Once you have calculated the silt loading and percent silt content of the 3 samples collected, average your results together.

A15.3.10. Step 9

Examine results. If the average silt loading is less than 0.33 oz/ft², the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft², then proceed to examine the average percent silt content. If the source is an unpaved road and the average percent silt content is 6 percent or less, the surface is STABLE. If your field test results are within 2 percent of the standard (for example, 4–8 percent silt content on an unpaved road), it is recommended that you collect 3 additional samples from the source according to Step 1 (Section A15.3.2 of this appendix) and take them to an independent laboratory for silt content analysis.

A15.3.11. Independent Laboratory Analysis

You may choose to collect 3 samples from the source, according to Step 1 (Section A15.3.2 of this appendix), and send them to an independent laboratory for silt content analysis rather than conduct the sieve field procedure. If so, the test method the laboratory is required to use is: U.S. Environmental Protection Agency (1995), “Procedures for Laboratory Analysis of Surface/Bulk Dust Loading Samples”, (AP-42 Fifth Edition, Volume I, Appendix C.2.3 “Silt Analysis”), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina.

A15.4. Qualification and Testing

A15.4.1. Certification Requirements

To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15 percent opacity on any one reading and an average error not to exceed 7.5 percent opacity in each category. Candidates shall be tested according to the procedures described in Section A15.4.2 of this appendix. Any smoke generator used pursuant to Section A15.4.2 of this appendix shall be equipped with a smoke meter which meets the requirements of Section A15.4.3 of this appendix. Certification tests that do not meet the requirements of Sections A15.4.2 and A15.4.3 of this appendix are not valid. The certification shall be valid for a period of 6 months, and after each 6-month period the qualification procedures must be repeated by an observer in order to retain certification.

A15.4.2. Certification Procedure

The certification test consists of showing the candidate a complete run of 50 plumes, 25 black plumes and 25 white plumes, generated by a smoke generator. Plumes shall be presented in random order within each set of 25 black and 25 white plumes. The candidate assigns an opacity value to each plume and records the observation on a suitable form. At the completion of each run of 50 readings, the score of the candidate is determined. If a candidate fails to qualify, the complete run of 50 readings must be repeated in any retest. The smoke test may be administered as part of a smoke school or training program, and may be preceded by training or familiarization runs of the smoke generator, during which candidates are shown black and white plumes of known opacity.

A15.4.3. Smoke Generator Specifications

Any smoke generator used for the purpose of Section A15.4.2 of this appendix shall be equipped with a smoke meter installed to measure opacity across the diameter of the smoke generator stack. The smoke meter output shall display in-stack opacity, based upon a path length equal to the stack exit diameter on a full 0 percent to 100 percent chart recorder scale. The smoke meter optical design and performance shall meet the specifications shown in Table 1 of this appendix. The smoke meter shall be calibrated as prescribed in Section A15.4.3.1 of this appendix prior to conducting each smoke reading test. At the completion of each test, the zero and span drift shall be checked, and if the drift exceeds plus or minus 1 percent opacity, the condition shall be corrected prior to conducting any subsequent test runs. The smoke meter shall be demonstrated, at the time of installation, to meet the specifications listed in Table 1 of this appendix. This demonstration shall be repeated following any subsequent repair or replacement of the photocell or associated electronic circuitry, including the chart recorder or output meter, or every 6 months, whichever occurs first.

A15.4.3.1. Calibration

The smoke meter is calibrated after allowing a minimum of 30 minutes warm-up by alternately producing simulated opacity of 0 percent and 100 percent. When stable response at 0 percent or 100 percent is noted, the smoke meter is adjusted to produce an output of 0 percent or 100 percent, as appropriate. This calibration shall be repeated until stable 0 percent and 100 percent readings are produced without adjustment. Simulated 0 percent and 100 percent opacity values may be produced by alternately switching the power to the light source on and off while the smoke generator is not producing smoke.

A15.4.3.2. Smoke Meter Evaluation

The smoke meter design and performance are to be evaluated as follows:

A15.4.3.2.1. Light Source

Verify, from manufacturer's data and from voltage measurements made at the lamp, as installed, that the lamp is operated within plus or minus 5 percent of the nominal rated voltage.

A15.4.3.2.2. Spectral Response of Photocell

Verify from manufacturer's data that the photocell has a photopic response (i.e., the spectral sensitivity of the cell shall closely approximate the standard spectral-luminosity curve for photopic vision which is referenced in (b) of Table 1 of this appendix).

A15.4.3.2.3. Angle of View

Check construction geometry to ensure that the total angle of view of the smoke plume, as seen by the photocell, does not exceed 15°. Calculate the total angle of view (ϕ_v) as follows:

$$\text{Total Angle of View} = 2 \tan^{-1} (d/2L)$$

where:

d = The photocell diameter + the diameter of the limiting aperture; and

L = The distance from the photocell to the limiting aperture. The limiting aperture is the point in the path between the photocell and the smoke plume where the angle of view is most restricted. In smoke generator smoke meters, this is normally an orifice plate.

A15.4.3.2.4. Angle of Projection

Check construction geometry to ensure that the total angle of projection of the lamp on the smoke plume does not exceed 15°. Calculate the total angle of projection (ϕ_p) as follows:

$$\text{Total Angle of Projection} = 2 \tan^{-1} (d/2L)$$

where:

d = The sum of the length of the lamp filament + the diameter of the limiting aperture; and

L = The distance from the lamp to the limiting aperture.

A15.4.3.2.5. Calibration Error

Using neutral-density filters of known opacity, check the error between the actual response and the theoretical linear response of the smoke meter. This check is accomplished by first calibrating the smoke meter, according to Section A15.4.3.1 of this appendix, and then inserting a series of three neutral-density filters of nominal opacity of 20 percent, 50 percent, and 75 percent in the smoke meter path length. Use filters calibrated within plus or minus 2 percent. Care should be taken when inserting the filters to prevent stray light from affecting the meter. Make a total of five nonconsecutive readings for each filter. The maximum opacity error on any one reading shall be plus or minus 3 percent.

A15.4.3.2.6. Zero and Span Drift

Determine the zero and span drift by calibrating and operating the smoke generator in a normal manner over a 1-hour period. The drift is measured by checking the zero and span at the end of this period.

A15.4.3.2.7. Response Time

Determine the response time by producing the series of five simulated 0 percent and 100 percent opacity values and observing the time required to reach stable response. Opacity values of 0 percent and 100 percent may be simulated by alternately switching the power to the light source off and on while the smoke generator is not operating.

Table 1: Smoke Meter Design and Performance Specifications

<u>Parameter</u>	<u>Specification</u>
a. <u>Light source</u>	<u>Incandescent lamp operated at nominal rated voltage</u>
b. <u>Spectral response of photocell</u>	<u>Photopic (daylight spectral response of the human eye)</u>
c. <u>Angle of view</u>	<u>15° maximum total angle</u>
d. <u>Angle of projection</u>	<u>15° maximum total angle</u>
e. <u>Calibration error</u>	<u>Plus or minus 3 percent opacity; maximum</u>
f. <u>Zero and span drift</u>	<u>Plus or minus 1 percent opacity, 30 minutes</u>
g. <u>Response time</u>	<u>Less than or equal to 5 seconds</u>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

January 13, 2017

Timothy Franquist
Director, Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

RE: Comments on the Draft State Implementation Plan for the Hayden Nonattainment Area for the 2008 Primary Lead (Pb) standard and the 2010 Primary Sulfur Dioxide (SO₂) standard and associated rules; Comments on State Implementation Plan for the Miami Nonattainment area for the 2010 Primary SO₂ standard and associated rules.

Dear Mr. ^{Jim} Franquist:

This letter transmits the U.S. Environmental Protection Agency's (USEPA) comments based on our preliminary review of the above State Implementation Plans (SIPs) developed by the Arizona Department of Environmental Quality (ADEQ). We appreciate the opportunity to review the SIPs and to provide our comments. Our comments are based on an assessment of how the SIPs meet the requirements of the Clean Air Act and the respective regulations and guidance for each pollutant.

Although we expect that you will consider and incorporate all the changes indicated by our comments, we wanted to highlight the following as critical issues to be addressed in the above SIPs:

1. Replacing the Hybrid or Dual Emission limits proposed in the Hayden SO₂ SIP with the approach for setting long term emissions limits as outlined in the EPA's Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, April 23, 2014;
2. Providing additional detail for the EPA to determine whether the ambient air boundaries used for dispersion modeling are appropriate for all the above SIPs;
3. Making specific rule language changes as indicated in the attached document section titled "EPA Region 9 Comments to Arizona Department of Environmental Quality on Rules for Pb and SO₂ Nonattainment Area SIPs".

We appreciate the collaborative working relationship between ADEQ and USEPA over the past many months, and the effort put forward by you and your staff. This has been an extremely unique and complex effort, and we look forward to moving these SIPs and rules forward for the protection of Arizona residents and the environment. If you have any questions, or wish to discuss our comments further, please contact me at 520-498-0118 or Krishna Viswanathan at 520-999-7880.

Sincerely,

A handwritten signature in cursive script that reads "Colleen McKaughan".

Colleen McKaughan
Associate Director, Air Division
USEPA, Region 9

Attachments

ADEQ Hayden Pb SIP Review

1.0 Introduction

- Check to see if footnotes are accurate and all cited documents are publicly available in the links provided.
- Page 6:
 - Section 1.5.1 – Last sentence in first paragraph needs to be updated.
 - Emission threshold is 0.5 tpy not 0.05 tpy.
- Section 1.6.4 This section could be considerably shortened with citations to already published documents. Except for some summary information, much of this discussion is irrelevant for the SIP.

2.0 Air Quality Monitoring

- In listing monitoring regulations on page 20, please revise the Part 58 bullet to match the Hayden SO₂ SIP bullet and state “40 CFR Part 58 and Appendices A, C, D, and E.” The subparts currently listed are incomplete, and do not include the appendices.
- In listing monitoring regulations on page 20, please delete the subparts and simply refer to the 40 CFR 50. If it is necessary to specify the subparts, please include Subparts A, C, and E.
- To clarify/add to what is provided on page 20, to be used for determining NAAQS compliance (i.e. for boundary determinations associated with NAAQS designations), data must be measured using FRM/FEM/ARMS, follow the quality assurance and quality control requirements contained in 40 CFR 58 Appendix A, siting requirements contained in 40 CFR 58 Appendix E, and be analyzed in accordance with the relevant portion of 40 CFR Part 50.
- Footnote 32 appears to contain an inactive link.
- Page 22 contains an Error! Message related to Figure 3.
- Page 22 states that ADEQ runs meteorological and Pb monitoring at Globe Highway. This is confusing given that the discussion on the preceding page only discussed meteorological monitoring at Camera Hill and Hayden Old Jail. Please clarify.
- Pb collocation requirements are contained in 40 CFR 58 Appendix A. The first sentence of Section 2.1.2 should therefore refer to Appendices D and A.
- In section 2.2, please include an explanation as to why the data are shown only through 2014, if it is not included elsewhere in the document.

4.0 Control Measures

Section 4.6

- Table 22 – Please use “EPA approval” “EPA Administrator approval” in lieu of “administrator approval”.
- We are not sure Figure 8 with data from 3 different monitors is helpful or provides useful information. We recommend removing this figure or further explaining why this is necessary.
- Also please note that the red line, for 2016-2019, are modeled estimates. So the red line is observed (past) and estimated (future) concentrations at the monitors.

- Please clarify the following:
 - a. Section 4.7.3 - It is not clear that the paved roads silt loading reduction of 55% is due to sweeping roads twice a day. MAG's analysis suggests that this reduction in silt loading is achieved by one sweeping of the paved roads with a conventional sweeper on the day of sweeping. It is also not clear that sweeping twice a day linearly decreases silt loading by an additional 55%.
 - b. R18-2-B1301.01 requires cleaning roads at least once daily with a sweeper, vacuum, or wet broom in accordance with manufacturer recommendations. This is assumed to provide for a 55% reduction in silt loading, which is already required as part of the base control strategy for the SIP. Therefore, it is not clear what silt loading reduction was assumed as an input for modeling for twice a day sweeping and how that is considered additional control that can be used as a contingency measure.

5.0 Attainment Demonstration

- Section 5.2 – Table 23 outlines reductions assumed in the modeling attainment demonstration. Here or in the Emission Inventory sections please further describe how the 84% emission reduction is achieved for paved roads.

Appendix A (Emission Inventory Technical Support Document)

- The Emission Inventory TSD contains table summaries of emission calculations for the 2012 base year and the 2019 projected year. These tables represent the final summaries of an extensive amount of work on the part of ADEQ staff in quantifying and projecting Pb emissions from point and nonpoint sources in the nonattainment area. It does not appear that any of the supporting calculations used to develop these summary tables are present in the proposed SIP. Please describe these supporting calculations and assumptions in greater detail in the Emission Inventory TSD, and include the underlying documentation in the final submittal to EPA. If the entirety of the underlying spreadsheets and documents are too extensive or voluminous to practicably make available for review, please focus on the most crucial or often-referenced spreadsheets and documents.

Appendix B (Modeling Technical Support Document)

- EPA's memorandum "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions", dated April 23, 2014, Appendix A, Section 5.3 states "receptors should be placed in areas that are considered ambient air" and "at key locations such as around facility fence lines (which define the ambient air boundary for a particular source)". Ambient air is defined as "that portion of the atmosphere, external to buildings, to which the general public has access."¹ EPA's longstanding view is that the exemption from ambient air is available only for the atmosphere over land owned or controlled by the source and to which public access is precluded by a fence or other physical barriers.² This represents EPA's national policy with regard to ambient air, and has been

¹ 40 CFR 50.1(e)

² Letter from Administrator Douglas M. Costle, EPA to Senator Jennings Randolph, Chairman, Environment and Public Works Committee (Dec. 19, 1980).

reaffirmed on multiple occasions.^{3,4,5} As part of demonstrating if an exemption is appropriate, a source must show that the necessary steps have been taken to preclude the general public from accessing the property by some type of physical barrier, such as a fence, wall or a natural obstruction.⁶

In general, the documentation provided was insufficient for EPA to conclude that exemption from ambient air would be appropriate. Additional supporting information is needed, as well as further evaluation of the adequacy of the existing physical barriers. Based on our review of the information currently available, we have the following recommendations:

The Modeling Technical Support Documents for the Hayden SO₂ and Pb SIPs provide a description of the ambient air boundary used for attainment modeling for the Asarco smelter. Upon preliminary review of the documentation provided, it is unclear if a sufficient physical barrier that precludes public access exists along the entirety of the indicated boundary. We recommend areas closest to towns and roadways (segments B-H) include additional fencing to form a continuous fence, due to the potential for public access. For Segments A and I, we also recommend a physical barrier consisting of additional fencing except in those areas, such as where the distance increases from the main road (and any other roads), for which the State can document that the terrain is sufficiently rugged to preclude public access. A site survey of the terrain and roads, etc. should be completed by the State to determine where fencing may terminate in those segments and verify that public access is precluded, including at access points to those areas.

³ EPA Memo "Determining the Ambient Air Boundary for Potential Permit Application in Support of Alaska Industrial Development and Export Authority's Restart of Healy Clean Coal Project", September 11, 2007.

⁴ Letter from Gerald Emison, EPA to William O'Keefe, American Petroleum Institute, January 22, 1986

⁵ EPA Memo from Joseph Tikvart, Chief, Source Receptor Analysis Branch to Regional Modeling Contacts, Regions I-X, January 21, 1986

⁶ EPA Memo "Interpretation of 'Ambient Air' In Situations Involving Leased Land Under the Regulations for Prevention of Significant Deterioration", June 22, 2007. As indicated in the attachment to this EPA memo, "preclude" does not necessarily imply that public access is absolutely impossible, but rather that the likelihood of such access is small.

ADEQ Hayden SO2 SIP Review

1.0 Introduction

- Page 4, section 1.5 Last paragraph – Revise “The Governor’s Office submitted the recommendation to EPA on April 25, 2011. EPA agreed with Arizona’s recommendation, and the Miami area was designated as nonattainment for the 2010 SO2 NAAQS on August 5, 2013 (78 FR 47191; effective October 4, 2013).” to include Hayden, as both areas were designated in the same action.
- Section 1.6.1 NAA Legal descriptions are cited correctly but the boundaries seem different from the Pb SIP description (they should be the same) and the legal boundary provided in the table is incorrect. Please rectify.
- Sections 1.6.3 and 1.6.4 need to be closely tied to the air quality problem in the area. These sections can be summarized to one page and readers referred to other publications for more detailed information.
- Table 1.8 110(l) please correct *inferred* to *interfered*.
- Throughout text, please replace Miami with Hayden as appropriate.

2.0 Ambient Air Quality Monitoring

- Please provide a discussion of monitor location versus anticipated high concentrations in this chapter.
- In listing monitoring regulations on page 20, please include 40 CFR 50 Appendix A, and 40 CFR 58 Appendices A, C, D, and E. Also, revise it to simply say 40 CFR 58 and do not list the subparts, or list subparts A-G. Also, 40 CFR 51 should not be referenced here.
- Page 20 says the state established monitoring sites “during 1970.” Table 2-1 shows the date the Hayden Old Jail was established as 1/1/1969. Please reconcile.
- Please revise the first sentence of Section 2.2 to read, “The CAA requires EPA to set national ambient air quality standards for SO2 and other criteria air pollutants...”
- The last sentence on page 22 should read that the highest annual 99th percentile 1-hour concentration was 353 ppb in 2012 (not 314 ppb).
- Table 2-3 appears to be incorrectly titled, as it presents data from 2010-2014.
- Please include information as to whether ADEQ considers the ASARCO data to be adequate to be considered as additional information. If not, please explain why. If so, please provide a description of the values seen at those monitors in relation to the concentrations measured at the Hayden Old Jail site.
- In section 2.3, please include an explanation as to why the data are shown only through 2014, if it is not included elsewhere in the document.

4.0 Control Strategy

- 4.2 Retrofit controls and designed control efficiencies are discussed in the narrative. We recommend that these be summarized in a table to clearly call out for the reader each discrete control being compared in the RACT/RACM analysis later.

Emission Points

- 4.3.1: Is the discussion on GEP stack height accurate? (PDF page 56, document page 49)
- 4.3.1: Duplicate "... an effective" in first line of first full paragraph (PDF page 57)
- 4.3.2: Recommend include discussion/explanation on why direct monitoring of roofline fugitives is not being done.

4.4.3 RACT/RACM Analysis

The existing analysis outlines the proposed control measures, then includes a table of similar measures that have been deemed RACM or RACT in other facilities across the country. This analysis is insufficient. We recommend improving the RACT/RACM analysis with the following additions that mirror the analysis conducted for the Miami SO2 SIP.

- Describe each control measure discussed in the narrative in 4.2, and explain why ADEQ believes such a control meets RACT or RACM for SO2 control.
- Include ADEQ's evaluation on the effectiveness for each proposed control measure at the Hayden smelter in a tabular format, similar to the evaluation done for the Miami smelter in this section of the SIP chapter.
- Compare each control measure and its effectiveness to equivalent control measures from across the country directly in the same table.

4.5.3.7 Compliance and Test Methods

- Missing discussion of the dual limit, allowing compliance with the 1518 pounds per hour CEV limit. This approach is not acceptable to EPA. See our detailed comments on this topic in the rules section, R18-2-B1302, paragraph C.1.

5.0 Reasonable Further Progress

- Page 68; Citation to General preamble is incorrect. It should be 57 FR 13498, at 13547.
- The language seems to imply that the implementation of controls by the applicable attainment date is acceptable whereas the Guidance states "..... the air agency needs to ensure that affected sources implement appropriate control measures as expeditiously as practicable in order to ensure attainment of the standard by the applicable attainment date.", which means that controls need to be installed earlier than the attainment date such that the area attains the NAAQS by the attainment date of October 4, 2018.

5.5.1 Compliance Schedule for Implementation of the CRP at the Hayden Smelter

- The SIP states "The EPA SO2 guidance indicates that a nonattainment area must achieve one calendar year of clean data to be considered for redesignation to attainment." This is incorrect and needs to be revised. As stated in the Guidance, EPA's requirements for determination of attainment generally requires 3 calendar years of clean data from a regulatory monitor. The inclusion of one year of post-compliance monitoring data would increase the likelihood of the area showing 3 years of clean data at the regulatory monitor. In the EPA SO2 Guidance (Guidance), EPA stated that it expects states to require sources to begin complying with the

attainment strategy in the SIP no later than January 1, 2017. The plans should be able to provide at least 1 calendar year of air quality monitoring data (and at least 1 calendar year of compliance information which, when modeled, would show attainment) before the applicable attainment deadline, indicating that the plan is in fact providing for attainment.

- EPA's requirements for redesignation of areas are separately outlined in the memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, U.S. EPA, Research Triangle Park, N.C., "Procedures for Processing Requests to Redesignate Areas to Attainment." September 4, 1992.
- Please clarify that "Although the area will not have one year of clean data by the attainment deadline, the modeling projections indicate that emission reductions of SO₂ and the resulting ambient monitoring will show attainment of the 2010 SO₂ NAAQS, with the implementation schedule outlined in Table 5-8".

5.6 Attainment Demonstration

- Modify last sentence on Page 70 to "This delay may result in the area not attaining the NAAQS by the applicable attainment date of October 2018. However, as stated earlier, ADEQ commits to submitting any necessary SIP revisions per the streamlined approach outlined in page 11 of the SO₂ NAA Guidance."

6.0 Contingency Measures

- 6.2 Please remove last statement regarding the clean data policy. The policy as stated in the Guidance is "Nonattainment areas with design values over the level of the NAAQS may be able to achieve emission reductions in the area, or in nearby areas such that, when their effect is considered in combination with reductions achieved under national or regional programs, they may be sufficient to attain the SO₂ NAAQS before SIPs are due under section 191(a)."
- The SIP for this area was due in April 2015 and is approximately 24 months late; therefore, the Clean Data Policy does not apply in this area and contingency measures are required.

7.0 Conformity

- 7.1 Change text to indicate Hayden NAA.

8.0 New Source Review

- 8.1 NSR for the Hayden SO₂ Nonattainment NAA.
- The text is unclear. EPA promulgated a limited approval/limited disapproval of ADEQ's 2012 submission; please clarify the status of the submittal of the parts of the program that were disapproved by the EPA.

Appendix B (Emission Inventory Technical Support Document)

- The Emission Inventory TSD contains table summaries of emission calculations for the 2012 base year and the 2019 projected year. It also includes table summaries of 2009-14 historical emissions for major point sources in the NAA, specifically the Hayden Smelter and Ray Mine Complex. These tables represent the final summaries of an extensive amount of work on the

part of ADEQ staff in quantifying and projecting SO₂ emissions from the Hayden Smelter, as well as other sources in the NAA. It does not appear that the supporting calculations used to develop these summary tables were part of the proposed SIP. Please describe these supporting calculations and assumptions in greater detail in the Emission Inventory TSD, and include the underlying documentation in the final submittal to EPA. In particular, we consider those spreadsheets that contain Hayden Smelter historical emission data and projected emission profile to be the most crucial.

Appendix C (Attainment Demonstration Technical Support Document)

- Please include wind roses and discuss the meteorological characteristics of Camera Hill in comparison to alternate meteorological stations located near the smelter. Discuss why Camera Hill meteorology adequately represents the behavior of the smelter fugitives and main stack plumes.
- See EPA comment regarding the model receptor/ambient air boundary used in the Hayden Pb SIP above, which also applies to model receptor boundary discussed in Appendix C of Appendix C (Modeling Technical Support Document for the Hayden Sulfur Dioxide (SO₂) Nonattainment Area).

ADEQ Miami SO2 SIP Review

General

Please check all citations in the document. Some citations are referred to incorrectly and some provided links don't seem to work.

1.0 Introduction

- Section 1.6.1 NAA Legal descriptions; please correct 3rd row in Table 1-3 to R 13E.
- Section 1.6.3 and 1.6.4 need to be closely tied to the air quality problem in the area. These sections can be summarized to one page and the reader referred to other publications for more detailed information.
- Table 1.8 110(l) please correct *inferred* to *interfered*.

2.0 Ambient Air Quality Monitoring

- In listing monitoring regulations on page 20, please include 40 CFR 50 Appendix A, and 40 CFR 58 Appendices A, C, D, and E. Also, revise it to simply say 40 CFR 58 and do not list the subparts, or list subparts A-G. Also, 40 CFR 51 should not be referenced here.
- The last sentence in the first paragraph on Section 2.1 appears to be misworded.
- On page 20, please indicate why all three monitors are located south-southwest of the smelter.
- Table 2-1 indicates that the three sites were established in 1993 and 1997. These years do not correspond to any of the discussion contained on page 19, making the explanations and table together confusing. Please clarify.
- Please revise the first sentence of Section 2.2 to read, "The CAA requires EPA to set national ambient air quality standards for SO2 and other criteria air pollutants..."
- In Table 2-2, please duplicate the shading used in the Ridgeline cells to the Jones Ranch and Townsite 2013 and 2014 99th percentile cells.
- In Table 2-2, please include a footnote stating something to the effect of, "This monitor had only three valid quarters of data this year" for the following (we note that the 2010 incomplete data year at Miami Ridgeline does not affect the validity of its design values):
 - Miami Ridgeline, 2010
 - Miami Jones Ranch, 2013
 - Miami Townsite, 2013
- The last sentence on page 22 should state that the highest design value (132 ppb) occurred 2007-2009, not 2012-2014 as currently stated.
- In section 2.3, please include an explanation as to why the data are shown only through 2014, if it is not included elsewhere in the document.

4.4.3 RACT/RACM Analysis

- RACT/RACM analysis includes estimates for control efficiency and emissions reduction for the control measures described in 4.3, and describes the analysis for the acid plant scrubbers and for fugitive emissions in the narrative. ADEQ presents its analysis in narrative format and concludes that the controls being implemented in this SIP would constitute RACT/RACM. A more effective analysis would include an additional table, or an additional column in an existing

table, that clearly compares each proposed control measure, the existing control measure defined as RACT/RACM, and comparative effectiveness. Please revise accordingly.

5.5.1 Compliance Schedule for Implementation of the CRP at the Hayden Smelter

- The SIP states “The EPA SO₂ guidance indicates that a nonattainment area must achieve one calendar year of clean data to be considered for redesignation to attainment.” This is incorrect and needs to be revised. As stated in the Guidance, EPA’s requirements for determination of attainment generally requires 3 calendar years of clean data from a regulatory monitor. The inclusion of one year of post compliance monitoring data would increase the likelihood of the area showing 3 years of clean data at the regulatory monitor. In the EPA SO₂ Guidance (Guidance), EPA stated that it expects states to require sources to begin complying with the attainment strategy in the SIP no later than January 1, 2017. The plans should be able to provide at least 1 calendar year of air quality monitoring data (and at least 1 calendar year of compliance information which, when modeled, would show attainment) before the applicable attainment deadline, indicating that the plan is in fact providing for attainment.
- EPA’s requirements for redesignation of areas are separately outlined in the memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, U.S. EPA, Research Triangle Park, N.C., “Procedures for Processing Requests to Redesignate Areas to Attainment.” September 4, 1992.
- Please clarify that “Although the area will not have one year of clean data by the attainment deadline, the modeling projections indicate that emission reductions of SO₂ and the resulting ambient monitoring will show attainment of the 2010 SO₂ NAAQS, with the implementation schedule outlined in Table 5-8”.

5.6 Attainment Demonstration

- Modify last sentence on Page 68 to “This delay may result in the area not attaining the NAAQS by the applicable attainment date of October 2018. However, as stated earlier, ADEQ commits to submitting any necessary SIP revisions per the streamlined approach outlined in page 11 of the SO₂ NAA Guidance.”

8.0 New Source Review

8.1 NSR for the Hayden SO₂ Nonattainment NAA.

- The text is unclear. EPA promulgated a limited approval/limited disapproval of ADEQ’s 2012 submission; please clarify the status of the submittal of the parts of the program that were disapproved by the EPA.

Appendix B (Emission Inventory Technical Support Document)

The Emission Inventory TSD contains table summaries of emission calculations for the 2011 base year and the 2018 projected year. It also includes table summaries of 2012-14 historical emissions for major point sources in the NAA, specifically the Miami Smelter, as well as certain analyses for hourly emission rate frequency distribution for smelter sources. These tables represent the final summaries of an extensive amount of work on the part of ADEQ staff in quantifying and projecting SO₂ emissions from the Miami Smelter, as well as other sources in the NAA. It does not appear that the supporting calculations used to develop these summary

tables were part of the proposed SIP. Please describe these supporting calculations and assumptions in greater detail in the Emission Inventory TSD, and include the underlying documentation in the final submittal to EPA. In particular, we consider those spreadsheets that contain Miami Smelter historical emission data and projected emission profile to be the most crucial.

Appendix C (Attainment Demonstration Technical Support Document)

- Appendix L is missing from Appendix C.
- Please provide a walkthrough of the most recent Model Change Bulletins associated with the v15181 and v16216 to justify that the bug fixes since v14134 will not adversely affect the modeling results or rerun using the latest AERMOD version.
- See EPA comment regarding model receptor/ambient air boundary in the Hayden Pb SIP above, which provides background information applicable here. Appendix C, Section 3.2, pp. 3-15 to 3-19 provides a description of the ambient air boundary used for attainment modeling for the FMMI smelter. Upon preliminary review of the documentation, we recommend that the State complete a site survey to verify that continuous fencing exists around the boundary and that any unfenced terrain, particularly around the town of Miami, sufficiently and effectively precludes public access. It is not clear from Figure 3-3 and our examination of satellite imagery that public access is adequately precluded by the topography in these areas.

EPA Region 9 Comments to Arizona Department of Environmental Quality on Rules for Pb and SO₂ Nonattainment Area SIPs

Thank you for the opportunity to provide comment on the following draft Arizona Administrative Code rules and appendices:

- R18-2-B1301 “Limits on Lead Emissions from the Hayden Primary Copper Smelter”
- R18-2-B1301.01 “Limits on Lead-Bearing Fugitive Dust from the Hayden Primary Copper Smelter”
- R18-2-B1302 “Limits on SO₂ from the Hayden Primary Copper Smelter”
- R18-2-C1302 “Limits on SO₂ from the Miami Smelter”
- R18-2-715 “Standards for Performance for Existing Primary Copper Smelters; Site-specific Requirements”
- R18-2-715.01 “Standards for Performance for Existing Primary Copper Smelters; Compliance and Monitoring”
- A14 Appendix 14 “Procedures for Sulfur Dioxide and Lead Fugitive Emissions Studies for the Hayden Primary Copper Smelter”
- A15 Appendix 15 “Test Methods for Determining Opacity and Stabilization of Unpaved Roads”

Italicized text indicates rule text. Sections of text in ~~strikeout~~ are recommended for deletion, and sections in underlined text indicate proposed additional language. Bold text is for contextual emphasis.

We look forward to working with the Arizona Department of Environmental Quality to resolve these issues.

R18-2-B1301.01

Section D “Performance and Housekeeping Requirements,” paragraph 10 “Unpaved Roads.”
10. Unpaved Roads. These requirements apply to the unpaved roads identified in subsections (D)(10)(a)(i) through (D)(10)(a)(v)...

There is no section (D)(10)(a)(iv) or (v) in the rule. Please correct this error.

Section E “Contingency Requirements.”

Clean Air Act (CAA) section 172(c)(9) requires nonattainment area SIPs to provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the standard by the applicable attainment date. In a recent decision, the U.S. Court of Appeals for the Ninth Circuit rejected EPA’s approval of contingency measures implemented “early” as inconsistent with the plain language of CAA section 172(c)(9). *See Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016) (“*Bahr*”), at 1235-1237.

Section E of R18-2-B1301.01 establishes a single contingency measure (doubling the paved road cleaning frequency from once to twice per day) that could be triggered by certain specified events, whichever happens first. One of the triggering events is notification by EPA Region IX of a failure of the area to attain by the attainment date. Under CAA section 179(c), EPA must determine within six months of the applicable attainment date whether an area attains the standard by that date, which, in the case of

Hayden for the 2008 Pb National Ambient Air Quality Standards (NAAQS) in Hayden, AZ, is as expeditiously as practicable but no later than October 3, 2019. Thus, if the Hayden area fails to attain the 2008 Pb NAAQS by the area's applicable attainment date, EPA's determination to that effect will likely not occur until 2020. A number of the other specific triggering events pre-date 2020, and as a result, the one contingency measure could be implemented "early," i.e. prior to EPA's determination of failure to attain (if the area in fact fails to attain), potentially leaving no measure to be undertaken if the area fails to attain the standard. In light of the *Bahr* decision and to meet the attainment contingency measure requirement under CAA section 172(c)(9), we suggest revising section E. of R18-2-B1301.01 to set aside a measure or measures specifically to be undertaken if and when EPA determines that the Hayden area has failed to attain the 2008 Pb NAAQS by the attainment date.

Section I "Reporting."

1. On a quarterly basis Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a report to the Department covering the prior quarter that includes the following:

We recommend inserting a time limit to be consistent with other ADEQ rules e.g., R18-2-B1301 section H.5.

R18-2-B1302

Section C "Sulfur Dioxide Emission Limitations," paragraph 1 (main stack emission limit, two-step limit).

R18-2-B1302, paragraph C.1 currently reads:

Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period.

The proposed emissions limit is inconsistent with the criteria for setting long term emissions limits outlined in EPA's Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, April 23, 2014 ("2014 Guidance"), Section V.D.2.b. (p.27). In order to assure that the SIP includes a limit that provides for attainment of the 1-hour SO₂ NAAQS, revise this language to require continuous compliance with the 1-hr emission limit set at the CEV, or else continuous compliance with the 14-day limit set consistent with the 2014 Guidance, rather than allowing an exceedance of **either** of these limits at different times. After this revision is made, revise recordkeeping and monitoring requirements to be consistent with the final rule limit.

Section C "Sulfur Dioxide Emission Limitations," paragraph 2 (New Source Performance Standards limit).

2 The owner and operator shall not cause to be discharged into the atmosphere from any affected unit subject to 40 C.F.R. 60 Subpart P

The correct reference is to 60 subpart P. Please correct this error.

Section E “Monitoring,” paragraph 6 (substitutes for annual stack testing).

6. ...Annual stack testing shall use EPA Methods 1, 4, 6C in 40 C.F.R. 60 Appendix A or an approved alternative method by the Department and EPA Region IX. Annual stack testing shall commence no later than ~~the~~ one year after the date the continuous emission monitoring system was removed...

Please correct the above noted errors, and include EPA Region IX in any approval for alternative testing methods.

R18-2-B1301 and R18-2-B1302

The following comments apply to the provisions concerning the Operations and Maintenance Plans (O&M plan) in the Hayden Smelter SO₂ and Lead rules. The paragraph citations are the same for both rules.

Section D “Operational Standards,” paragraph 2 “Capture system and control device operations and maintenance plan,” subparagraph b “Operational limits.”

Subparagraph D.2.b identifies several operating limits that must be established in the O&M plan. While these provisions are described as limits in the rule language, we note that Paragraph D.2 merely states that these limits must be established, and does not include more explicit language indicating that the owner/operator must operate in accordance with those operating limits. We recognize that the O&M plan may contain additional provisions and content beyond these 12 initial operating limits listed in subparagraph D.2.b, and that not all of such additional provisions and content will be or should be compliance obligations. However, given the prominence of these 12 initial operating limits listed in subparagraph D.2.b., we consider more explicit language appropriate, and recommend the following revision:

b. Operational limits. The owner or operator shall establish and operate in accordance with operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. The initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:...

Section D “Operational Standards,” paragraph 2 “Capture system and control device operations and maintenance plan,” subparagraph b “Operational limits,” item xi (acid plant catalyst bed temperature).

As noted on page 5-18 of the “Modeling Technical Support Document for the Hayden SO₂ Nonattainment Area” supporting the SO₂ SIP, Asarco has installed a new, full flow preheater at the acid plant. This preheater provides Asarco with the capability to heat all four catalyst beds in the acid plant to a minimum reaction temperature before process gases are introduced to the acid plant. Because the practice with the previous preheater was to only heat the first catalyst bed to the minimum reaction temperature, the acid plant operated at reduced effectiveness during startup periods. Many of the highest historical 1-hr emission rates are primarily attributable to acid plant startup emissions. The new, full flow preheater is expected to reduce peak startup emissions by 50%, and should eliminate many of the highest historical 1-hr emission rates. Its anticipated effectiveness is reflected in the projected emission profile of the smelter by an assumption that acid plant emissions will not exceed 1,000 lb/hr.

The language in subparagraph D.2.b.xi is helpful in addressing preheater operation by establishing a temperature at the catalyst bed consistent with manufacturer’s recommendation. However, we feel

that this language needs additional clarification and specificity to ensure that future acid plant emissions are of a magnitude consistent with the assumptions in the projected emission profile.

xi. ~~The operating temperatures of the acid plant catalyst bed, which shall at minimum, meet the manufacturer's catalyst vendor's recommendations for minimum reaction temperature ranges. This operating temperature range shall be achieved in each of the acid plant catalyst beds prior to introduction of gases from hot metal process sources as listed in Paragraph B.9.~~

Section D "Operational Standards," paragraph 2 "Capture system and control device operations and maintenance plan," subparagraph b "Operational limits," item xii (acid plant catalyst replenishment schedule).

While the language in subparagraph D.2.b.xii is helpful in addressing acid plant catalyst effectiveness, it may be overly restrictive. The projected acid plant emission profile is based on historical acid plant emission rates, which are in turn affected by the effectiveness and quality of acid plant catalyst over that historical period. As a result, acid plant catalyst management and replenishment is an important underlying assumption in the projected emission profile. It is similarly important in ensuring that future acid plant emissions are of a magnitude consistent with the assumptions in the projected emission profile. While we feel that the current language in subparagraph D.2.b.xii is helpful in this regard, it focuses only on the schedule of acid plant catalyst replenishment. While the frequency/schedule of replenishment is important, there are other aspects governing catalyst replenishment, such as catalyst activity, catalyst structural integrity, and possibly catalyst type, which may be relevant and warrant inclusion in the O&M plan. We recommend the use of the broader term "criteria" which would provide for the inclusion of other factors besides schedule in the O&M plan.

xii. ~~The acid plant catalyst replenishment schedule criteria, which shall at a minimum, meet the manufacturer's recommendations of the catalyst vendor(s).~~

Section G "Recordkeeping."

The current rule language regarding recordkeeping (in section G) or regarding O&M plan contents (section D) do not include any mechanism for verifying that the O&M plan is being implemented. It is unclear how facility personnel or state inspectors will be able to determine if the owner/operator is implementing or operating within the limits established by the O&M plan. Please include rule language that requires the O&M plan to include a requirement for the owner/operator to maintain records that are sufficient to demonstrate that the facility is operating within the limits established pursuant to subparagraph D.2.b.

Section E "Monitoring," paragraph 1 (compliance determination with emission limit, shutdown ventilation flue).

Based upon the rule language in paragraph E.1, a CEMS does not exist on the shutdown ventilation flue. Per Paragraph G.2.e., emissions from shutdown ventilation flue utilization events will be calculated rather than directly monitored. Our understanding of the shutdown ventilation flue is that it is activated during periods of smelting and converting cessation, and serves to isolate certain segments of process equipment from strong residual process gas, protecting personnel to exposure as they perform maintenance activities and other duties on process equipment. It instead directs these strong residual process gases from sources such as the INCO flash furnace into the atmosphere. While we would not necessarily consider this a bypass duct, it has the end effect of allowing strong SO₂ process gas to migrate into the atmosphere without control.

We note that the rule language for the Freeport McMoRan Miami Smelter requires an SO₂ CEMS on a process stream that serves a similar, although not identical, function (i.e., the Miami Smelter's bypass duct). Please discuss why it is appropriate for the rule text to not require an SO₂ CEMS on the shutdown ventilation flue for the Hayden Smelter, noting any particular technical or economic challenges associated with monitoring emissions from the flue, as well as process differences between the two smelters.

R18-2-715 Standards of Performance for Existing Copper Smelters

The version of this rule being revised by ADEQ is not the same as the version EPA has approved into the Arizona SIP. For example, the SIP-approved version was last amended with an effective date of July 18, 2002. The most recent version of this rule as approved on the ADEQ website⁷ was amended with an effective date of March 7, 2009. Please ensure that your analysis includes any changes in the intervening time, and please provide a version of this draft rule with markup indicating differences between the SIP-approved version and this draft version.

⁷ Accessed on 12/16/2016 at http://apps.azsos.gov/public_services/Title_18/18-02.pdf



January 6, 2017

VIA Electronic Mail: nm3@azdeq.gov

Natalie Muilenberg
Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007

Re: Comments on Arizona Department of Environmental Quality Proposed Rule: R18-2-B1301 (Limits on Lead Emissions from the Hayden Primary Copper Smelter) and R18-2-B1301.01 (Limits on Lead-Bearing Fugitive Dust from the Hayden Primary Copper Smelter)

Dear Ms. Muilenberg:

ASARCO LLC ("Asarco") appreciates this opportunity to provide public comment on the proposed rules at A.A.C. R18-2-B1301 (Limits on Lead Emissions from the Hayden Primary Copper Smelter) and R18-2-B1301.01 (Limits on Lead-Bearing Fugitive Dust from the Hayden Primary Copper Smelter). Asarco has also appreciated the opportunity to work with ADEQ in developing these rules. Asarco has the following comments on the proposal.

I. Comments on R18-2-B1301, Limits on Lead Emissions from the Hayden Primary Copper Smelter

a. Asarco Proposes Revising the Form of the Lead Emission Limit to Conform to the 3-Month Rolling Average Form Contained in the NAAQS.

Under proposed R18-2-B1301.C.1, lead emissions from the main stack cannot exceed 0.683 pound of lead per hour. The limit is designed to ensure attainment of the lead NAAQS, which is set at 0.15 micrograms per cubic meter Pb in total suspended particles as a 3-month average. SIP limits should be tied to the averaging time of the corresponding NAAQS. In this case, Asarco believes that the limit should be 0.683 pound of lead per hour, 3-month average, rolled each calendar month. This limit is protective of the NAAQS and consistent with Asarco's modeling approach in the attainment demonstration. Any individual exceedance of the hourly emission limit will not violate the NAAQS so long as the individual exceedance, when averaged with the other data during the NAAQS averaging period, is below 0.683 pounds per hour, 3-month average, rolled monthly. Moreover, an individual exceedance of an hourly limit should not constitute a violation of a SIP designed to attain a NAAQS when that individual exceedance would not individually establish a violation the NAAQS itself. The NAAQS' 3-month form accommodates variability. The SIP limit designed to attain that NAAQS should similarly accommodate such variability.

b. Asarco Requests that Three Operating Limits Be Removed Because They Have No Bearing On Control or Capture System Operations Relating to Lead Emissions.

Under proposed R18-2-B1301.D.2.b, Asarco must establish initial operating limits that are representative and reliable indicators of the performance of the capture system and control device operations. Asarco requests removal of three of these parameters. The first parameter, paragraph (i), requires Asarco to identify “those modes of operation when the double dampers between the flash furnace vessel and the vent gas system will be closed and the interstitial space evacuated to the acid plant.” A.A.C. R18-2-B1301.D.2.b.i. Under the second and third parameters, paragraphs (xi) and (xii), Asarco must establish acid plant catalyst bed temperatures and acid plant catalyst replenishment schedules that meet manufacturer recommendations. A.A.C. R18-2-B1301.D.2.b.xi, xii.

These parameters should be removed because they do not impact lead emissions. Regardless of the double damper position, lead emissions from the flash furnace are routed to a control device of substantially equivalent effectiveness. Similarly, while the catalyst bed increases sulfuric acid production and thereby reduces sulfur dioxide emissions, it has no demonstrable impact on lead emissions. These parameters are not “representative” or “reliable” indicators of the performance of the capture and control systems as they relate to lead because they have no bearing on these systems or on the amount of lead emitted.

c. Asarco Requests Additional Flexibility in Submitting Reports.

Under R18-2-B1301.H.5, Asarco must submit a quarterly report detailing activities from the prior quarter. Asarco requests flexibility to submit this report earlier than required in order to harmonize this reporting with other air quality reporting required by its permit. We propose appending the following language to R18-2-B1301.H.5: “The owner and operator may submit a report earlier than required for purposes of harmonizing reporting under this Section with air quality permit required reporting, so long as no report is delayed beyond the period required by this Section.”

d. Clarification of the Method for Calculating the Primary Hood Exhaust Rate and Infiltration Ratio.

Under R18-2-B1301.D.2.b.iv, Asarco must maintain a “minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.” Asarco has three comments on this language.

First, Asarco understands this language to require it to track Blowing hours and determine the infiltration ratio on a 24-Blowing hour basis, rolled each Blowing hour. Blowing hours will rarely, if ever, correspond to calendar hours.

Second, as noted in prior discussions, Asarco cannot directly measure the exhaust rate in the primary hood due to space and process constraints. Asarco will calculate primary hood gas flow rate by a differential pressure-based flow meter located in the common duct

downstream of the converter spray chambers. Spray system air and water flow rates will be measured for the blowing converter. The exhaust flow rate of gas exiting the blowing converter's primary hood will be calculated based on the primary gas flow rate measured downstream of the spray chamber and subtracting the spray air flow rate and spray water flow rate. It will be assumed that all of the spray water flow will be evaporated to water vapor into the gas stream.

Third, Asarco notes that there will be technical issues in tracking the start and finish of Blowing (such as instrumentation instructions) and tying together all the necessary measurements (differential pressure-based flow meter, spray air flow rate, spray water flow rate, delta T) to determine the infiltration ratio. ADEQ and EPA will need to recognize these issues and allow some latitude in the development and implementation of the necessary measurement systems.

II. Comments on R18-2-B1301.01, Limits on Lead-Bearing Fugitive Dust from the Hayden Primary Copper Smelter

a. Asarco Requests that ADEQ Confirm that Concrete Pad Designs that Have Already Been Approved By EPA Are Approved For Purposes of the SIP.

Under R18-2-B1301.01.C.2.e, Asarco must develop a fugitive dust plan that contains, among other things, design plans for the concrete pads for the non-smelting process sources specified in subsections (D)(11) and (D)(13) of the rule. The pads must be designed to capture, store, and control stormwater or sprayed water to minimize emissions to the greatest practicable extent, including curbing where feasible. *Id.* These requirements are drawn from the Asarco/EPA consent decree control requirements.

Asarco has already constructed new concrete pads for the revert crushing system required by the consent decree. EPA approved the design for these pads, which does not include a water pump system. Because the pads were approved for the consent decree, from which these requirements were drawn, Asarco requests confirmation that the pads satisfy the requirements of this rule.

b. Asarco Requests That the Unpaved Road Performance and Housekeeping Requirements Be Removed to the Extent They Are Not Justified or Justified Only by Unrepresentative Sampling.

Under proposed R18-2-B1301.01.D.10, Asarco is subject to several performance and housekeeping requirements for unpaved roads. Because the record does not support imposition of these measures, we request their removal.

Asarco notes that in "10.7 Appendix G: Unpaved Roads De Minimis Analysis" of the SIP, ADEQ's Technical Analysis Unit identified four unpaved road areas that warranted analysis: slag dump; smelter support area; concentrator access road, and concentrate storage. The Technical Analysis Unit then looked at Hayden RI/FS data, primarily samples taken from areas off the roads, to evaluate whether the roads were significant based on the Arizona *residential* soil remediation level (SRL) of 400 ppm.

Using this conservative *residential* exposure scenario, the Technical Analysis Unit concluded that only the slag dump and concentrate storage area roads should be included in the modeling and “considering the remaining two unpaved roads de minimis.” Appendix G at 10-103. These other two roads are the concentrator access road and the smelter support area road.

Based on this analysis, Asarco does not believe that the concentrator access road should be included in R18-2-B1301.01.D.10.a.ii or the smelter support area road be included in R18-2-B1301.01.D.10.a.iii because they were found to be de minimis contributors. Asarco does not believe that striking these areas is a significant change because Asarco is otherwise required to control dust from its operations, including from the concentrator access road and smelter support area, under the PM and PM₁₀ control requirements of its permit and applicable regulation. Inclusion in the SIP, however, renders it difficult to adjust the control regime on the roads in the future if different or more effective measures are identified.

Asarco agrees with ADEQ that the concentrate storage area does not require inclusion in R18-2-B1301.01 because it will be paved and/or concreted as part of the Fugitive Dust Plan and subject to the paved road controls in R18-2-B1301.D.9 and R18-2-B1301.D.11.

Asarco disagrees with ADEQ’s assessment of the slag hauler road. To justify imposing the performance and housekeeping measures for the slag hauler road, ADEQ used analyses from samples taken during the RI/FS efforts. All of the samples used in the Technical Analysis Unit’s evaluation are taken from the slag dump (with the possible exception of SLH20, which appears to be on the slag dump, but is near the edge). Most of the samples are slag and not the road base material. The slag dump represents less than half the length of the slag hauler road (see green road outlined on Appendix G, Figure 15). For the other half of the road, nearer the Smelter proper, the “Smelter support area” samples may well be more representative. These samples, by and large, show de minimis lead, as ADEQ previously concluded in the smelter support area analysis. See Appendix G. This corresponds with Asarco’s process knowledge of the area. The slag hauler road is not comprised of any significant levels of slag until it enters the slag dump, at which point slag becomes an increasing part of the road substrate. Although Asarco does not believe slag, even on the slag dump where haulage occurs, is a significant source of lead emissions, there is certainly no basis for believing that the slag hauler road outside of the slag dump is a significant source of lead emissions based on ADEQ’s own analysis.

Accordingly, Asarco requests that proposed R18-2-B1301.01.D.10.a.i be revised to read “For the slag hauler road and all other roads on the slag dump used or to be used by the slag hauler, chemical dust suppressant shall be applied at least once per week during the summer and once per every two weeks during the winter.” Asarco’s proposal is more consistent with the data and modeling than the current SIP proposal, which extends into areas not supported by the data. Dust suppression on the balance of the slag hauler road would be governed by existing permits and regulations.

c. Typographical correction in R18-2-1301.01

The introductory language of proposed R18-2-1301.01.D.10 states that the requirements apply “to the unpaved roads identified in subsections (D)(10)(a)(i) through (D)(10)(a)(v) below.

There are now (D)(10)(a)(iv)-(v) in the proposed rule. Further, Asarco has presented substantial reasons why the requirements should not apply to the road segments identified in (D)(10)(a)(ii)-(iii). Accordingly, Asarco recommends that the phrase in (D)(10) be revised to read "to the unpaved road identified in subsection (D)(10)(a)" and that (D)(10)(a)(i), as proposed to be revised above, be included in (D)(10)(a) and provisions (D)(10)(a)(ii)-(v) be eliminated.

d. Asarco Requests Clarification of the Silt Content Limit.

If ADEQ continues to apply the R18-2-B1301.01(D)(10) requirements as proposed, Asarco proposes clarifying the silt content limit. Under proposed R18-2-B1301.01.D.10.c, Asarco must, among other things, not allow silt loading to equal or exceed .33 oz/ft². If silt loading is equal to or greater than .33 oz/ft², the rule states that Asarco cannot "allow the silt content to exceed 6 percent." *Id.*

Asarco proposes clarifying what is meant by 6 percent. We propose revising the standard to reflect the language in Appendix 15, which clarifies that 6 percent means the average percent silt content. See A15.3.10 (proposed). To address these revisions, we propose changing the second sentence of proposed R18-2-B1301.01.D.10.c as follows: "However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner or operator shall not allow the average percent silt content to exceed 6 percent of the total sample taken pursuant to Appendix 15 procedures."

III. Comments on Appendix 15, Test Methods for Determining Opacity and Stabilization of Unpaved Roads

a. Asarco Requests that the Second Reading for an Opacity Observation Be Extended to 15 Seconds.

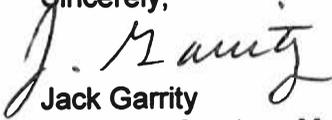
Under proposed A15.2.3 and A15.2.4, Asarco must make opacity observations with the first reading at zero seconds and the second reading at five seconds. Under EPA Method 9 and Method 203A, opacity observations are required every *fifteen* seconds, not every *five* seconds. Method 9 and Method 203A are the methods for which Asarco personnel have received training, and these are the methods that have been used to observe processes throughout the plant. Requiring a different interval for the observations required by this rule will cause confusion and is not otherwise necessary. Asarco requests that all five-second observations be changed to fifteen-second observations to be consistent with Method 9 and 203A methodology.

b. Asarco Requests Simplification of A15.4 to Better Reflect Asarco's Customary Approach to Method 9 Training.

The certification process and procedures at A15.4 are equivalent to Method 9 training requirements. Asarco is not in the business of conducting Method 9 or smoke school training. Asarco sends personnel to a certified third party to receive such training. For these reasons, the lengthy requirements at A15.4 are unnecessary. We propose removing A15.4 and all subparagraphs and replacing it with the following language: "Individuals who perform opacity observations must be certified according to EPA Reference Method 9."

Asarco Comments on Proposed R18-2-B1301 and R18-2-1301.01
Draft Hayden Lead Nonattainment Area State Implementation Plan
January 6, 2017
Page 6

Asarco appreciates the opportunity to provide these comments. Please contact Jack Garrity, Technical Services Manager, at (520) 356-3296 or Amy Veek, Smelter Environmental Engineer, at (520) 356-3296 if you have any questions.

Sincerely,

Jack Garrity
Technical Services Manager

JG

pc: File

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January 10, 2017

VIA Electronic Mail: nm3@azdeq.gov

Natalie Muilenberg
Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007

Re: Supplemental Comment on Emission Limit Averaging Period

Dear Ms. Muilenberg:

ASARCO LLC (“Asarco”) appreciates this opportunity to provide supplemental public comment on the proposed revision to the averaging period for the Main Stack lead emission limit in proposed R18-2-B1301.C, which is currently set at 0.683 pound of lead per hour. In its January 6, 2017 comments, Asarco had recommended that this be changed to a 3 month average, rolled monthly, to correspond to the form of the lead NAAQS. After today’s hearing, you requested that Asarco explain how the compliance methodology would work given the use of stack testing in proposed R18-2-B1301.E.1.

The lead NAAQS relies upon procedures set forth in 40 C.F.R. Part 50, Appendix R. Basically, Appendix R takes a daily measurement, averages the daily measurement across each month, and then averages the three most recent calendar months to compare to the NAAQS. Under Asarco’s approach, compliance with the emission limit in R18-2-B1301.C would be determined by taking the stack test results and attributing that lb/hr value to each operating day, summing those days and dividing by the number of days in the month. Each of the most recent three months would then be averaged together to demonstrate compliance. A short cut is available if all performance tests during the three month period were less than 0.683 lb/hr, then no demonstration should be required.

If ADEQ were to accept Asarco’s approach, it might be useful to add the following language to R18-2-B1301.F(1):

For purposes of determining compliance with the main stack emission limit in subsection (C)(1), the owner or operator shall calculate the combined lead emissions in pounds per hour from the gas streams identified in subsection (E)(1)

based on the most recent performance tests conducted in accordance with subsection (E) using the following procedure:

- a. For each operating day, the owner or operator shall sum the emissions in pounds per hour from the most current performance test for each point listed in subsection (E)(1). This calculation need only be completed for the day after receipt of the final performance test report for a point listed in subsection (E)(1). The daily sum shall be used for each subsequent operating day until the day after receipt of the next final performance test report, when a new daily sum is calculated.
- b. If each calculated daily sum in the three-month averaging period is less than or equal to the limit in subsection (C), no further demonstration of compliance is required.
- c. If any calculated daily sum is greater than the limit in subsection (C), then the owner or operator shall calculate the monthly average by summing the calculated daily sums for each operating day during the calendar month and dividing the sum by the number of days in the calendar month. The monthly average shall be calculated for each full month in the three-month averaging period.
- d. Compliance with the limit in subsection (C) is demonstrated if the average of the most recent three full calendar months is less than or equal to the limit in subsection (C).
- e. The calculations in subsection (F)(1)(c) and (d), if required, shall be completed no later than the third business day of each calendar month for the three prior calendar months.

We hope that this explanation is helpful. Please call with any questions or concerns.

Sincerely yours,



Eric L. Hiser
Counsel for Asarco

Cc: J. Garrity, Asarco
A. Veek, Asarco



January 6, 2017

VIA Electronic Mail: lt5@azdeq.gov

Lisa Tomczak
Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007

Re: Comments on Arizona Department of Environmental Quality Proposed Rule: R18-2-B1302, Limits on SO₂ Emissions from the Hayden Primary Copper Smelter

Dear Ms. Tomczak:

ASARCO LLC ("Asarco") appreciates this opportunity to provide public comment on the proposed rule at A.A.C. R18-2-B1302, Limits on SO₂ Emissions from the Hayden Primary Copper Smelter. Asarco has also appreciated the opportunity to work with ADEQ in developing these rules. Asarco has the following comments on the proposal.

I. Asarco Supports the Dual Limit Proposed at A.A.C. R18-2-B1302.C.1.

Under A.A.C. R18-2-B1302.C.1, "Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period."

Asarco supports this dual limit. This dual limit satisfies all Clean Air Act requirements and agency guidance and otherwise provides necessary flexibility. As the Supreme Court explained, "so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation." *Train v. Nat. Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975). Moreover, in *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions* (April 2014) (hereinafter *EPA Guidance*), the U.S. Environmental Protection Agency ("EPA") approved the use of the critical emission value ("CEV") as well as averaging periods to meet the NAAQS. Indeed, states may "develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1 hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO₂ NAAQS." *EPA Guidance* at 24.

Asarco's proposed limit requires it to meet the 14-operating day limit (which assures attainment of the NAAQS). If that is not feasible (say due to a malfunction), it still is not a violation if emissions in every hour of that same period never exceed the CEV, which EPA agrees is protective of the NAAQS. *EPA Guidance* at 23. Thus, during all periods, Asarco is complying with a limit that is protective of the NAAQS, which is all that is required. If Asarco has an exceedance of the 14-operating day limit and any hour in that period exceeds 1,518 pounds per hour, then Asarco is in violation.

II. Asarco Requests Minor Revisions to the Stack Testing Alternative Provision.

Under R18-2-B1302.E.6, Asarco may petition the department to substitute annual stack testing in lieu of operating the CEMS for the tertiary ventilation or the anode furnace baghouse stack under certain conditions. Based on the current language of this provision, it is unclear if the five-percent SO₂ contribution must be met individually or collectively by the tertiary ventilation system emissions and anode furnace baghouse stack emissions before substitution is permitted. We propose the following clarification, with the changes underlined:

The owner operator of the Hayden Smelter may petition the department to substitute annual stack testing for the tertiary ventilation or the anode furnace baghouse stack CEMS if the owner or operator demonstrates through the respective CEMS data, for a period of two years, that the respective process individually contributes less than five percent of the total sulfur dioxide emissions.

The intent of this revision is to clarify that if either process individually contributes less than five percent over a two-year period, then the CEMS for that process may be substituted by stack test data. This revision also identifies the *process* as the source of emissions, not the CEMS.

Furthermore, Asarco believes that the criteria governing approval of such a request is identified in R18-2-B1302.E.6. Accordingly, Asarco proposes adding language that provides assurance that such request will be approved subject to satisfaction of that provision. At the end of R18-2-B1302.E.6, Asarco proposes adding the following: "If the owner or operator makes the demonstrations required by this provision, the department shall approve the petition to substitute annual stack testing for the respective CEMS."

Asarco supports the flexibility offered by this provision and believes that reliance on stack test data will be adequate to demonstrate compliance with the respective emission limits for these sources, particularly when they demonstrably contribute less than five percent of total sulfur dioxide emissions.

III. Clarification of Primary Hood Measurement/Infiltration Ratio Monitoring

Under R18-2-B1301.D.2.b.iv, Asarco must maintain a "minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing." Asarco has three comments on this language.

First, Asarco understands this language to require it to track Blowing hours and determine the infiltration ratio on a 24-Blowing hour basis, rolled each Blowing hour. Blowing hours will rarely, if ever, correspond to calendar hours.

Second, as noted in prior discussions, Asarco cannot directly measure the exhaust rate in the primary hood due to space and process constraints. Asarco will calculate primary hood gas flow rate by a differential pressure-based flow meter located in the common duct downstream of the converter spray chambers. Spray system air and water flow rates will be

measured for the blowing converter. The exhaust flow rate of gas exiting the blowing converter's primary hood will be calculated based on the primary gas flow rate measured downstream of the spray chamber and subtracting the spray air flow rate and spray water flow rate. It will be assumed that all of the spray water flow will be evaporated to water vapor into the gas stream.

Third, Asarco notes that there will be technical issues in tracking the start and finish of Blowing (such as instrumentation instructions) and tying together all the necessary measurements (differential pressure-based flow meter, spray air flow rate, spray water flow rate, delta T) to determine the infiltration ratio. ADEQ and EPA will need to recognize these issues and allow some latitude in the development and implementation of the necessary measurement systems.

IV. The SIP Is Protective of the 1-Hour SO₂ NAAQS and Should Be Approved

The purpose of a state implementation plan is to “provide[] for implementation, maintenance, and enforcement” of the NAAQS. 42 U.S.C. § 7410(a)(1). So long as the plan achieves this result, the state has wide latitude to select the measures and form of limits that go into it. In this case, Asarco believes that the measures that the State has proposed amply achieve the goal of the Clean Air Act, which is to assure that the NAAQS is attained.

The NAAQS are concerned with the quality of the ambient air. Asarco believes that the modeling protocols used in the development of the plan may have muddled the actual impact of the Converter Retrofit Project on improving the air quality in the Hayden area. Asarco thus requested that Osman Environmental Services (OES) run EPA's AERMOD model with the emissions variability post-processor (EMVAP) to evaluate, conservatively, the likely quality of the ambient air post-retrofit. In preparing this model, Asarco assumed that it would increase production up to the full legal limit of 693,500 tons of concentrate per year. Asarco further assumed that the post-retrofit emissions profile would be similar to the pre-retrofit emissions profile, except where the profile was adjusted to reflect controls added as part of the Converter Retrofit Project to reduce emission loading. This approach considers the impact of startup and shutdown conditions. Asarco thus asked OES to model the full projected range of emissions from the Hayden Smelter post-retrofit to evaluate whether the Converter Retrofit Project is protective of the NAAQS.

In response to Asarco's request, OES ran AERMOD+EMVAP for five hundred iterations, basically the equivalent of 500 years of expected Smelter operation at full operation. OES then examined the predicted concentrations from the 500 simulations and determined that the maximum of the predicted controlling¹ ambient 1-hour SO₂ concentration from the Hayden Smelter is 132.2 µg/m³, which when added to the 6.3 µg/m³ background concentration, gives a maximum expected concentration of 138.5 µg/m³ compared to a 1-hour SO₂ NAAQS of 196.0 µg/m³. Asarco is confident that the Converter Retrofit Project will assure compliance with the NAAQS under all reasonably foreseeable operating scenarios. The details of OES's analysis are set forth in the attached modeling report, “SO₂ Air Dispersion Modeling Analysis in Support of Asarco's Comments on Proposed Hayden SO₂ SIP” dated January 2017.

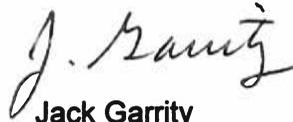
¹ Controlling concentration is defined as the 99th percentile of the maximum daily 1-hour SO₂ concentration.

Comments on ADEQ's Proposed R18-2-B1302 for Hayden Smelter
ASARCO LLC – Hayden Operations
January 6, 2017
Page 4

Asarco believes that it is important for all parties, ADEQ, EPA and the public, to recognize that the Converter Retrofit Project will achieve real, substantial emissions reductions that are protective of the NAAQS under worst case operating scenarios. No further reductions are realistically possible and none are needed.

Asarco appreciates the opportunity to provide these comments. Please contact Jack Garrity, Technical Services Manager, at (520) 356-3284 or Amy Veek, Smelter Environmental Engineer, at (520) 356-3296 if you have any questions.

Sincerely,



Jack Garrity
Technical Services Manager

Enclosure: SO₂ Air Dispersion Modeling Analysis in Support of Asarco's Comments on Proposed Hayden SO₂ SIP

pc: File

Due to file size, Asarco's enclosure, "SO2 Air Dispersion Modeling Analysis in Support of Asarco's Comments on Proposed Hayden SO2 SIP" is available upon request.

Contact:

Lisa Tomczak, ADEQ

lt5@azdeq.gov

602-771-4450

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January 9, 2017

HAND DELIVERED AND EMAIL: lt5@azdeq.gov

Lisa Tomczak
Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007

Re: Supplemental Comments on Arizona Department of Environmental Quality Proposed
Rule: R18-2-B1302, Limits on SO₂ Emissions from the Hayden Primary Copper Smelter

Dear Ms. Tomczak:

ASARCO LLC ("Asarco") appreciates this opportunity to provide supplemental public comment on the proposed rule at A.A.C. R18-2-B1302, Limits on SO₂ Emissions from the Hayden Primary Copper Smelter. Asarco has reached agreement today to purchase 40 acres at the SE ¼, SW ¼, S12, T5S R15E G&SR meridian, which is land immediately north of the slag dump. As with other areas on the east side of the Smelter, Asarco has the practical ability to exclude intruders from the 40 acres due to a combination of fencing, patrols and physical barriers as set forth in its prior submittal. Asarco requests that the proposed SIP change the ambient air boundary/process area boundary to reflect this property purchase. While there is no impact on the proposed regulatory language, the anode furnace fugitive emission rate in the SIP modeling demonstration can increase to 40.1 pound per hour (from 32.2 pound per hour in the current demonstration) without causing an exceedance of the NAAQS using the ADEQ modeling protocol. A modeling memorandum from Osman Environmental Solutions documenting this conclusion is attached.

Asarco appreciates the opportunity to provide these comments. Please contact Jack Garrity, Technical Services Manager, or Amy Veek, Smelter Environmental Engineer, if you have any questions.

Sincerely,



Eric L. Hiser
Counsel for Asarco

Enclosure

Osman Environmental Solutions letter dated January 9, 2017

January 9, 2017

Mr. Jack Garrity
Technical Services Manager
ASARCO, LLC
6094 North Asarco Road
Hayden, AZ 85135

RE: Revised 1-hr SO₂ Modeling Results and Increased Anode Furnace Fugitive CEV with SRMG Purchase

Dear Jack

Per our phone conversation earlier today, Asarco has recently learned that the Salt River Mining Group (SRMG) has agreed to sell Asarco a 40-acre parcel of land to the east of the smelter. Asarco's acquisition of this land will change the Ambient Air Boundary (AAB) that has been used in the recent air dispersion modeling in support of the development of the Hayden SO₂ State Implementation Plan (SIP). This new AAB will change the footprint of the predicted concentrations, and accordingly, will allow for a higher Critical Emissions Value (CEV) from the Anode Furnace fugitives. This letter summarizes this land purchase and the affect it will have on the SO₂ modeling analysis.

SRMG Purchase

The 40-acre parcel that the SRMG has agreed to sell to Asarco is depicted in Figure 1.



Figure 1
SRMG Parcel to be sold to Asarco

Revised Asarco AAB with SRMG Purchase

Asarco's acquisition of that parcel will change Asarco's AAB. The revised AAB is depicted in Figure 2.



Figure 2
Revised Asarco AAB

Revised 1-hr SO₂ Modeling Results

In November 2016 Osman Environmental Solutions, LLC (OES) submitted a report to the Arizona Department of Environmental Quality (ADEQ) summarizing modeling conducted in support of the development of the Hayden SO₂ SIP¹. OES has re-run that modeling with the revised AAB based on the SRMG land purchase. Because the revised AAB eliminates some nearby receptors to which the Anode Furnace fugitives had an impact, the CEV of the Anode Furnace fugitives is now able to be modeled at 40.1 lb/hr while still demonstrating compliance with the 1-hr SO₂ National Ambient Air Quality Standard (NAAQS) (previous modeling had set the CEV for the Anode Furnace fugitives at 32.2 lb/hr).

Figure 3 presents predicted 1-hr SO₂ concentrations in the immediate vicinity of Asarco, with all source characteristics and emission rates being identical to those previously modeled with the exception of the Anode Furnace fugitive emission rate of 40.1 lb/hr.

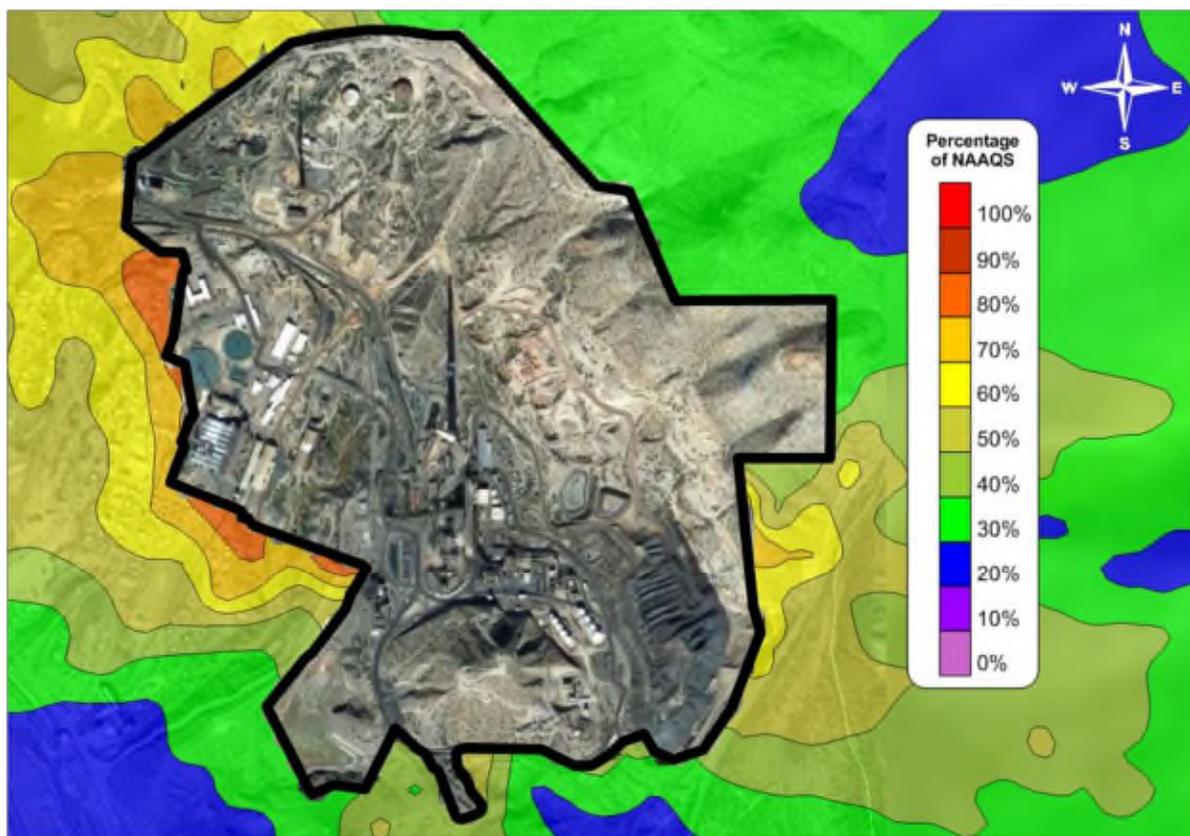


Figure 3
4th-highest of Maximum Daily Predicted 1-hr SO₂ Concentrations
Revised AAB, Reflecting SRMG Purchase
Anode Furnace fugitives at 40.1 lb/hr

¹ SO₂ Air Dispersion Modeling Analysis for ASARCO, LLC, Hayden, Arizona. Osman Environmental Solutions, LLC. November 2016.

Increasing the Anode Furnace fugitive emission rate to 40.1 lb/hr with an AAB reflective of the future land purchase does not change the location or value of the overall controlling 1-hr SO₂ concentration. As described in Section 6.2.1 of the November 2016 report, it remains 189.4 µg/m³ and is still located in the Dripping Springs Mountains to the north of Asarco. When added to the background concentration of 6.3 µg/m³, the controlling 1-hrh SO₂ concentration is 195.7 µg/m³, below the 1-hr SO₂ NAAQS of 196 µg/m³.

If you have any questions or comments, please do not hesitate to contact me at 410.794.6096, or at billjones@osmanenvironmental.com.

Sincerely,



William B. Jones
Principal
Osman Environmental Solutions, LLC

CC: Amy Veek (Asarco)
Eric Hiser (Jorden, Hiser, and Joy)



Miami Operations
5701 New St, PO Box 4444, Claypool, AZ 85532-4444

January 6, 2017

Ms. Lisa Tomczak
Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007

Subject: Comments on Proposed Rules for the Hayden Lead, Hayden Sulfur Dioxide & Miami Sulfur Dioxide Nonattainment Areas

Dear Ms. Tomczak,

Freeport-McMoRan Miami, Inc. ("FMMI") appreciates the opportunity to submit these comments on the *Proposed Rules for the Hayden Lead, Hayden Sulfur Dioxide & Miami Sulfur Dioxide Nonattainment Areas*. FMMI operates the Miami Smelter, a primary copper smelter located in Miami, Arizona. The Miami Smelter is the primary source that would be subject to the proposed rules for the Miami Sulfur Dioxide Nonattainment area.

General Comment: The references to "Freeport McMoRan" and "Freeport McMoRan-Miami" throughout the Notice of Proposed Rulemaking should be "Freeport-McMoRan Miami Inc."

Page 3287: The description of SO₂ emission control measures in the second sentence of the third paragraph would be more accurately described as follows:

The Miami Smelter emission control upgrades include new converter mouth covers, a new Aisle Scrubber, additional capture systems, and upgrades to the Acid Plant Tail Gas and Vent Fume Scrubbers to use caustic for SO₂ removal to ensure attainment of EPA's more stringent sulfur dioxide NAAQS.

R18-2-C1302(B)(6)(f): The word "or" should be added after the text and semicolon.

R18-2-C1302(F)(2)(a) and (d): The references to "subsection (F)(3)(c)" should be "subsection (F)(2)(c)."

R18-2-715(I): This provision should be revised to differentiate between the Hayden and Miami areas and to clarify applicability based on the relevant effective date of R18-2-B1302 and R18-2-C1302 and the respective SIP revisions for the Hayden and Miami SO₂ nonattainment areas. For example, the R18-2-715 provisions related to SO₂ emissions (i.e., those that are part of the current Miami area maintenance SIP addressing the 1971 SO₂ standard) should no longer apply

once R18-2-C1302 and the SIP revision for the Miami SO₂ Nonattainment Area (addressing the 2010 SO₂ standard) become effective. The status of R18-2-B1302 and the Hayden SO₂ Nonattainment Area is not relevant to the applicability of the R18-2-715 SO₂ provisions to the owner or operator of the primary copper smelter in the Miami area once R18-2-C1302 and the SIP revision for Miami SO₂ Nonattainment Area become effective.

R18-2-715.01(V): Same comments as above.

R18-2-715.02: A similar provision regarding the applicability of R18-2-715.02 should be added as described in the comments above.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Mares', with a stylized flourish at the end.

Bryce Mares
Manager, Environmental and Land
Freeport-McMoRan Inc.

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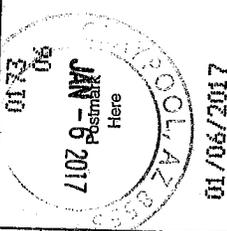
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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -

AIR POLLUTION CONTROL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement (ESBCIS) under A.R.S. § 41-1055.

An identification of the rule making.

The rulemaking addressed by this EIS consists of new rules added to the new Article 13 (R18-2-B1301; R18-2-B1301.01; R18-2-B1302; R18-2-C1301 (Reserved), and R18-2-C1302). The purpose of the amendments and new rulemaking is to bring nonattainment areas in the State of Arizona into compliance with new air quality standards for lead and sulfur dioxide pollution.

This EIS addresses the impact of the 2008 lead NAAQS and the 2010 sulfur dioxide NAAQS that requires the owner and operators of copper smelters, Asarco and Freeport-McMoRan Miami Inc., to install new and improved air pollution control equipment, apply for a new permit, and comply with new emission limits. The new NAAQS may result in increased compliance costs for Asarco and Freeport-McMoRan Miami Inc. and minor increased administrative costs for ADEQ.

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

The persons who will be directly affected by and bear the costs of this rulemaking are the owners and operators of the Miami and Hayden Smelters, which are Freeport-McMoRan Miami Inc. and Asarco, respectively. There are no other smelting facilities in the state of Arizona affected by this rulemaking.

The persons who will benefit from this rulemaking are the residents of Hayden and Miami, as well as the employees of Asarco and Freeport-McMoRan Miami Inc., due to the improved air quality that will result from this rulemaking and the corresponding control technology Asarco and Freeport-McMoRan Miami Inc. will be implementing to control lead and sulfur dioxide pollution.

A cost benefit analysis of the following:

- (a) The probable costs and benefits to the implementing agency and other agencies**

directly affected by the implementation and enforcement of the rule making.

ADEQ estimates that the current number of full-time employees assigned in the Permits and Compliance Sections of the Air Quality Division at ADEQ are adequate to implement and enforce the 2008 lead NAAQS in the Hayden nonattainment area and the 2010 sulfur dioxide NAAQS in the Hayden and Miami nonattainment areas. The costs of the rules to the implementing agency will therefore be minimal. Furthermore, permits for sources in the nonattainment areas are revised every five years, with minor revisions occurring periodically. Under A.A.C. R18-2-301(2) and R18-2-326(B)(1)(a), the permit applicant—in this case, Asarco and Freeport-McMoRan Miami Inc.—will ultimately be required to reimburse ADEQ for the cost of revisions as part of permit fees.

ADEQ has permitting, enforcement, and compliance jurisdiction in the Hayden and Miami nonattainment areas, and therefore, no other state agencies will be affected by this rulemaking.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making.

No political subdivision of the state operates a smelter of metal ore like copper. Under A.R.S. § 49-402(A)(2), ADEQ has original jurisdiction over all “sources, permits, and violations which pertain to...smelting of metal ore.” The costs of enforcing these new rules applicable to the Asarco and Freeport-McMoRan Miami Inc. copper smelters are likely to be minimal and will be recoverable through permit fees acquired from Asarco and Freeport-McMoRan Miami Inc.

(c) The probable costs and benefits to businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rule making.

The rules that are the subject of this preamble and EIS are necessary to comply with federal requirements for the SIP program under the CAA. If ADEQ fails to adopt these rules, the federal requirements will apply to the copper smelters through the adoption of a Federal Implementation Plan (FIP) issued by EPA under Section 110(c) of the CAA. However, the issuance of a FIP would likely require more strict emission limits and controls for the copper smelters, and further delay the areas’ attainment of the lead and sulfur dioxide NAAQS as expeditiously as practicable, as required by the CAA.

If ADEQ fails to submit approvable SIPs, the nonattainment areas would be subject to sanctions under CAA Section 179(b), which can include a prohibition of highway funds and emission

offsets requirements for other facilities. Therefore this rulemaking is an effort to not only curb air pollution in Arizona, but to also avoid federal consequences.

Lead and sulfur dioxide pollution cause extreme health risks and burdensome healthcare costs. Such related costs and benefits obtained from controlling lead and sulfur dioxide pollution are discussed further below.

The effects of lead air pollution

According to EPA, lead is emitted into the air from a wide variety of source types. *73 Fed. Reg.* 29184, 29190 (2008). Source types include aviation fuel, industrial boilers, iron and steel foundries, and metal ore smelters. Once deposited out of the air, lead can be disturbed and re-suspended into the air. For example, if dust containing particles of lead settles on a road, the lead can become airborne when a truck drives on the road. Lead pollution in the air can be exceptionally troublesome due to its ease of transport in smaller particle sizes. Lead also subsists in the environment for a very long time, making full remediation difficult.

Lead can enter the human body through many routes, but it is primarily inhaled when it is a component of air pollution. In its review of scientific literature for the 2008 lead NAAQS, EPA examined air-related lead exposure through:

1. Inhalation of airborne lead, including re-suspended lead particles
2. Ingestion of lead deposited as indoor or outdoor dust or soil, dietary items (like crops and livestock), and drinking water

EPA recognizes that “lead has been demonstrated to exert ‘a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action.’” *73 Fed. Reg.* 29184, 29197 (2008). Furthermore, a “safe” level of lead in the human body that causes little to no harm has yet to be determined. In promulgating the 2008 lead NAAQS, EPA focused primarily on neurological effects in children and cardiovascular effects in adults that “are currently clearly of greatest public health concern.”

Health experts agree that the developing nervous system of a child is the most sensitive to lead exposure. EPA states, “Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive, and behavioral impacts.” *73 Fed. Reg.* 29184, 29198 (2008). Studies

have observed lower IQ, reduced academic achievement, and decreased graduation rates in adolescents exposed to lead. Lead exposure is associated with more negative ratings by teachers and/or parents for children exhibiting inattentiveness, impulsivity, distractibility, and lack of concentration. Higher concentrations of lead in the blood are also linked to impaired memory and visual-spatial skills. Additional studies show early exposure to lead in adolescents may result in an increased likelihood of antisocial and criminal behavior later in life. Since children are exposed to lead early, it has more time to accumulate in the blood supply and bones, hindering overall development and growth.

Lead exposure in adults can cause coronary heart disease, strokes, premature death, and hypertension. Furthermore, lead bioaccumulates in the body, causing persistent, long-term health problems. Lead exposure can also cause kidney disease, anemia, decreased sperm count, increased blood pressure, and interference with vitamin D metabolism. In the body of a pregnant woman, lead can easily cross the placenta, resulting in continued fetal exposure during pregnancy with lasting neurological impacts after birth. Pregnant women who are exposed to even low levels of lead are at high risk for premature birth.

Other symptoms caused by lead exposure include: irritability; shortened attention span; fatigue; impaired growth; loss of appetite; learning disabilities; headaches; seizures; nausea and vomiting; and severe abdominal pain.

A discussion of the monetary costs and health-based benefits of the proposed rulemaking for lead follows.

Lead emissions controls and costs

The CAA prohibits the EPA from considering costs in setting or revising the NAAQS for any pollutant. However, in promulgating the 2008 lead NAAQS, EPA analyzed the associated costs for pollution control equipment and benefits associated with improved public health. EPA estimates that full implementation of the lead NAAQS by sources across the U.S. in 2016 alone would cost approximately \$150 million to \$2.8 billion. The health benefits far outweigh these costs, estimated between \$3.8 billion to \$6.9 billion. *73 Fed. Reg.* 66964 (2008).

As part of the consent decree, Asarco will implement the Converter Retrofit Project at its Hayden copper smelter to reduce lead and sulfur dioxide emissions. The project will replace the existing five 13-foot diameter copper converters with three 15-foot diameter converters that operate more

efficiently. Improved primary and secondary hooded ventilation systems will also be installed above the smelting equipment to capture process off-gases. A new tertiary hooding system will further prevent emissions from escaping the smelting building. An upgraded vent gas baghouse will collect particulate and gaseous emissions coming from the converter dryers and flash furnace.

In addition to the Converter Retrofit Project, Asarco will also be implementing additional control technology for leaded fugitive dust sources. For example, solids from the acid plant scrubbers that process emissions from the flash furnace and copper converters will be dried in a fully enclosed system that is maintained under negative pressure instead of being dried in open piles outside. Materials like concentrate and reverts will no longer be stored in open piles outside, but rather on concrete pads with fences to block the wind and water sprays to minimize fugitive emissions. Unpaved roads will also be sprayed with chemical dust suppressants and paved roads will be sprayed with water to control leaded dust emissions. In addition to complying with the consent decree, these modifications will also contribute to the control strategy for the Hayden lead nonattainment area SIP.

In 2015, Asarco's Hayden operations emitted over three tons of lead emissions. In 2019, that amount is projected to decrease by half to roughly 1.5 tons. The cost of the retrofit project is estimated to be \$110 million.

Benefits of lead emissions controls

The primary benefit of installing the emissions control technologies is an overall reduction in lead in ambient air, which in turn, decreases health and welfare risks from exposure.

Health issues cause more hospital stays and sick time taken from work, putting more burden on health care systems and the economy. EPA estimated between \$3.8 billion to \$6.9 billion of benefits can be contributed to the new lead NAAQS, reflecting public health improvements and an expected increase in lifetime earnings as a result of avoiding IQ loss.

This rulemaking will also help the State of Arizona avoid federal sanctions implemented under the CAA. If the State fails in submitting the rules and SIP revision for the Hayden lead nonattainment area, EPA has the authority to prohibit highway funding and increase costly emission offset requirements for new or modified facilities.

This rulemaking is necessary because of the health benefits derived from the improved controls implemented at the copper smelter and to avoid federal consequences.

The effects of sulfur dioxide pollution

According to the Agency for Toxic Substances and Disease Registry (ATSDR), sulfur dioxide is a colorless gas with a pungent odor. Sulfur dioxide is a liquid when under pressure; it easily dissolves in water and cannot catch fire. Sulfur dioxide in the air results primarily from activities associated with the burning of fossil fuels (coal, oil) such as at power plants or from copper smelting. Once released into the environment, sulfur dioxide moves to the air where it can convert to sulfuric acid, sulfur trioxide, and sulfates.

Short-term exposures to high levels of sulfur dioxide can be life-threatening. Exposure to 100 parts per million parts of air (ppm) is considered immediately dangerous to life and health. Previously healthy nonsmoking miners who breathed sulfur dioxide released as a result of an explosion in an underground copper mine developed burning of the nose and throat, breathing difficulties, and severe airway obstructions. Long-term exposure to persistent levels can also affect health. Lung function changes have been observed in some workers exposed to 0.4 - 3.0 ppm of sulfur dioxide for 20 years or more. However, these workers were also exposed to other chemicals, making it difficult to attribute their health effects to sulfur dioxide exposure alone. Additionally, exercising asthmatics are sensitive to the respiratory effects of low concentrations (0.25 ppm) of sulfur dioxide.

Typical outdoor concentrations of sulfur dioxide may range from 0 to 1 ppm. Occupational exposures to sulfur dioxide may lawfully range from 0 to 5 ppm under state OSHA (Occupational Safety and Health Administration) regulations. During any 8-hour work shift of a 40-hour work week, the average concentration of sulfur dioxide in the workplace may not exceed 5 ppm.

Most of the effects of sulfur dioxide exposure that occur in adults (i.e., difficulty breathing, changes in the ability to breathe as deeply or take in as much air per breath, and burning of the nose and throat) are also of potential concern in children, but it is unknown whether children are more vulnerable to exposure. Children may be exposed to more sulfur dioxide than adults because they breathe more air for their body weight than adults do. Children also exercise more frequently than adults. Exercise increases breathing rate. This increase results in both a greater amount of sulfur dioxide in the lungs and enhanced effects on the lungs. One study suggested that

a person's respiratory health, and not his or her age, determines vulnerability to the effects of breathing sulfur dioxide.

Sulfur dioxide emissions controls and costs

Freeport-McMoRan Miami Inc.

The construction work being performed at the Freeport-McMoRan Miami Inc. Miami smelter includes process changes along with environmental upgrades to achieve sulfur dioxide emission reductions so that the Miami area will meet the new ambient air quality standards. The Miami Smelter emission control upgrades include new converter mouth covers, a new Aisle Scrubber, additional capture systems, and upgrades to the Acid Plant Tail Gas and Vent Fume Scrubbers to use caustic for sulfur dioxide removal to ensure attainment of EPA's more stringent sulfur dioxide NAAQS. At this time, the cost of the project is estimated to be \$250 million.

Asarco-Hayden

The Converter Retrofit Project and associated controls discussed above for lead pollution will also greatly mitigate sulfur dioxide emissions. As mentioned earlier, the project involves replacement of the existing five 13-foot diameter converters with three 15-foot diameter converters. Corresponding modifications will be made to the converter aisle in order to accommodate the larger converters. The retrofit includes installation of a new converter primary gas system. New secondary hoods will also be installed and designed to fit the new, larger converters and new primary hoods. The new secondary hoods will direct sulfur dioxide ventilation gases during blowing operations to the acid plant instead of a baghouse, improving control. Other upgrades include installation of a new converter aisle tertiary gas collection system, enhanced lime injection at the secondary and new vent gas baghouse to further control sulfur dioxide emissions, and improvements to the acid plant. Overall, the retrofit is projected to reduce current sulfur dioxide emissions by 90 percent, with a total sulfur dioxide capture rate of 99.5 percent of the sulfur dioxide produced during the copper smelting process. The cost of the converter retrofit project is estimated to be \$110 million.

Benefits of sulfur dioxide emissions controls

One of the primary benefits of installing the emissions control technologies is an overall reduction in sulfur dioxide emissions. EPA first set health based standards for sulfur dioxide in

1971 at a 24-hour primary standard at 140 parts per billion (ppb) and an annual average standard at 30 ppb. In 1996, EPA reviewed the sulfur dioxide NAAQS and chose not to revise the standards. The 2010 revision to the sulfur dioxide NAAQS established a new one-hour standard at a level of 75 ppb. *75 Fed. Reg. 35520 (2010)*.

Lowering the standard will result in health benefits by lowering exposure to sulfur dioxide, specifically short-term exposure. Initial respiratory reactions to sulfur dioxide include narrowing of the airways in the lungs and difficulty breathing. Individuals with sensitive or comprised respiratory systems, such as children, the elderly, and individuals with respiratory related illnesses are more susceptible to these reactions. These negative reactions commonly result in increased emergency room and hospital visits. The revised NAAQS is designed to lower emissions and reduce exposure to high levels of sulfur dioxide by lowering the level of the standard and establishing new averaging time frame. EPA estimates that a level of 75 ppb for sulfur dioxide will result in cost benefits between \$13 billion and \$33 billion from reduced emergency room visits, hospitalizations, lost work days, and cases of aggravated asthma and bronchitis.

In addition to direct impacts, sulfur dioxide is also a precursor to particulate matter that is 2.5 micrometers in diameter, which can penetrate deep into the lungs and cause serious health effects including increases in cardiovascular illness and mortality.

Additional benefits of this rulemaking include continued oversight and control of air emissions by ADEQ. As stated earlier for lead pollution, without approval of this rulemaking and SIPs, the CAA specifies that EPA must develop a federal implementation plan (FIP) to regulate sources within the planning area. In addition to a FIP, the Hayden and Miami nonattainment areas would also be subject to highway sanctions and offsets. Highway sanctions are prohibitions on certain transportation projects or grants within the planning area. Offset sanctions are requirements for new or modified sources to have a ratio of emissions reductions to increased emissions at a level of at least two to one. Both ADEQ and the business community will benefit from continued regulation at the state level as a result of avoiding federal sanctions.

A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rule making.

ADEQ anticipates that employment impacts will be minor. ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this

rulemaking. Furthermore, no sources are expected to close from the implementation of this rulemaking.

Asarco-Hayden Operations

Asarco estimates that 10 contractors and 100 full-time employees will be needed in order to complete the retrofit project. Some of the contractors will be hired for planned maintenance outages during the construction period. Roughly 50 percent of the contractors will be hired from Arizona and the other 50 percent from the Southwest in general. Procurement of equipment for the retrofit project is scheduled to begin in 2015, with full completion of the project scheduled by the fourth quarter of 2018. Asarco is not planning to create any new full or part-time positions at the company as a result of this project.

Freeport-McMoRan Miami Inc. – Miami Operations

Through the various phases of the construction project described above, Freeport-McMoRan Miami Inc. expects to have over 500 contractors/individuals working on the construction; although this number will vary over the construction period. This estimate does not include contractors required for planned maintenance outages during the same time frame. While the number of contractors required for planned maintenance outages is contingent upon the work to be completed during the outage, it usually requires between 500 and 1,000 contractors.

Because of the increased demand for contractors, Freeport-McMoRan Miami Inc. anticipates a short-term increase in employment by the contractors throughout the project. Contractors will be selected on an as needed basis; some local and specialty contractors from outside the State may be necessary. No new positions will be created within the Freeport-McMoRan Miami Inc. Miami smelter for this project.

Construction will occur in two major phases. Phase 1 started with ADEQ's approval of the smelter's significant permit revision authorizing the proposed construction. Phase 2 will begin shortly after internal approval to move forward is received and Freeport-McMoRan Miami Inc. anticipates the project will be completed eight quarters after that approval is received.

A statement of the probable impact of the rule making on small businesses.

(a) An identification of the small businesses subject to the rule making.

Under A.R.S. § 41-1001(21):

“Small business” means a concern, including its affiliates, which is [1] *independently owned and operated*, which is [2] *not dominant in its field* and which [3] *employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year*. (Emphasis added.)

The lead and sulfur dioxide-related rules will apply only to the companies that own and operate copper smelters in Hayden and Miami, which is currently Asarco and Freeport-McMoRan Miami Inc., respectively. These companies do not qualify as small businesses.

As of 2014, Asarco’s Hayden operations employed over 600 people. Asarco is a subsidiary of Grupo Mexico, a public company, and one of the major copper producers in the world. According to its 2014 annual report, Grupo Mexico’s net profit was \$1.7 billion. Grupo Mexico nor Asarco’s Hayden operations meet the definition of a “small business” under A.R.S. § 41-1001(21).

As of this rulemaking, Asarco currently contracts with Smithco Enterprises, LLC, an operation that processes smelter byproducts like reverts for Asarco. Smithco’s business relies heavily on Asarco’s copper smelter. Several control measures required by this rulemaking (and the consent decree) will apply to some of Smithco’s operations. However, Asarco is paying for the control measures as part of the consent decree with EPA. Therefore, this rulemaking will not have a direct impact on Smithco.

In 2015, Freeport-McMoRan Miami Inc., also a public company and top producer of copper in the world, reported a \$15.8 billion revenue. Also in 2015, its Miami mine and smelter produced 43 million pounds of copper. As of 2016, roughly 760 people are employed at Freeport’s Miami operations. Freeport-McMoRan Miami Inc. Miami operations do not meet the definition of a “small business” under A.R.S. § 41-1001(21).

(b) The administrative and other costs required for compliance with the rule making.

Not applicable.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the rule making.

Not applicable.

A statement of the probable effect on state revenues.

Since any costs associated with the rulemaking will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking—attainment of the 2008 lead NAAQS and 2010 sulfur dioxide NAAQS. The smelters owned by Asarco and Freeport-McMoRan Miami Inc. are the primary source of emissions and are responsible for installing adequate control technologies that will bring the areas into compliance.

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.

To support the emission limits and control requirements in both rules, ADEQ conducted air quality modeling using data obtained from Asarco, Freeport-McMoRan Miami Inc., and air quality monitors. ADEQ followed EPA Guidance in conducting the modeling.

Before conducting the air quality modeling, ADEQ identified lead and sulfur dioxide pollution sources in the Hayden nonattainment area and sulfur dioxide pollution sources in the Miami nonattainment area. To do this, ADEQ obtained emissions data from EPA's National Emission Inventory (NEI). After analyzing the emissions data, ADEQ determined that no other sources or combination of sources contributed as much as the Asarco smelter in the Hayden nonattainment area and the Freeport-McMoRan Miami Inc. smelter in the Miami nonattainment area.

ADEQ used the emissions data, in addition to meteorological and topographical data, to develop

emissions limits that demonstrate attainment. Since the copper smelters in both areas were identified as the primary sources of emissions, the modeling efforts concentrated on the facilities' operations. The emission limits derived from the modeling are conservative and factor in the emission control equipment efficiency as well as peak smelter production levels.

The modeling Technical Support Documents outline ADEQ's methods, approach, and empirical results. The documents for both nonattainment areas are available for review at ADEQ's Records Center. See section 7 of this preamble for more information.

$$E = 55.0P^{0.11-40}$$

where “E” and “P” are defined as indicated in subsection (A)(1).

- B.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- C.** For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- D.** The opacity of emissions subject to the provisions of this Section shall not exceed 20%.
- E.** Monitoring of operations under this Section is as follows:
- The owner or operator of an affected facility shall maintain daily records of the time and duration of each steel production cycle.
 - The owner or operator of any affected facility that uses Venturi scrubber emission control equipment shall install, calibrate, maintain and continuously operate the following monitoring devices:
 - A monitoring device for the continuous measurement of the pressure loss through the Venturi constriction of the control equipment. The monitoring device shall be certified by the manufacturer to be accurate within ± 250 pascals (± 1 inch water).
 - A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within $\pm 5\%$ of the design water supply pressure. The pressure sensor or tap shall be located close to the water discharge point.
 - All monitoring devices required in subsection (F)(2) shall be recalibrated annually and at other times as the Director may require, in accordance with the procedures in Appendix 9 of this Chapter.
- F.** The test methods and procedures required under this Section are as follows:
- The reference methods set forth in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in subsection (A) as follows:
 - Method 5 for concentration of particulate matter and associated moisture content,
 - Method 1 for sample and velocity traverses,
 - Method 2 for volumetric flow rate,
 - Method 3 for gas analysis.
 - For Method 5, the sampling for each run shall continue for an integral number of cycles with total duration of at least 60 minutes. The sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director. A cycle shall start at the beginning of either the scrap preheat or the oxygen blow and shall terminate immediately prior to tapping.

Historical Note

Section R18-2-713 renumbered from R18-2-513 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-714. Standards of Performance for Existing Sewage Treatment Plants

- A.** No person shall cause, allow or permit to be emitted into the atmosphere, from any municipal sewage treatment plant sludge incinerator:

- Smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity for more than 30 seconds in any 60-minute period.
 - Particulate matter in concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- B.** The owner or operator of any sludge incinerator subject to the provisions of this Section shall monitor operations by doing all of the following:
- Install, calibrate, maintain and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall have an accuracy of $\pm 5\%$ over its operating range.
 - Provide access to the sludge charged so that a well-mixed representative grab sample of the sludge can be obtained.
 - Install, calibrate, maintain and operate a weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid wastes are incinerated together. The weighing device shall have an accuracy of $\pm 5\%$ over its operating range.
- C.** The test methods and procedures required by this Section are as follows:
- The reference methods set forth in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in subsection (A) as follows:
 - Method 5 for concentration of particulate matter and associated moisture content;
 - Method 1 for sample and velocity traverses;
 - Method 2 for volumetric flow rate; and
 - Method 3 for gas analysis.
 - For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.

Historical Note

Section R18-2-714 renumbered from R18-2-514 effective November 15, 1993 (Supp. 93-4).

R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements

- A.** No owner or operator of a primary copper smelter shall cause, allow or permit the discharge of particulate matter into the atmosphere from any process in total quantities in excess of the amount calculated by one of the following equations:
- For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 - For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where “E” and “P” are defined as indicated in subsection (A)(1).
- B.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.

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- C. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter for that process.
- D. The opacity of emissions subject to the provisions of this Section shall not exceed 20%.
- E. The reference methods set forth in the Arizona Testing Manual and 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:
 1. Method A1 or Reference Method 5 for concentration of particulate matter and associated moisture content,
 2. Reference Method 1 for sample and velocity traverses,
 3. Reference Method 2 for volumetric flow rate,
 4. Reference Method 3 for gas analysis.
- F. Except as provided in a consent decree or a delayed compliance order, the owner or operator of any primary copper smelter shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from any stack required to be monitored by R18-2-715.01(K) in excess of the following:
 1. For the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17" W:
 - a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 6,882 pounds per hour.
 - b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

- a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 604 pounds per hour.
- b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	8678
1	7158
2	5903
4	4575
7	4074
12	3479
20	3017
32	2573
48	2111
68	1703
94	1461
130	1274
180	1145
245	1064
330	1015
435	968
560	933
710	896
890	862
1100	828
1340	797
1610	765
1910	739
2240	712

n, Cumulative Occurrences	E, (lb/hr)
0	24,641
1	22,971
2	21,705
4	20,322
7	19,387
12	18,739
20	17,656
32	16,988
48	16,358
68	15,808
94	15,090
130	14,423
180	13,777
245	13,212
330	12,664
435	12,129
560	11,621
710	11,165
890	10,660
1100	10,205
1340	9,748
1610	9,319
1910	8,953
2240	8,556

- G. Except as provided in a consent decree or a delayed compliance order, for the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17"W, annual average fugitive emissions calculated under R18-2-715.01(T) shall not exceed 295 pounds per hour.
- H. In addition to the limits in subsection (F)(3), except as provided in a consent decree or a delayed compliance order, the owner or operator of the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from combined stack and fugitive emissions units in excess of the 2420 pounds per hour annual average calculated under R18-2-715.01(U).

Historical Note

Section R18-2-715 renumbered from R18-2-515 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

- 2. For the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W:

R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

- A.** The cumulative occurrence and emission limits in R18-2-715(F) apply to the total of sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not uncaptured fugitive emissions or emissions due solely to the use of fuel for space heating or steam generation.
- B.** The owner or operator shall include periods of malfunction, startup, shutdown or other upset conditions when determining compliance with the cumulative occurrence or annual average emission limits in R18-2-715(F), (G), or (H).
- C.** The owner or operator shall determine compliance with the cumulative occurrence and emission limits contained in R18-2-715(F) as follows:
1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period defined in subsection (J) ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(F) if either:
 - a. The annual average is greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
 2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements in subsection (K).
- D.** For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986, except that:
1. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(1) and R18-2-715(G)(1) is January 15, 2002, and
 2. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(2), (F)(3), (G)(2), and (H) is the effective date of this rule.
- E.** For purposes of subsection (C), a three-hour emissions average in excess of an emission level E violates the associated cumulative occurrence limit n listed in R18-2-715(F) if:
1. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
 2. The average is calculated during the last operating day of the compliance period being reported.
- F.** A three-hour emissions average only violates the cumulative occurrence limit n of an emission level E on the day containing the last hour in the average.
- G.** Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(F).
- H.** The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(F).
- I.** Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(F).
- J.** To determine compliance with subsections (C) through (I), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- K.** To determine compliance with R18-2-715(F) or (H), the owner or operator of any smelter subject to R18-2-715(F) or (H) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in each stack that could emit five percent or more of the allowable annual average sulfur dioxide emissions from the smelter.
1. The owner or operator shall continuously monitor sulfur dioxide concentrations and stack gas volumetric flow rates in the outlet of each piece of sulfur dioxide control equipment.
 2. The owner or operator shall continuously monitor captured fugitive emissions for sulfur dioxide concentrations and stack gas volumetric flow rates and include these emissions as part of total plant emissions when determining compliance with the cumulative occurrence and emission limits in R18-2-715(F) and (H).
 3. If the owner or operator demonstrates to the Director that measurement of stack gas volumetric flow in the outlet of any particular piece of sulfur dioxide control equipment would yield inaccurate results once operational or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
 4. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all monitored stacks, outlets, or other approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
 5. The owner or operator shall demonstrate that the continuous monitoring system meets all of the following requirements:
 - a. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 6.
 - b. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring system.
 - d. The Director shall approve the location of all sampling points for monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
 - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period

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unless the manufacturer specifies or recommends calibration at shorter intervals, in which case specifications or recommendations shall be followed. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.

- L.** The owner or operator of a smelter subject to this Section shall measure at least 95 percent of the hours during which emissions occurred in any month.
- M.** Failure of the owner or operator of a smelter subject to this Section to measure any 12 consecutive hours of emissions according to the requirements of subsection (K) or (S) is a violation of this Section.
- N.** The owner or operator of any smelter subject to this Section shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring equipment required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
- O.** To determine total overall emissions, the owner or operator of any smelter subject to this Section shall perform material balances for sulfur according to the procedures prescribed by Appendix 8 of this Chapter.
- P.** The owner or operator of any smelter subject to this Section shall maintain a record of all average hourly emissions measurements and all calculated average monthly emissions required by this Section. The record of the emissions shall be retained for at least five years following the date of measurement or calculation. The owner or operator shall record the measurement or calculation results as pounds per hour of sulfur dioxide. The owner or operator shall summarize the following data monthly and submit the summary to the Director within 20 days after the end of each month:
1. For all periods described in subsection (C) and (R), the annual average emissions as calculated at the end of each day of the month;
 2. The total number of hourly periods during the month in which measurements were not taken and the reason for loss of measurement for each period;
 3. The number of three-hour emissions averages that exceeded each of the applicable emissions levels listed in R18-2-715(F) and (G)(1)(b) for the compliance periods ending on each day of the month being reported;
 4. The date on which a cumulative occurrence limit listed in R18-2-715(F) or (G)(1)(b) was exceeded if the exceedance occurred during the month being reported; and
 5. For all periods described in subsection (T) and (U), the annual average emissions as calculated at the end of the last day of each month.
- Q.** An owner or operator shall install instrumentation to monitor each point in the smelter facility where a means exists to bypass the sulfur removal equipment, to detect and record all periods that the bypass is in operation. An owner or operator of a copper smelter shall report to the Director, not later than the 15th day of each month, the recorded information required by this Section, including an explanation for the necessity of the use of the bypass.
- R.** The owner or operator shall determine compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G)(1) as follows:
1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (R)(8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(G)(1)(a) if either:
 - a. The annual average is greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
 2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements contained in subsection (S).
 3. For purposes of subsection (R)(2), a three-hour emissions average in excess of an emission level E_f violates the associated cumulative occurrence limit n listed in R18-2-715(G)(1)(b) if:
 - a. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
 - b. The average is calculated during the last operating day of the compliance period being reported.
 4. A three-hour emissions average only violates the cumulative occurrence limit n of an emission level E_f on the day containing the last hour in the average.
 5. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(G)(1)(b).
 6. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(G)(1).
 7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(G)(1)(b).
 8. To determine compliance with subsections (R)(1) through (7), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- S.** To determine compliance with R18-2-715(G)(1), the owner or operator of the smelter subject to R18-2-715(G)(1) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
1. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration from an approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
 2. The owner or operator of a smelter subject to the requirements of this subsection shall conduct quality assurance procedures on the continuous monitoring system according to the methods in 40 CFR 60, Appendix F, except that

an annual relative accuracy test audit (RATA) is not required.

T. The emission limit in R18-2-715(G)(2) applies to the total of uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(G)(2) as follows:

1. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
2. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(G)(2) if the fugitive annual average computed at the end of each month exceeds the allowable annual average emission limit.

U. The emission limit in R18-2-715(H) applies to the total of stack and uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(H) as follows:

1. The owner or operator shall calculate annual average stack emissions at the end of the last day of each month by averaging the emissions for all hours measured during the previous 12-month period ending on that day according to the requirements contained in subsection (K).
2. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
3. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(H) if the total of the stack and fugitive annual averages computed at the end of each month exceeds the allowable annual average emission limit.

Historical Note

Section R18-2-715.01 renumbered from R18-2-515.01 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3).

R18-2-715.02. Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions

- A.** For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986.
- B.** No later than 24 months before the compliance date, the owner or operator of a smelter subject to R18-2-715 shall submit to the Director the results of an evaluation of the fugitive emissions from the smelter. The evaluation results shall contain all of the following information:

1. A measurement or accurate estimate of total fugitive emissions from the smelter during typical operations, including planned start-up and shutdown. The measurement or estimate shall contain the amount of both average short-term (24 hours) and average long-term (monthly) fugitive emissions from the smelter. The evaluation plan shall be approved in advance by the Department and shall specify the method used to determine the fugitive emission amounts, including the conditions determined to be “typical operations” for the smelter.
 2. A measurement or accurate estimate of the relative proportion, expressed as a percentage, of total fugitive emissions during typical operations, including planned start-up and shutdown, produced by any of the following smelter processes:
 - a. Roaster or dryer operation;
 - b. Calcine or dried concentrate transfer;
 - c. Reverberatory furnace operations, including feeding, slag return, matte and slag tapping;
 - d. Matte transfer; and
 - e. Converter operations.
 3. The measurement technique or method of estimation used to fulfill the requirement in subsection (B)(2) shall be approved in advance by the Department.
 4. The results of at least a six-month fugitive emission impact analysis conducted during that part of the year when fugitive emissions are expected to have the greatest ambient air quality impact. The study shall utilize sufficient measurements of fugitive emissions, meteorological conditions and ambient sulfur dioxide concentrations to associate fugitive emissions with specific measured ambient concentrations of sulfur dioxide. The study shall describe in detail the techniques used to make the required determinations. The design of the study shall be approved in advance by the Department.
- C.** On the basis of the results of the evaluation as well as other data and information contained in the records of the Department, the Director shall determine whether fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of the ambient sulfur dioxide standards in the vicinity of the smelter. If the Director finds that fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of a smelter, then the Director shall adopt rules specifying the emission limits and undertake other appropriate measures necessary to maintain ambient sulfur dioxide standards.
- D.** The requirements of subsection (B) shall not apply to a smelter subject to this Section if the owner or operator of that smelter can demonstrate to the Director both that:
1. Compliance with the applicable cumulative occurrence and emission limits listed in R18-2-715(F) will require the smelter to undergo major modifications to its physical configuration or work practices prior to the compliance date, and
 2. That the modification will reduce fugitive emissions to such an extent that such emissions will not cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of the smelter.
- E.** In order to assess the sufficiency of the cumulative occurrence and emission limits contained in R18-2-715(F) to maintain the ambient air quality standards for sulfur dioxide set forth in R18-2-202, an owner or operator of a smelter subject to this Section shall continue to calibrate, maintain and operate any ambient sulfur dioxide monitoring equipment owned by the smelter owner or operator and in operation within the area of

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the smelter enclosed by a circle with 10-mile radius as calculated from a center point which shall be the point of the smelter's greatest sulfur dioxide emissions, for a period of at least three years after the compliance date.

1. Such monitors shall be operated and maintained in accordance with 40 CFR 50 and 58 and such other conditions as the Director deems necessary.
2. The location of ambient sulfur dioxide monitors and length of time such monitors remain at a location shall be determined by the Director.

Historical Note

Section R18-2-715.02 renumbered from R18-2-515.02 and amended effective November 15, 1993 (Supp. 93-4).

R18-2-716. Standards of Performance for Existing Coal Preparation Plants

- A. The provisions of this Section are applicable to any of the following affected facilities in coal preparation plants: thermal dryers, pneumatic coal-cleaning equipment, coal processing and conveying equipment including breakers and crushers, coal storage systems, and coal transfer and loading systems. For purposes of this Section, the definitions contained in 40 CFR 60.251 are adopted by reference and incorporated herein.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing coal preparation plant in total quantities in excess of the amounts calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Fugitive emissions from coal preparation plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The test methods and procedures required by this Section are as follows:
 1. The reference methods in the 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, are used to determine compliance with standards prescribed in subsection (B) as follows:
 - a. Method 5 for the concentration of particulate matter and associated moisture content,
 - b. Method 1 for sample and velocity traverses,
 - c. Method 2 for velocity and volumetric flow rate,
 - d. Method 3 for gas analysis.
 2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf) except that short sampling times or smaller volumes, when necessitated by process variables

or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.

3. The owner or operator shall construct the facility so that particulate emissions from thermal dryers or pneumatic coal cleaning equipment can be accurately determined by applicable test methods and procedures under subsection (F)(1).

Historical Note

Section R18-2-716 renumbered from R18-2-516 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-717. Standards of Performance for Steel Plants: Existing Electric Arc Furnaces (EAF)

- A. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from electric arc furnaces or dust-handling equipment which are affected facilities in any steel plant in total quantities in excess of the amount calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (A)(1).
- B. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- C. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- D. An opacity standard of 40% shall not be exceeded by existing steel plant electric arc furnaces and their appurtenances for more than an aggregate of three minutes in any 45-minute period.
- E. A continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the control device shall be installed, calibrated, maintained, and operated by the owner or operator subject to the provisions of this Section.
- F. The test methods and procedures required under this Section are as follows:
 1. Reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed under subsection (A) as follows:
 - a. Method 5 for concentration of particulate matter and associated moisture content,
 - b. Method 1 for sample and velocity and volumetric flow rate,
 - c. Method 2 for velocity and volumetric flow rate,



A.R.S. § 49-104. *Powers and duties of the department and director*

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to 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.

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Authorizing Statute

A.R.S. § 49-404

A.R.S. § 49-404. *State implementation plan*

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

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Authorizing Statute

A.R.S. § 49-425

A.R.S. § 49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.